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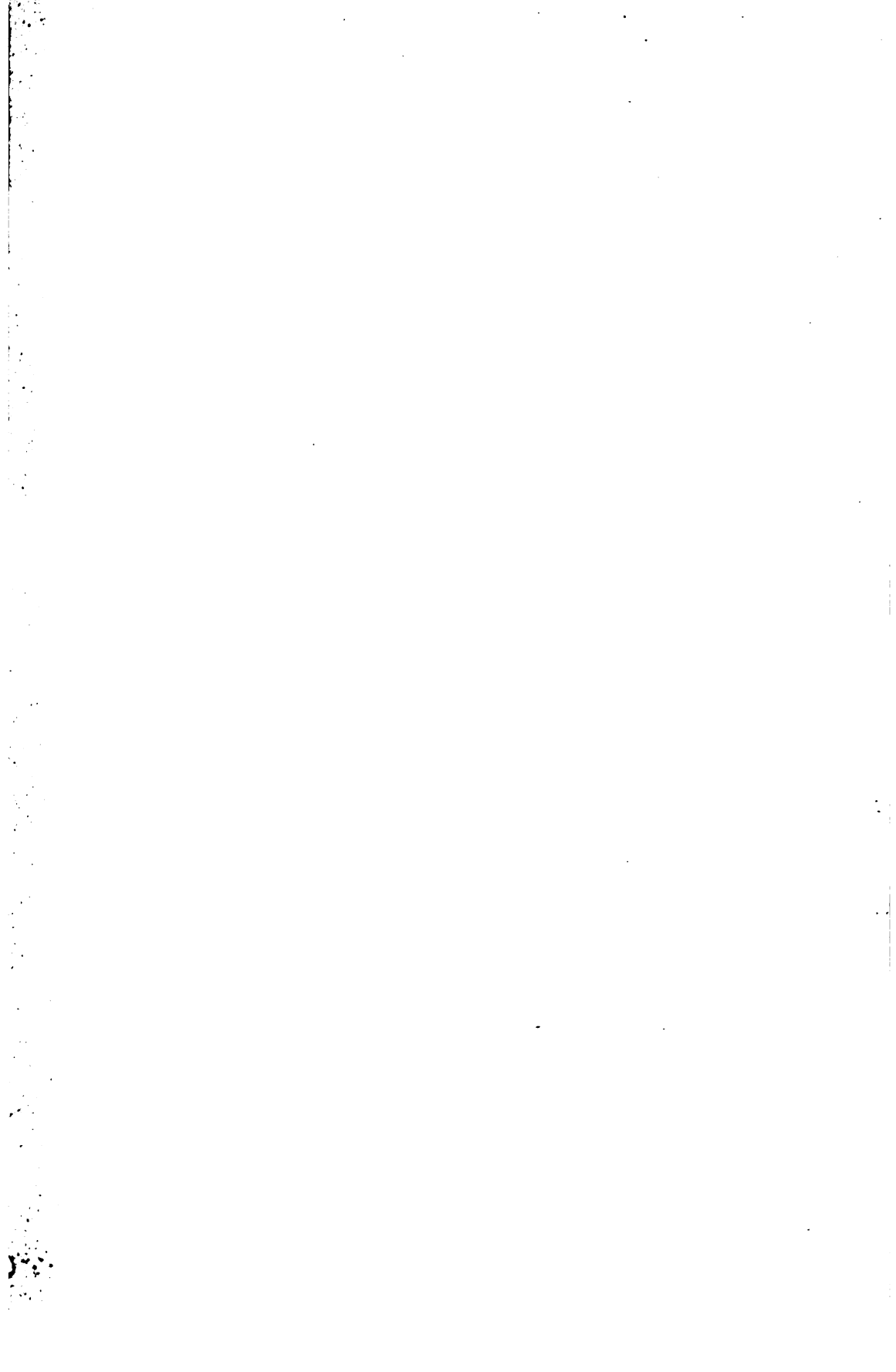
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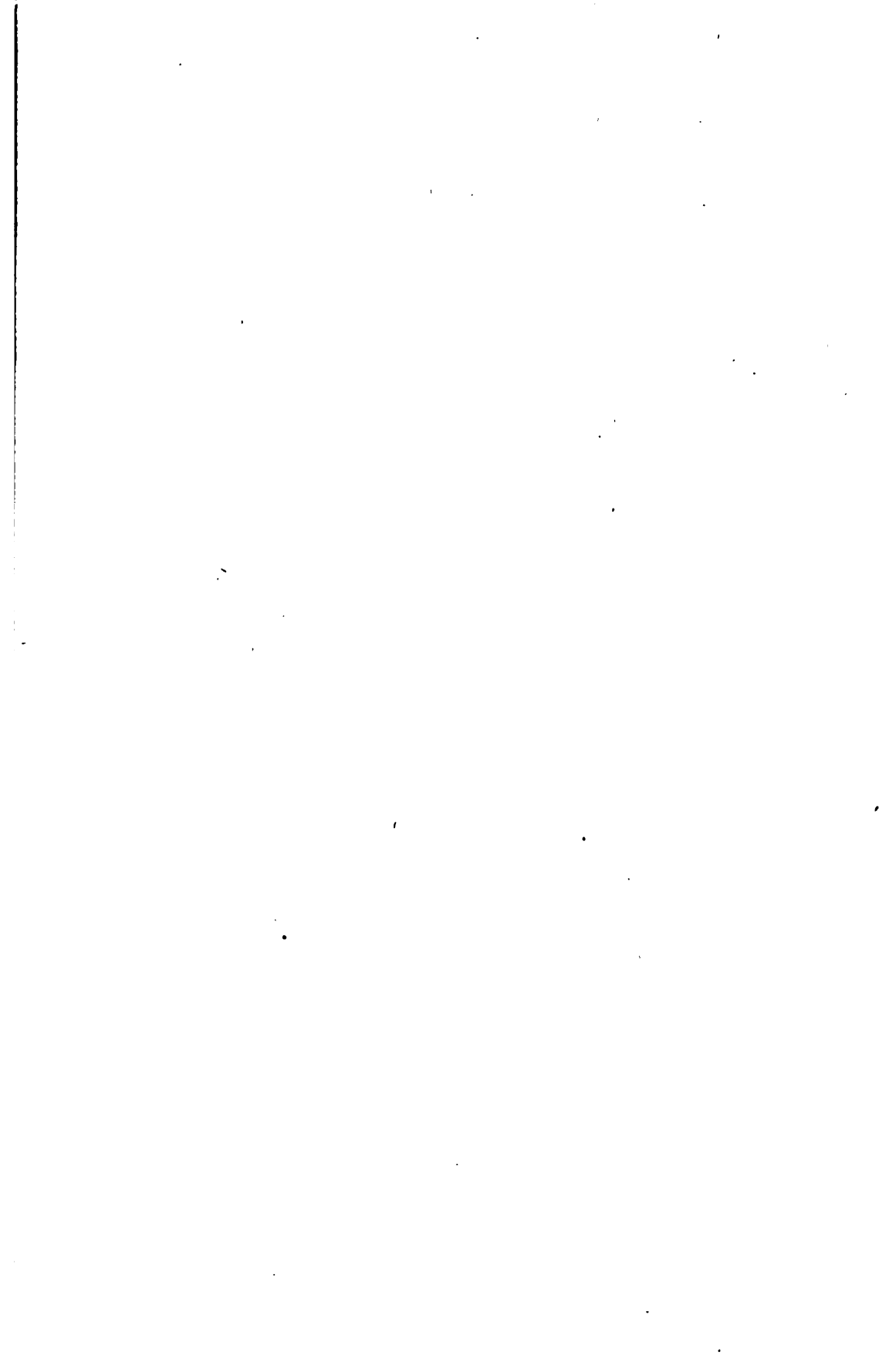
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INTERSTATE COMMERCE REPORTS 122274

VOL. I.

DECISIONS AND PROCEEDINGS

OF THE

11 INTERSTATE COMMERCE COMMISSION

UNDER THE

INTERSTATE COMMERCE ACT

OF FEBRUARY 4, 1887,

TOGETHER WITH ALL

DECISIONS OF THE COURTS

RELATING TO

INTERSTATE COMMERCE,

WITH NOTES.

MAY, 1887, TO JUNE, 1888.

PREPARED AND PUBLISHED

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PREFACE.

ON completing the first volume of the INTERSTATE COMMERCE REPORTS we feel justified in saying that the intention expressed in our preliminary announcement has been fulfilled, namely: that these Reports should "include not only the formal decisions of the Commission, but also such of its proceedings as may be of general interest and convey information as to the method of procedure before it;" and that "full reports will also be given of all cases in the courts of the country at large, relating to the subject of interstate commerce and arising under the Interstate Commerce Act, or involving questions connected with its application and operation, and which are deemed of value as precedents to lighten the burden of the Commission, or to inform shippers, carriers or counsel."

This plan of the Reports seems to have met with general approval, and the value and convenience of having everything connected with the subject of interstate commerce collected in a single publication have been recognized.

Of course the most prominent feature of the volume is its full presentation of the important work accomplished by the Interstate Commerce Commission during the first year of its existence. It will be seen that the labor which has been imposed upon the Commission has been very great, and that the questions which it has been called upon to decide have been intricate and difficult and of vital importance, not only to the parties immediately interested but to the commercial interests of the whole country.

The necessity for such legislation as is embodied in the Interstate Commerce Act seems to be fully shown by this record of the first year of its enactment; and the difficulties which it was feared by many would attend the application and enforcement of its provisions have been reduced to a minimum, under the clear and practical construction placed thereon by the Commission.

This central portion of the work has been supplemented by full reports of the decisions of the Federal and State Courts upon the subject of interstate commerce, rendered during the year covered by this volume; and the effort has been made (by including the full text of the Interstate Commerce Act and the material portions of the English Statutes upon which our Act is largely based, together with a note on the American and English decisions upon the questions connected with this legislation) to furnish a comprehensive and convenient hand-book upon the subjects of domestic commerce and transportation, in their relations to the Nation and the State, to the carrier and the shipper, to the producer and the consumer.

For the completeness and accuracy of this history of the first year of the Interstate Commerce Act, much is due to the courtesy and co-operation of the members of the Commission, of their Secretary and his assistants, and of the counsel who have appeared before the Commission.

May, 1888.

THE L. C. P. Co.

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INTERSTATE COMMERCE REPORTS.

THE INTERSTATE COMMERCE ACT.

Approved February 4, 1887.

AN ACT TO REGULATE COMMERCE.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

To whom provisions of the Act apply.

The term "railroad" as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

Terms "railroad," and "transportation" defined.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Reasonable and just charges.

Sec. 2. That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service

Special rates, rebates, drawbacks, unjust discrimination.

rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Undue or unreasonable preference.

Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Interchange of traffic.

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Discrimination prohibited.

Long and short haul. Greater compensation for a shorter than a longer distance forbidden.

Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for transportation of passengers or property; and the Commission may from time to time prescribe the extent to which said designated common carrier may be relieved from the operation of this section of this Act.

Relief may be granted by commission.

Pooling of freights.

Sec. 5. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Sec. 6. That every common carrier subject to the provisions of this Act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this Act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected.

Schedules of rates to be printed and made public.

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep for public inspection, at every depot where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

Rates to foreign countries.

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reductions in such published rates, fares, or charges may be made without previous public notice; but whenever any such reduction is made, notice of the same shall immediately be publicly posted and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection.

Advances in rates—ten days' notice.

Reductions in rates.

And when any such common carrier shall have established and published its rates, fares, and charges, in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater

No variation from published rates.

or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Copies of schedules filed with Commission.

Every common carrier subject to the provisions of this Act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said

Contracts and agreements with other companies to be filed.

Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of

Joint rates.

such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such

Failure to adhere to rates.

part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published; but no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares, or charges thus made and published.

Failure to file or publish rates — penalties for.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of *mandamus*, to be issued by any Circuit Court of the United States in the judicial district wherein the principal office of said common carrier is situated or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the People of the United States, at the relation of the Commissioners appointed under the provisions of this Act; and failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply,

Injunction.

in any such Circuit Court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment

and of entry and the several States and Territories of the United States, as mentioned in the first section of this Act, until such common carrier shall have complied with the aforesaid provisions of this section of this Act.

Sec. 7. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

Combinations to prevent continuous carriage prohibited.

Sec. 8. That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Liability for damages.

Sec. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act in any District or Circuit Court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Complaint to Commission or action in court.

Testimony compulsory.

Sec. 10. That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or

Penalty for violation of the Act.

person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any District Court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed \$5,000 for each offense.

Interstate Commerce Commission—how constituted.

Sec. 11. That a commission is hereby created and established to be known as the Interstate Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, Anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President, for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Powers of the Commission.

Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this Act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production

of books, papers, and documents under the provisions of this section.

And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Refusal to testify before Commission.

Sec. 13. That any person, firm, corporation, or association, or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Complaints to Commission.

Reparation by common carrier.

Investigation by Commission.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

Complaints by State R. R. Commissioners.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.

Findings of Commission *prima facie* evidence.

All reports of investigations made by the Commission shall be

Reports of investigations.

entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Notification to
common carrier
of violation of
Act.

Sec. 15. That if any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this Act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

Petition to United
States courts.

Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this Act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this Act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the Circuit Court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said Commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that

Hearing of com-
plaints against
carriers.

Report of Com-
mission
prima facie
evidence.

the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of \$500 for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of \$2,000 or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. For the purposes of this Act, excepting its penal provisions, the Circuit Courts of the United States shall be deemed to be always in session.

Injunction.

Attachment.

Punishment for violation of Act or injunction.

Appeal to Supreme Court.

Sec. 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to

Commission — manner of conducting business.

rates. The petitioner set forth that his business is at a standstill, and that his daily expenses are about \$200. He asked the issuing of an order for the furnishing of cars and the acceptance of the old rates, according to the contract under which the elevator was built.

Re SUSPENSION OF THE FOURTH SECTION.

MR. Charles H. Tweed, of New York, addressed the Commission in behalf of the prayer of the Southern Pacific Railroad for a suspension of the fourth section. He presented a formal petition which sets forth that the Southern Pacific is in competition for the transportation of through passengers and freight with the Canadian Pacific, the Pacific Mail Steamship Company, clippers and tramp steamers, and that the business is done under substantially dissimilar conditions from those under which local transportation is conducted.

Mr. Hawley, of New York, general eastern agent of the Southern Pacific Company, was sworn and questioned by counsel upon the matters set forth in the petition. He was cross examined by F. N. Taft, of New York, representing Sutton & Co., of the clipper lines.

A. T. Britton, attorney of the Atchison, Topeka and Santa Fe Railroad, produced a map of the road and its connections. He read a petition setting forth that the road and its connections were engaged in transcontinental traffic. In an honest endeavor to comply with the law it had put in operation new schedules which, while they increased the through rates, largely reduced the rates to intermediate points. While this had not resulted in increasing the way traffic, it had entirely destroyed the through traffic. The prayer of the petition was similar to that of the Southern Pacific.

General William W. Belknap, representing the St. Louis & San Francisco Road, presented a petition setting forth the circumstances influencing that company's through traffic, and asked that the fourth section of the Act be suspended.

Colonel George Gray gave notice that he would file the petition of the Northern Pacific to a like purport later in the day.

James F. Goddard, assistant general manager of the Atchison, Topeka & Santa Fe Road, was sworn, and in reply to inquiries by counsel substantiated under oath the matters set forth in the petition mentioned above. The witness said the company asked to be placed in a position where it could meet the competition of the clippers without further reference to the Commission.

Mr. Taft presented a communication from Sutton & Co's Dispatch Line setting forth that the action of the transcontinental roads toward the shipping interest via Cape Horn has been of the most violent nature; that they had exerted every effort to annihilate the shipping interests of the country. They had taken the long haul traffic at a loss which they must make up from charges on the short haul traffic. The writers protested against the suspension of the long and short haul section, unless a fair competing tariff shall be made that will enable

shippers of coarse goods to forward them by sail.

J. E. Searles, Jr., of New York, representing the sugar refiners of the East, including the St. Louis Refinery, entered a protest against the granting of the San Francisco refiners' petition. He told the history of the rise of the Hawaiian sugar trade, to the point where the importations from the islands exceeded the entire consumption of the Pacific Coast. Then, to make a market for this surplus the importers entered into a combination with the railroads, by means of which they were enabled to lay down this foreign commodity, admitted duty free, at prices with which the eastern refiners who were held to full rates of freight could not compete. One result had been the closing up of the St. Louis refinery, which had cost \$1,500,000.

A telegram was received by the Commission from C. M. Wicker of Chicago, on behalf of the Board of Trade and merchants of Chicago announcing a wish to be heard upon the transcontinental question, and asking that the decision of the Commission be withheld until arguments can be submitted.

"We are," the telegram says, "in favor of conditional suspension of long and short haul clause on Pacific Coast traffic, provided rates from the Great Lakes and Mississippi Valley be made proportionately less than from the Atlantic seaboard as has been the case in the past."

Justice, Bateman & Co., wool commission merchants, of Philadelphia, in a letter to the Commission, express the hope that section 4 will not be suspended as regards transcontinental lines. The protests against the long and short haul, they say, came from persons who have heretofore enjoyed the greatest benefits from cut rates and who have had an unfair advantage.

"For instance," they continue, "last year the merchants of San Francisco had a rate of fifty cents per 100 pounds on wool, while dealers and growers located several hundred miles further east had to pay \$8 to \$4.50 per 100 pounds if that wool was shipped direct to the East."

There is wool, they say, now in Philadelphia, grown in Montana, which the railroads forced to be sent thence via San Francisco, making a haul of 4,000 miles, while if shipped direct it would have traveled only 2,000 miles. The object of the discrimination was to give the San Francisco merchants an opportunity to exact toll before it reached its natural destination.

(April 23, 1887.)

Re EXPORT TRADE OF BOSTON.*

Upon petitions by railroad companies praying the Commission to "authorize the trunk lines to bill export freight to Boston at New York rates" etc., held, that as any legal ground for affirmative action on the part of the Commission was precluded by the fact that the parties bringing the practice to the attention of the Commission did so with explanations of its propriety and insisting upon its lawfulness,—no order

*See ante, 13, 22.

should be made on the petitions, but leaves should be given to withdraw them.

PETITIONS by the Fitchburg Railroad Company and other Railroad Companies. The question presented is stated in the opinion.

Cooley, Chairman, delivered the opinion of the Commission:

Several petitions regarding this trade are before us: One from the Fitchburg Railroad Company, and others from the Boston & Lowell, the New York & New England, the Central Vermont line, and the Boston & Albany railroad companies. All seek the same relief, and upon a state of facts, which may be summarized as follows:

For many years it has been the practice of the railroad companies connecting Boston with western points, to make the rates from such points to Boston, upon grain and provisions for export, as low as the rates to New York, although the rates upon property for local consumption have during the same time been higher to Boston than to New York, the distance being somewhat greater. The rates to the seaboard and abroad, it was shown, are in effect determined by the shortest line from the interior, which for this purpose is the Pennsylvania line; the other lines conforming substantially to those rates as a security to participation in the traffic.

The equalization of rates upon the export business has sometimes been made by way-billing to Boston at New York rates, but as this is not always practicable it has more commonly been made by paying a rebate equal to the difference between Boston and New York rates.

Making the allowance in some form has been essential to the existence of the trade, since the ocean rates from Boston to New York are not materially different, and higher interior rates would exclude Boston altogether from participation in the foreign trade.

The practice which allows the rebate has, therefore, been adopted in a spirit of fairness to Boston and as a convenient method for equalizing the rates from western points to the foreign market, whether the route chosen by the shipper for his traffic be by way of Boston or of New York.

The petition of the Fitchburg Railroad Company states that "the New England railroads have been advised by the unanimous opinion of the counsel consulted by them that this practice was not illegal under the Interstate Commerce Bill inasmuch as the terms are available for all engaged in the like and contemporaneous transportation of such traffic under similar circumstances and conditions, and being equal to those by New York are neither unjust nor unreasonable. This commercial usage has in fact been looked upon as a vested right of this port (Boston) and upon the faith of its continuance vast sums have been expended to accommodate and permanently continue the export business. Unfortunately, however, adverse legal opinions have apparently been rendered by the advisers of the trunk lines, whose action, guided thereby, has practically stopped the practice, and has seriously

embarrassed the Boston export business, and threatens to put a stop to it, to the great detriment of this road and the business interests of Boston."

The prayer of the petition is that the Commission "authorize the trunk lines to bill export freight to Boston at New York rates, or take such other action as may seem best in order that this business may be continued upon as fair and favorable a basis as it has been done hitherto."

The other petitions are not essentially different. A hearing was had upon all together and evidence was taken in support of their allegations of fact. A party interested in the local grain and provision trade of Boston was also heard in favor of the contention that any concessions made in favor of the export trade of Boston ought in fairness to be extended to all other persons to whom grain and provisions may be consigned at that city from interior markets.

It was shown on the hearing that the Boston export trade was for the time being under considerable embarrassment arising from a doubt whether the railroad companies might lawfully continue the rebate which has been heretofore allowed. It was not so evident, however, that the Commission had the power to give relief. Indeed the petitioners when called upon to point out the provision of the Interstate Commerce Law under which the Commission had authority to grant the relief prayed, frankly confessed that there was difficulty in doing so. It was stated, however, that there were times when the rebate exceeded the ocean rates, and that then a suspension of the operation of the fourth section of the Act would be necessary, since otherwise the railroad companies would be liable to penalties for charging and receiving a greater sum for the transportation of grain and provisions from western points to Boston than from the same western points through Boston to the foreign market. But a case of this sort, it was conceded, would be quite exceptional, so that a suspension of the long and short haul clause of section 4 would not alone give the relief required.

What the companies desire is authority to continue payment of the rebate as well when it falls short of the ocean rates as when it exceeds it.

If what is paid under the name of a rebate were a rebate in fact, as understood in the second section of the Interstate Commerce Law, and if the effect of allowing it were to impose upon some classes of persons a greater charge for service rendered than was imposed upon others for a like contemporaneous service, under the same circumstances and conditions, and so effect what is described in the law as an unjust discrimination, it would neither be legal in itself nor could it be made legal by any order, assent, or permission made or given by the Commission. But as explained by the petitions and the evidence adduced in their support, the rebate has for its purpose to correct an inequality that would otherwise exist, and which, by making the cost of foreign shipments by way of Boston greater than by way of New York, would practically exclude shippers from the choice of the Boston route, though the distance from interior points to the foreign market would be practically no

greater by that route than by the other. This alleged necessity for the equalization of rates on export traffic is relied upon as the justification for the higher rate which is imposed on the traffic whose final destination is Boston, which higher rate, however, is averred to be in itself just and reasonable. If such is the real nature of the so-called rebate—if its purpose is only to do indirectly what might directly be done by bill of lading issued at the interior point of shipment for the delivery of the goods at the foreign destination, and if no discrimination is made between persons engaged in the foreign traffic, but the rebate is paid impartially, and only as a means of protecting the Boston route for the export trade against an excess in charge that would be ruinous to it, then it is obvious there is no occasion for calling upon the Commission to give sanction to a practice which would be legal without it. Indeed any legal ground for affirmative action on the part of the Commission is precluded when those who bring the practice to its attention do so with explanations of its propriety and insisting upon its lawfulness.

Whether all freights from interior points to Boston ought to be carried at rates as low as those prevailing from the same points to New York, is a question not legitimately before the Commission now.

The railroad companies, who are the only parties asking action at our hands, justify the differences now made on the ground of longer haul, while submitting to the rebate on the export trade, under a species of compulsion. If the exactions from the Boston traffic proper are excessive, the fact can only be adjudicated when somebody questions them in a proceeding instituted for the purpose of regular investigation.

It follows from what has been said that no order should be made on the petitions, and the petitioners have leave to withdraw them.

Morrison, Commissioner, concurs in the determination to make no order in the premises, and that leave be given to withdraw the petitions.

RE SUSPENSION OF THE FOURTH SECTION.*

The fourth section of the Act suspended for seventy-five days in the case of the transcontinental roads.

THE Commission made an order suspending the fourth section of the law for seventy-five days, as applied to the transcontinental roads, but subject to revocation and with a proviso that intermediate rates shall not be raised above those in force on April 30. This applies to the Northern Pacific, Southern Pacific, Atchison, Topeka and Santa Fé and St. Louis and San Francisco lines.

The Commission says:

"The Commission has made orders upon the application of the Southern Pacific, Northern Pacific, Atchison Topeka & Santa Fé and St. Louis & San Francisco railroad companies for relief from the operation of section 4 of the 'Act

*See ante, 25.

to regulate commerce,' permitting the carriers to establish rates to and from the Pacific coast at less amounts than to and from intermediate points, for a period not exceeding seventy-five days. This result has been reached upon considerations which are not necessary to be now stated in detail, but which appear to leave no present alternative.

"It is in evidence before us that rates to and from local points on some of the transcontinental lines have been somewhat reduced since April 5, and also that the through rates which prevailed prior to April 5 were the result of a war of rates among the lines, and produced a discrepancy between local rates and through rates, which the carriers agree was unreasonable and do not desire to return to.

"The Commission is earnestly engaged in considering the course which it will finally adopt in reference to section 4. Many conflicting interests have indicated a desire to be heard, and should have an opportunity, before our final decision is reached. All such persons are invited to present facts and arguments. For the purpose of this matter only, and without authorizing any general practice of that nature, in order to obtain the fullest information and afford the most extended facilities to distant points of the country, the Commission will receive affidavits as to matters of fact and printed or written arguments on matters of fact or of law, which should be presented without delay. This invitation extends to the general subject of questions arising under section 4, and is not limited to the petitions of the transcontinental lines.

"Meanwhile, the attention of the carriers is directed to the propriety of devoting the intermediate time to the preservation and adoption of tariffs which shall attempt to meet in good faith the requirements of the 'Act to regulate commerce,' giving the same a fair and reasonable interpretation in respect to all its various features. In making these orders the Commission does not finally determine upon their propriety or justice; but only that, pending the investigations now in progress, it is proper, right and just that the permission provided for be given, in order that the general business of the country shall receive no unnecessary shock or damage. The orders are intended to prevent, as far as may be possible, the occurrence of mischief in a period which, in a certain sense, is transitional and which must of necessity involve changes, the full extent of which cannot at present be foreseen."

The order in the case of each road recites in its preamble the circumstances peculiar to the road to which it applies. The following wording is common to all the orders:

"And it appearing to the Commission, after an investigation of said petition, and the facts presented in support thereof, to be a proper case for a temporary order until the Commission can make a complete examination of the matters alleged as reasons for relieving said common carrier from the operation of said section of the Act, it is ordered that the said application be, and the same is hereby granted temporarily, subject to modification or revocation by the Commission at any time upon hearing or otherwise, and that said railroad is hereby temporarily relieved from the operation of section 4 of

said Act, to the extent specified in the recitals of this order, and for a period not greater than seventy-five days from this date—subject, however, to the restriction that while this order remains in force said common carrier shall not charge or receive compensation for the transportation of property between sections on its line where more is charged for a short than for a longer haul which shall be greater than the rates hitherto in force prior to the 20th day of April, instant. It is a further condition of this order that a printed copy hereof shall be forthwith publicly posted and kept with the schedule of rates and charges at every station named herein upon the line of said company for the use of the public."

The following letter was sent by the Commission to Charles P. Clark, President of the New York & New Haven Railroad, in reference to the petitions presented by him on behalf of the various railroads of Southern New England for the suspension of the long and short haul clause:

"Your petitions were presented to us so late, while the transcontinental matters were pressing and on the eve of our departure for the South, that their immediate consideration is almost impossible. Moreover, you do not show in your petitions or prove by evidence any pressing exigency or imperative urgency for a temporary order such as has been shown in the not very numerous cases in which such orders have been made. They have been withheld in other instances upon that ground. It will not be very long before our views will be formulated; but at present it is a matter in process of hearing and consideration. Your statement that you 'are advised and believe' that no relief from us is necessary has also been observed, and a very vigorous protest against granting you this relief has been received, in which a hearing is demanded and

of which a copy is inclosed. Under all these circumstances the consideration of the petitions presented by you must be deferred until our return from our Southern trip."

The protest referred to is from C. C. Goodrich, general agent of the Hartford & New York Transportation Company. In it he says:

"We respectfully request notice, that we may be present and show the grievous wrongs done and force used at inland points reached by water in case parties competing by water do not combine in price and share the business with the railroads. If allowed by suspension of this law to give specials when touching a water point, they proceed at once to notify the water lines customers that if they do not ship by them (the railroad) at all times, they will be compelled to pay to the highest point when once navigation is closed. The law stops this wrong; and if the railroads are relieved from it, there is but one method of existence for the water lines, which is to join hands with the railroads and all charge so high that we may live, even though by dividing up the business the steamer lines go half loaded."

In the matter of a petition received from the Rome, Watertown & Ogdensburg Railroad, the Commission ordered the temporary suspension of the long and short haul as regards passenger traffic between stations where there is competition with the Grand Trunk. These are stations between Norwood on the East and Cape Vincent on the West.

(April 26, 1887.)

THE Commissioners left Washington for the South to investigate the facts set forth in the petition of the Southern Railway & Steamship Association* and expect to be absent for about two weeks.

See ante, 15.

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF OREGON.

Ex parte Richard KOEHLER, RECEIVER
OF the OREGON & CALIFORNIA RAIL-
WAY CO.

- *1. **Interstate Commerce.** The transportation of property from one State to another is interstate commerce, whether the carriers engaged in moving it or the vehicles on which it is borne cross the line of the State or not.
2. **Interstate Commerce Act.** This Act does not include or apply to all carriers engaged in interstate commerce, but only such as use a railway, or a railway and water craft "under common control, management or arrangement for a continuous carriage or shipment" of property from one State to another; nor does it apply to the carriage of property by rail wholly within the State, although shipped from or destined to a place without the State, so that such place is not in a foreign country.
3. **Case in judgment.** The O. R. & N.

*Head notes by DEADY, J.

Company carries certain kinds of goods on its steamers forth and back between Portland and San Francisco at special and reduced rates; the O. & C. Railway, under the management of the petitioner, carries the same kinds of goods forth and back between Portland and Ashland and way stations, in Oregon, at special and reduced rates; the O. P. Railway Company carries the same kind of goods forth and back between certain points on the line of the O. & C. Road and San Francisco via its railway from Albany to Yaquina Bay and thence by steamer, at reduced rates and thereby competes with the O. & C. and the O. R. & N. for business between said points and San Francisco. The O. R. & N. and the receiver of the O. & C. act independently, although concurrently, in making these reduced rates; but no through bill of lading or freight receipt is given, nor is either interested in or liable for the carriage of the goods beyond its own line of transportation. *Held*, that the O. & C. Road and the steamers of the O. R. &

N. Company in the carriage of the goods in question are not "used under any common control, management or arrangement for a continuous carriage or shipment" thereof, to and from San Francisco, within the intent and meaning of the Act, and that the carriage and handling of said goods so far as the receiver is concerned is performed wholly within the State, and therefore specially exempted by the terms of the Act from its operation; *provided*, the same are not directly shipped to or from a foreign country.

(April 4, 1887.)

PETITION by the Receiver of the Oregon & California Railway Company for instruction under the Interstate Commerce Act.

The facts and questions presented are stated in the opinion.

Mr. John W. Whalley, for petitioner.

Deady, J., delivered the following opinion:

The road of the Oregon & California Railway Company is 400 miles in length, and lies wholly within this State, between Portland and Ashland, near the southern boundary thereof. It is operated at present by a Receiver of this court, heretofore appointed on the application of the plaintiff in the pending suit of *Harrison v. Oregon & California R. Co.*, to enforce the lien of a mortgage thereon.

On March 30, 1887, the Receiver, *Mr. Richard Koehler*, filed a petition in this court asking for instruction whether the Oregon & California Road is within the purview of the Interstate Commerce Act lately passed by Congress, when engaged in carrying freight destined to or coming from a point or place without the State, under the circumstances herein stated.

It appears from the petition that the Receiver, acting under the instruction of this court heretofore given (*Ex parte Koehler*, 25 Fed. Rep. 73), has been and now is carrying wheat and other agricultural products of the State destined to San Francisco from certain points along the line of the Oregon & California Road, where there is competition with the Oregon Pacific Railway Company, at special and lower rates than if destined for Portland only; that such products are taken from Portland to San Francisco at a special rate on the steamers of the Oregon Railway & Navigation Company.

That said steamers also carry goods at special rates on their return trips from San Francisco to Portland, destined to the points aforesaid along the line of the Oregon & California Road, consisting of the products of California, China, the Hawaiian Islands and the Central and South American States, which goods are carried from Portland on the Oregon & California Road to the places of their destination at special and lower rates than those charged for goods shipped from Portland for other and noncompeting points on said road.

That the Oregon Pacific Railway Company is operating a line of railway from Albany to Yaquina Bay, Oregon, in conjunction with a line of steamers between the latter place and San Francisco, and is avowedly carrying and offering to carry freight to and from San Francisco

and portions of the country traversed by the road of the Oregon & California Company at cost; and that unless the Receiver is allowed to make a special rate for freight between the points on the Oregon & California Road subject to this competition and San Francisco, said road will not be able to retain its share of this business.

That although the Oregon Railway & Navigation Company and the Receiver of the Oregon & California Road, in making special rates as aforesaid, purpose to obtain each for itself the carriage of goods which otherwise it might lose, yet there is no agreement or guaranty between them on the subject; nor is such freight ever shipped on a through bill of lading, or the one party in any way liable for the default or miscarriage of the other in respect thereto, but each for itself carries the same over its own route,—it being represented to and understood by the shippers that if they send such goods by these lines of transportation they will be carried over each at a certain reduced rate, and that the Oregon & California road and the Oregon Railway & Navigation steamers "are not under any 'common control, management or arrangement for a continuous carriage or shipment' in any manner," unless the facts herein stated make them so; and on this point the Receiver prays the advice and direction of the court.

The first section of the Act reads as follows:

"That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management or arrangement, for a continuous carriage or shipment from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country; *Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.*

"The term 'railroad,' as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease; and the term 'transportation' shall include all instrumentalities of shipment or carriage.

"All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be

reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

There is no doubt that this railway and these steamers are engaged in interstate commerce in the carriage of these goods under the circumstances stated. Any carriage of goods which crosses a state line is interstate commerce, and the fact that transportation from one State to another is accomplished in whole or in part through the agency of independent and unrelated carriers up to and from the state line, does not affect the character of the transaction in this respect; for whenever an article destined to a place without the State is shipped or started therefor, it becomes the subject of interstate commerce, and the carriers employed in the transportation thereof, although neither of them may pass from one State to the other, are subject, as instruments of such commerce, to national legislation and control. *The Daniel Ball*, 10 Wall. 564 [77 U. S. bk. 19, L. ed. 1001]; *Hall v. DeCuir*, 95 U. S. 485 [Bk. 24, L. ed. 547]; *Wabash etc. R. Co. v. Ill.* 118 U. S. 572 [Bk. 80, L. ed. 249]; *Ex parte Koehler*, 25 Fed. Rep. 76.

But the Interstate Commerce Act does not include or apply to all the instrumentalities or agencies used or engaged in interstate commerce. It does not include any water craft, unless it is used in connection with a railway "under a common control, management or arrangement for a continuous carriage or shipment" from one State or Territory of the United States to another, or to or from such State or Territory from or to a foreign country.

Nor does it include the carriage or handling of property by rail or otherwise, when such carriage and handling is performed wholly within a State, unless the same is directly shipped to or from a foreign country from or to such a State. The mere fact that a railway wholly within a State, and a vessel running between said State and another, meet at a point within the railway State, and thus form a continuous line of transportation between the two States, by the one taking up the goods delivered by the other, at its terminus, and carrying them thence to their destination, does not bring the carriers who so use the railway and steamer within the Act. So long as the railway and steamer are each operated under a separate and distinct control, making its own rates and only liable for the carriage and safe delivery of the goods at the end of its own route, the Act does not apply to the transaction.

To make these carriers subject to the Act,

the railway and vessel must, as therein provided, be operated or used under a "common control"—a control to which each is alike subject, and by which rates are prescribed and bills of lading given for the carriage of goods over both routes as one.

On this apparently plain exposition of the Act the railway of the Oregon and California Company and the steamers of the Oregon Railway & Navigation Company are not "used under a common control, management or arrangement" in this respect, and therefore are not subject to the Act, although engaged in interstate commerce. Each carrier makes its own rate, and undertakes for the carriage and delivery of goods not otherwise than over its own route. The fact that both are interested in maintaining the traffic between Oregon and California over this route and by this means, so as to secure it against the competition of the Oregon Pacific, is not material. Each is at liberty, as far as the other is concerned, to raise or further reduce its rates to-morrow, if the exigencies of the traffic permit or require it.

The present rate is not the result of any "arrangement" between the two carriers for "continuous carriage or shipment" from Oregon to San Francisco, and *vice versa*, but only an independent, although concurrent, reduction of rates by each over its own route, for the purpose of retaining the traffic thereon against the competition of a rival route.

The questions involved in this inquiry arise on the first section of the Act. Taking its several clauses together, my impression is that no carrier is within its operation unless he is engaged in interstate commerce by means of a railway or railway and water craft under one "control, management or arrangement," and that by such means or instrumentalities he does actually and continuously carry goods from within to without the State or from without to within the same. He may form a link in a line of interstate commerce; but if his relation to such commerce or interest in or liability for the carriage thereof does not extend beyond the line of the State he is not within the Act.

The Receiver is, therefore, instructed that he is at liberty, so far as the Act is concerned, to make special rates for the carriage of goods from or to points on the line of his road for the purpose of obtaining or retaining business therefor, against other carriers competing for the same. But this direction does not apply to goods shipped directly to or from a foreign country over the line of the Oregon & California Road.

UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

Re Petition of the Receivers of the TEXAS & PACIFIC R. CO.

The "circumstances and conditions" touching the transportation of passengers and freight to and from the Republic of Mexico through El Paso, Texas, by the Texas & Pacific R. Co. are (within the meaning of section 4 of the Interstate Commerce Act) so substantially different from those surrounding transportation to other points on said railway as to justify said Com-

pany in establishing lower rates at El Paso on freights transported for export into and received from Mexico and for delivery at El Paso than is charged at points between that city and the points where the freights originate and where the distance and haul are shorter.

(April 12, 1887.)

PETITION by the Receivers of the Texas & Pacific R. Co. for a ruling by the court as to their right to establish lower rates at El Paso on traffic to and from Mexico than at other

points to and from which the haul was shorter.

The petition stated that the enforcement of the "long and short haul" section (§ 4) of the Interstate Commerce Law would work irreparable injury to the road under the charge of said receivers, petitioners; that said section forbids charging less for longer than for shorter haul when "the circumstances and conditions are substantially similar;" that the petitioners believe that the circumstances and conditions touching traffic with the Republic of Mexico through El Paso and from the Republic of Mexico to points in the United States are substantially different from those that surround the transportation of freights to other points on the line of said Texas & Pacific Railway, and that they would be justified in establishing lower rates there on freights transported for ex-

port into and received from Mexico and for delivery at El Paso than is charged at points between that city and the points where the freights originate and where the distance and haul are shorter.

Pardee, C. J., delivered the following opinion:

It is considered that the petitioners are correct in their construction of the Act of Congress approved February 4, 1887, commonly known as the Interstate Commerce Law, as to the transportation of passengers to and from the City of El Paso, in the State of Texas, as in the foregoing petition set forth.

And said petitioners are hereby instructed to conduct the same according to their said construction, until further order of the court.

UNITED STATES SUPREME COURT.

WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY, *Plff. in Err.*,

v.

PEOPLE OF THE STATE OF ILLINOIS.

(From Lawyers' ed. U. S. Reports, Bk. 30, p. 244.)

*A Statute of Illinois enacts that if any railroad company shall, within that State, charge or receive for transporting passengers or freight of the same class, the same or a greater sum for any distance than it does for a longer distance, it shall be liable to a penalty for unjust discrimination. The defendant in this case made such discrimination in regard to goods transported over the same road or roads from Peoria in Illinois and from Gilman in Illinois to New York; charging more for the same class of goods carried from Gilman than from Peoria, the former being eighty-six miles nearer to New York than the latter, this difference being in the length of the line within the State of Illinois.

1. This court follows the Supreme Court of Illinois in holding that the Statute of Illinois must be construed to include a transportation of goods under one contract and by one voyage from the interior of the State of Illinois to New York.
2. This court holds further that such a transportation is "commerce among the States," even as to that part of the voyage which lies within the State of Illinois, while it is not denied that there may be transportation of goods which is begun and ended within its limits and disconnected with any carriage outside of the State, which is not commerce among the States.
3. The latter is subject to regulation by the State, and the Statute of Illinois is valid as applied to it. But the former is national in its character, and its

*Head notes by Mr. Justice Miller.

NOTE.—Constitutional law; regulation of interstate commerce; how far the power of Congress is exclusive. For full discussion, see Gloucester Ferry Co. v. Pa. 114 U. S. bk. 22. L. ed. p. 158, note.

regulation is confided to Congress exclusively, by that clause of the Constitution which empowers it to regulate commerce among the States.

4. The cases of *Munn v. Illinois*, *C. B. & Q. R. R. Co. v. Iowa*, and *Peik v. Chicago & Northwestern R. R. Co.*, all in 94 U. S. [Bk. 24, L. ed.], examined in regard to this question, and held, in view of other cases decided near the same time, not to establish a contrary doctrine.
5. Notwithstanding what is there said, this court holds now, and has never consciously held otherwise, that a statute of a State, intended to regulate or to tax, or to impose any other restriction upon the transmission of persons or property or telegraphic messages from one State to another, is not within that class of legislation which the States may enact in the absence of legislation by Congress; and that such statutes are void even as to that part of such transmission which may be within the State.
6. It follows that the Statute of Illinois, as construed by the Supreme Court of the State, and as applied to the transaction under consideration, is forbidden by the Constitution of the United States; and the judgment of that court is reversed.

(Argued Apr. 14, 15, 1886. Decided Oct. 25, 1886.)

IN ERROR to the Supreme Court of the State of Illinois. *Reversed.*

The case and agreed statement of facts appear in the opinion.

Messrs. H. S. Greene and W. C. Goudy, for plaintiff in error:

Under section 8 of article 1 of the Constitution, a regulation of commerce which is of a purely local character, and does not admit of general application, may be adopted and enforced by local authority. But where the subject of regulation is of national concern, or admits of one uniform plan or system of regulation, it is exclusively within the control of Congress.

Cooley v. Phila. 12 How. 299 (53 U. S. bk. 13, L. ed. 996); *Gilman v. Phila.* 8 Wall. 718 (70 U. S. bk. 18, L. ed. 96); *Passenger Cases*, 7 How. 283 (48 U. S. bk. 12, L. ed. 702); *Thames Bank v. Lovell*, 18 Conn. 500; *Lemmon v. People*, 20 N. Y. 562; *State Freight Tax Case*, 15 Wall. 232 (82 U. S. bk. 21, L. ed. 146); *Henderson v. Mayor, etc.* 92 U. S. 259 (Bk. 23, L. ed. 543); *Sherlock v. Alling*, 93 U. S. 99 (Bk. 23, L. ed. 819); *Welton v. Mo.* 91 U. S. 275 (Bk. 23, L. ed. 347); *Co. of Mobile v. Kimball*, 102 U. S. 691 (Bk. 26, L. ed. 238).

The non-exercise by Congress of its power over matters within its exclusive control is equivalent to a declaration that commerce as to such matters shall be free from any restriction.

Welton v. Mo and *Co. of Mobile v. Kimball*, *supra*; *Webber v. Va.* 103 U. S. 844 (Bk. 26, L. ed. 565); *Gloucester Ferry Co. v. Pa.* 114 U. S. 204 (Bk. 29, L. ed. 162); *Brown v. Houston*, 114 U. S. 630 (Bk. 29, L. ed. 260).

The statute in question cannot be sustained as an exercise of the police power.

R. R. Co. v. Husen, 95 U. S. 469 (Bk. 24, L. ed. 529); *New Orleans Gas Co. v. Louisiana Light etc. Co.* 115 U. S. 660 (Bk. 29, L. ed. 520); *Walling v. Mich.* 116 U. S. 460 (Bk. 29, L. ed. 695); *Carton v. Ill. Cent. R. R. Co.* 59 Iowa, 150.

Mr. George Hunt, Atty-Gen. of Illinois, for defendants in error:

The Act in question has for its object, neither directly nor indirectly, the promotion, restraint, or regulation of commerce among the States. It presents no hinderances, burdens, privileges or encouragements to commerce among the States, and it seeks no revenue, or advantage or disadvantage, to this or any other State.

Not everything which affects commerce is a regulation of it, within the meaning of the Constitution.

State Tax on R. Gross Receipts, 15 Wall. 284 (82 U. S. bk. 21, L. ed. 164); *Munn v. Ill.* 94 U. S. 113 (Bk. 24, L. ed. 77); *Gibbons v. Ogden*, 9 Wheat. 1 (22 U. S. bk. 6, L. ed. 23); *Passenger Cases*, 7 How. 283 (48 U. S. bk. 12, L. ed. 702); *Slaughter House Cases*, 16 Wall. 36 (83 U. S. bk. 21, L. ed. 394).

The subject matter of this Act is the discrimination in the rates charged for carriage. It neither requires the defendant to carry, nor prevents it from carrying, any freight between this State and other States. It may carry any goods it chooses, at any time and in any manner. The Act does not interfere with such commerce. But the defendant being a public servant, it requires it not to injure one citizen of the State by imposing upon him a greater charge than it imposes upon another for a similar service. The charge and collection of exorbitant and discriminating rates constitute a violation of the Act.

The Act in question is not in conflict with any Act of Congress and is within the power of the State to enforce. The grant of commercial power to Congress does not exclude the exercise by the State of authority over its subject matter.

Cooley v. Port Wardens, 12 How. 818 (53 U. S. bk. 13, L. ed. 1004).

If this Act amounts to a regulation of interstate commerce, it falls within that class of powers which the State may exercise in the absence of controlling action by Congress.

Houston v. Moore, 5 Wheat. 1 (18 U. S. bk. 5, L. ed. 19); *Sturges v. Crowninshield*, 4 Wheat. 198 (17 U. S. bk. 4, L. ed. 548); *Willson v. Blackbird Creek Co.* 2 Pet. 251 (27 U. S. bk. 7, L. ed. 414); *License Cases*, 5 How. 504 (48 U. S. bk. 12, L. ed. 256); *Cooley v. Port Wardens*, 12 How. 299 (53 U. S. bk. 13, L. ed. 996); *Gilman v. Phila.* 8 Wall. 718 (70 U. S. bk. 18, L. ed. 96).

This case is controlled by the decisions of this court in

Peik v. Chicago & N W R. Co. 94 U. S. 164 (Bk. 24, L. ed. 97); *O. B. & Q. R. R. Co. v. Iowa*, 94 U. S. 155 (Bk. 24, L. ed. 94); *Munn v. Ill. supra*, *R. R. Co. v. Fuller*, 17 Wall. 560 (84 U. S. bk. 21, L. ed. 710).

The law of Wisconsin, sustained in the *Peik Case*, fixed the maximum rate to be charged for the transportation of freight from points within to points outside of the State. In this case the Act authorizes the same thing, and undertakes to prevent discrimination in the rates charged. Only that portion of the Act is in issue which forbids unjust discrimination.

The Act in question is a police regulation. It forbids the making and enforcing, by railroad companies doing business in the State, of contracts which unjustly discriminate against one citizen, or locality, at the expense of another. It is not an attempt to regulate commerce among the States, or to interfere with the authority of Congress in regard thereto. It in no way attempts to tax, hinder, delay, control or regulate interstate commerce, but simply brands a discriminating contract as illegal, and provides a penalty for an illegal act. It merely protects persons within the State against unjust discrimination, the offense which it makes punishable.

Mr. Justice Miller delivered the opinion of the court

This is a writ of error to the Supreme Court of Illinois. It was argued here at the last term of this court.

The case was tried in the court of original jurisdiction on an agreed statement of facts. This agreement is short and is here inserted in full.

"For the purposes of the trial of said cause, and to save the making of proof therein, it is hereby agreed on the part of the defendant that the allegations in the first count of the declaration are true, except that part of said count which avers that the same proportionate discrimination was made in the transportation of said property—oil cake and corn—in the State of Illinois that was made between Peoria and the City of New York, and Gilman and New York City; which averment is not admitted, because defendant claims that it is an inference from the fact that the rates charged in each case of said transportation of oil cake and corn were through rates; but it is admitted that said averment is a proper one."

The first count in the declaration, which is referred to in this memorandum of agreement, charged that the Wabash, St. Louis and Pacific Railway Company had, in violation of a Statute of the State of Illinois, been guilty of an unjust discrimination in its rates or charges of toll and compensation for the transportation of freight. The specific allegation is that the Railroad Company charged Elder & McKinney

for transporting twenty-six thousand pounds of goods and chattels from Peoria, in the State of Illinois, to New York City, the sum of \$39, being at the rate of fifteen cents per hundred pounds for said carload; and that on the same day it agreed to carry and transport for Isaac Bailey and F. O. Swannell another carload of goods and chattels from Gilman, in the State of Illinois, to said City of New York, for which it charged the sum of \$65, being at the rate of twenty-five cents per hundred pounds. And it is alleged that the carload transported for Elder & McKinney was carried eighty-six miles further in the State of Illinois than the other carload of the same weight. This freight being of the same class in both instances, and carried over the same road, except as to the difference in the distance, it is obvious that a discrimination against Bailey & Swannell was made in the charges against them as compared with those against Elder & McKinney; and this is true whether we regard the charge for the whole distance from the terminal points in Illinois to New York City or the proportionate charge for the haul within the State of Illinois.

The language of the statute which is supposed to be violated by this transaction is to be found in chapter 114 of the Revised Statutes of Illinois, section 126. It is there enacted that if any railroad corporation shall charge, collect, or receive for the transportation of any passenger or freight of any description upon its railroad, for any distance within the State, the same or a greater amount of toll or compensation than is at the same time charged, collected, or received for the transportation in the same direction of any passenger or like quantity of freight of the same class over a greater distance of the same road, all such discriminating rates, charges, collections, or receipts, whether made directly or by means of rebate, drawback, or other shift or evasion, shall be deemed and taken against any such railroad corporation as *prima facie* evidence of unjust discrimination prohibited by the provisions of this Act. The statute further provides a penalty of not over \$5,000 for that offense, and also that the party aggrieved shall have a right to recover three times the amount of damages sustained, with costs and attorneys' fees.

To this declaration the Railroad Company demurred. The demurrer was sustained by the lower court in Illinois, and judgment rendered for the defendant. This, however, was reversed by the Supreme Court of that State, and on the case being remanded the demurrer was overruled; and the defendant pleaded, among other things, that the rates of toll charged in the declaration were charged and collected for services rendered under an agreement and undertaking to transport freight from Gilman, in the State of Illinois, to New York City, in the State of New York, and that in such undertaking and agreement the portion of the services rendered or to be rendered within the State of Illinois was not apportioned separate from such entire service; that the action is founded solely upon the supposed authority of an Act of the Legislature of the State of Illinois, approved April 7, 1871; and that said Act does not control or affect or relate to undertakings to transport freight from the State of

Illinois to the State of New York, which falls within the operation, and is wholly controlled by the terms of the third clause of section eight of article one of the Constitution of the United States, which the defendant sets up and relies upon as a complete defense and protection in said action. This question of whether the Statute of Illinois, as applied to the case in hand, is in violation of the Constitution of the United States, as set forth in the plea, was also raised on the trial by a request of the defendant, the Railroad Company, that the court should hold certain propositions of law on the same subject, which propositions are as follows:

"The court holds as law that, as the tolls or rates of compensation charged and collected by the defendant, in the instance in question, were for transportation service rendered in transporting freight from a point in the State of Illinois to a point in the State of New York, under an entire contract or undertaking to transport such freight the whole distance between such points, that the Act of the General Assembly of the State of Illinois, approved May 2, 1873, entitled 'An Act to Prevent Extortion and Unjust Discrimination in the Rates Charged for the Transportation of Passengers and Freight on Railroads in This State, and to Punish the Same, and Prescribe a Mode of Procedure and Rules of Evidence in Relation Thereto, and to Repeal an Act Entitled 'An Act to Prevent Unjust Discrimination and Extortion in the Rates to be Charged by the Different Railroads in the State for the Transportation of Freight on Said Roads,' approved April 7, 1871,' does not apply to or control such tolls and charges, nor can the defendant be held liable in this action for the penalties prescribed by said Act.

"The court further holds as law that said Act in relation to extortion and unjust discrimination cannot apply to transportation service, rendered partly without the State and consisting of the transportation of freight from within the State of Illinois to the State of New York, and that said Act cannot operate beyond the limits of the State of Illinois.

"The court further holds as matter of law that the transportation in question falls within the proper description of 'commerce among the States,' and as such can only be regulated by the Congress of the United States under the terms of the third clause of section 8 of article 1 of the Constitution of the United States."

All of these propositions were denied by the court, and judgment rendered against the defendant, which judgment was affirmed by the supreme court on appeal.

The matter thus presented, as to the controlling influence of the Constitution of the United States over this legislation of the State of Illinois, raises the question which confers jurisdiction on this court. Although the precise point presented by this case may not have been heretofore decided by this court, the general subject of the power of the State Legislatures to regulate taxes, fares and tolls for passengers, and transportation of freight over railroads within their limits has been very much considered recently; *State Freight Tax Case*, 15 Wall. 232 [82 U. S. bk. 21, L. ed. 146]; *Munn v. Illinois*, 94 U. S. 133 [Bk. 24, L. ed. 86]; *Chicago etc. R. R. Co. v. Cutts*, Id. 155 [Bk. 24, L. ed., 94];

Peik v. Chicago etc. R. Co. Id. 164 [Bk. 24, L. ed. 97]; *Stone v. Farmers Loan & Trust Co.* 116 U. S. 307 [Bk. 29, L. ed. 636]; *Gloucester Ferry Co. v. Pa.* 114 U. S. 204 [Bk. 29, L. ed. 162]; *Pickard v. Pullman Southern Car Co.* 117 U. S. 34 [Bk. 29, L. ed. 785]; and the question how far such regulations, made by the States and under state authority, are valid or void, as they may affect the transportation of goods through more than one State, in one voyage, is not entirely new here. The Supreme Court of Illinois, in the case now before us, conceding that each of these contracts was in itself a unit, and that the pay received by the Illinois Railroad Company was the compensation for the entire transportation from the point of departure in the State of Illinois to the City of New York, holds that while the Statute of Illinois is inoperative upon that part of the contract which has reference to the transportation outside of the State, it is binding and effectual as to so much of the transportation as was within the limits of the State of Illinois; *People v. Wabash, St. L. & P. R. R. Co.* 104 Ill. 476; and undertaking for itself to apportion the rates charged over the whole route, decides that the contract and the receipt of the money for so much of it as was performed within the State of Illinois violate the statute of the State on that subject.

If the Illinois Statute could be construed to apply exclusively to contracts for a carriage which begins and ends within the State, disconnected from a continuous transportation through or into other States, there does not seem to be any difficulty in holding it to be valid. For instance, a contract might be made to carry goods for a certain price from Cairo to Chicago, or from Chicago to Alton. The charges for these might be within the competency of the Illinois Legislature to regulate. The reason for this is that both the charge and the actual transportation in such cases are exclusively confined to the limits of territory of the State, and is not commerce among the States, or interstate commerce, but is exclusively commerce within the State. So far, therefore, as this class of transportation, as an element of commerce, is affected by the statute under consideration, it is not subject to the constitutional provision concerning commerce among the States. It has often been held in this court, and there can be no doubt about it, that there is a commerce wholly within the State which is not subject to the constitutional provision; and the distinction between commerce among the States and the other class of commerce, between the citizens of a single State and conducted within its limits exclusively, is one which has been fully recognized in this court, although it may not be always easy, where the lines of these classes approach each other, to distinguish between the one and the other. *The Daniel Ball v. United States*, 10 Wall. 557 [77 U. S. bk. 19, L. ed. 999]; *Hall v. DeCuir*, 95 U. S. 485 [Bk. 24, L. ed. 547]; *Western Union Telegraph Co. v. Texas*, 105 U. S. 460 [Bk. 26, L. ed. 1067].

It might admit of question whether the Statute of Illinois, now under consideration, was designed by its framers to affect any other class of transportation than that which begins and ends within the limits of the State. The Supreme Court of Illinois having in this case

given an interpretation which makes it apply to what we understand to be commerce among the States, although the contract was made within the State of Illinois, and a part of its performance was within the same State, we are bound, in this court, to accept that construction. It becomes, therefore, necessary to inquire whether the charge exacted from the shippers in this case was a charge for interstate transportation, or was susceptible of a division which would allow so much of it to attach to commerce strictly within the State, and so much more to commerce in other States. The transportation, which is the subject matter of the contract, being the point on which the decision of the case must rest, was it a transportation limited to the State of Illinois, or was it a transportation covering all the lines between Gilman in the one case and Peoria in the other in the State of Illinois, and the City of New York in the State of New York?

The Supreme Court of Illinois does not place its judgment in the present case on the ground that the transportation and the charge are exclusively state commerce; but, conceding that it may be a case of commerce among the States, or interstate commerce, which Congress would have the right to regulate if it had attempted to do so, argues that this Statute of Illinois belongs to that class of commercial regulations which may be established by the laws of a State until Congress shall have exercised its power on that subject; and to this proposition a large part of the argument of the Attorney-General of the State before us is devoted, although he earnestly insists that the Statute of Illinois, which is the foundation of this action, is not a regulation of commerce within the meaning of the Constitution of the United States. In support of its view of the subject the Supreme Court of Illinois cites the cases of *Munn v. Illinois*, *C. B. & Q. R. R. Co. v. Iowa* and *Peik v. Chicago & N. W. R. R. Co.*, above referred to. It cannot be denied that the general language of the court in these cases, upon the power of Congress to regulate commerce, may be susceptible of the meaning which the Illinois Court places upon it.

In *Munn v. Illinois* [*supra*] the language of this court upon that subject is as follows:

"We come now to consider the effect upon this statute of the power of Congress to regulate commerce. It was very properly said in the case of *State Tax on Railway Gross Receipts*, 15 Wall. 293 [82 U. S. bk. 21, L. ed. 167] that 'It is not everything that affects commerce that amounts to a regulation of it, within the meaning of the Constitution.' The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in state as well as those engaged in interstate commerce; but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern, and, certainly, until Congress acts in reference to their interstate relations, the State may exercise all the powers of government over them, even though in so doing

it may indirectly operate upon commerce outside its immediate jurisdiction. We do not say that a case may not arise in which it will be found that a State, under the form of regulating its own affairs, has encroached upon the exclusive domain of Congress in respect to interstate commerce; but we do say that, upon the facts as they are represented to us in this record, that has not been done."

In the case of *C. B. & Q. R. R. Co. v. Iowa*, [*supra*] which directly related to railroad transportation, the language is as follows:

"The objection that the statute complained of is void because it amounts to a regulation of commerce among the States, has been sufficiently considered in the case of *Munn v. Illinois*. This road, like the warehouse in that case, is situated within the limits of a single State. Its business is carried on there, and its regulation is a matter of domestic concern. It is employed in state as well as in interstate commerce, and, until Congress acts, the State must be permitted to adopt such rules and regulations as may be necessary for the promotion of the general welfare of the people within its own jurisdiction, even though in doing so those without may be indirectly affected."

But the strongest language used by this court in these cases is to be found in *Peik v. Chicago & N. W. R. R. Co.* [*supra*], as follows:

"As to the effect of the statute as a regulation of interstate commerce, the law is confined to state commerce, or such interstate commerce as directly affects the people of Wisconsin. Until Congress acts in reference to the relations of this company to interstate commerce, it is certainly within the power of Wisconsin to regulate its fares, etc., so far as they are of domestic concern. With the people of Wisconsin this company has domestic relations. Incidentally, these may reach beyond the State. But certainly, until Congress undertakes to legislate for those who are without the State, Wisconsin may provide for those within, even though it may indirectly affect those without."

These extracts show that the question of the right of the State to regulate the rates of fares and tolls on railroads, and how far that right was affected by the commerce clause of the Constitution of the United States, was presented to the court in those cases. And it must be admitted that, in a general way, the court treated the cases then before it as belonging to that class of regulations of commerce which, like pilotage, bridging navigable rivers, and many others, could be acted upon by the States, in the absence of any legislation by Congress on the same subject.

By the slightest attention to the matter it will be readily seen that the circumstances under which a bridge may be authorized across a navigable stream within the limits of a State for the use of a public highway, and the local rules which shall govern the conduct of the pilots of each of the various harbors of the coasts of the United States, depend upon principles far more limited in their application and importance than those which should regulate the transportation of persons and property across the half or the whole of the continent, over the territory of half a dozen States, through which they are carried without change of car or breaking bulk.

Of the members of the court who concurred in those opinions, there being two dissentients, but three remain, and the writer of this opinion is one of the three. He is prepared to take his share of the responsibility for the language used in those opinions, including the extracts above presented. He does not feel called upon to say whether those extracts justify the decision of the Illinois Court in the present case. It will be seen from the opinions themselves, and from the arguments of counsel presented in the reports, that the question did not receive any very elaborate consideration, either in the opinions of the court or in the arguments of counsel. And the question how far a charge made for a continuous transportation over several States, which included a State whose laws were in question, may be divided into separate charges for each State, in enforcing the power of the State to regulate the fares of its railroads, was evidently not fully considered. These three cases, with others concerning the same subject, were argued at the same time by able counsel, and in relation to the different laws affecting the subject, of the States of Illinois, Iowa, Wisconsin, and Minnesota; the main question in all the cases being the right of the State to establish any limitation upon the power of the railroad companies to fix the price at which they would carry passengers and freight. It was strenuously denied, and very confidently, by all the railroad companies, that any legislative body whatever had a right to limit the tolls and charges to be made by the carrying companies for transportation. And the great question to be decided, and which was decided, and which was argued in all those cases, was the right of the State, within which a railroad company did business, to regulate or limit the amount of any of these traffic charges.

The importance of that question overshadowed all others, and the case of *Munn v. Illinois* was selected by the court as the most appropriate one in which to give its opinion on that subject, because that case presented the question of a private citizen, or unincorporated partnership, engaged in the warehousing business in Chicago, free from any claim of right or contract under an Act of incorporation of any State whatever, and free from the question of continuous transportation through several States. And in that case the court was presented with the question, which it decided, whether anyone engaged in a public business, in which all the public had a right to require his service, could be regulated by Acts of the Legislature in the exercise of this public function and public duty, so far as to limit the amount of charges that should be made for such services.

The railroad companies set up another defense, apart from denying the general right of the Legislature to regulate transportation charges, namely: that in their charters from the States they each had a contract, express or implied, that they might regulate and establish their own fares and rates of transportation. These two questions were of primary importance; and though it is true that, as incidental or auxiliary to these, the question of the exclusive right of Congress to make such regulations of charges as any legislative power had the right to make, to the exclusion of the States, was presented, it

received but little attention at the hands of the court and was passed over with the remarks in the opinions of the court which have been cited.

The case of *The State Freight Tax* [supra] which was decided only four years before these cases, held an Act of the Legislature of Pennsylvania void, as being in conflict with the commerce clause of the Constitution of the United States, which levied a tax upon all freight carried through the State by any railroad company, or into it from any other State, or out of it into any other State, and valid as to all freight the carriage of which was begun and ended within the limits of the State; because the former was a regulation of interstate commerce, and the latter was a commerce solely within the State which it had a right to regulate. And the question now under consideration, whether these statutes were of a class which the Legislatures of the States could enact in the absence of any Act of Congress on the subject, was considered and decided in the negative.

It is impossible to see any distinction in its effect upon commerce of either class, between a statute which regulates the charges for transportation, and a statute which levies a tax for the benefit of the State upon the same transportation; and in fact the judgment of the court in the *State Freight Tax Case* rested upon the ground that the tax was always added to the cost of transportation, and thus was a tax in effect upon the privilege of carrying the goods through the State. It is also very difficult to believe that the court consciously intended to overrule the first of these cases without any reference to it in the opinion.

At the very next term of the court, after the delivery of these opinions, the case of *Hall v. De Cuir* [supra] was decided, in which the same point was considered, in reference to a Statute of the State of Louisiana which attempted to regulate the carriage of passengers upon railroads, steamboats, and other public conveyances, and which provided that no regulations of any companies engaged in that business should make any discrimination on account of race or color. This statute by its terms was limited to persons engaged in that class of business within the State, as is the one now under consideration; and the case presented under the statute was that of a person of color who took passage from New Orleans for Hermitage, both places being within the limits of the State of Louisiana, and was refused accommodations in the general cabin on account of her color. In regard to this, the court declared that "For the purposes of this case, we must treat the Act of Louisiana of February 28, 1869, as requiring those engaged in interstate commerce to give all persons traveling in that State, upon the public conveyances employed in such business, equal rights and privileges in all parts of the conveyance, without distinction or discrimination on account of race or color * * * . We have nothing whatever to do with it as a regulation of internal commerce, or as affecting anything else than commerce among the States."

And, speaking in reference to the right of the States in certain classes of interstate commerce to pass laws regulating them, the opinion says:

"The line which separates the powers of the State from this exclusive power of Congress,

is not always distinctly marked; and oftentimes it is not easy to determine on which side a particular case belongs. Judges not unfrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary rule by which the line must, in all cases, be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the particular rights involved. But we think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without, or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. * * * It was to meet just such a case that the commercial clause in the Constitution was adopted. The River Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be governed within the State in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments."

The applicability of this language to the case now under consideration, of a continuous transportation of goods from New York to central Illinois, or from the latter to New York, is obvious, and it is not easy to see how any distinction can be made. Whatever may be the instrumentalities by which this transportation from the one point to the other is effected, it is but one voyage, as much so as that of the steamboat on the Mississippi River. It is not the railroads themselves that are regulated by this Act of the Illinois Legislature, so much as the charge for transportation; and, in language just cited, if each one of the States through whose territories these goods are transported can fix its own rules for prices, for modes of transit, for times and modes of delivery, and all the other incidents of transportation to which the word "regulation" can be applied, it is readily seen that the embarrassments upon interstate transportation, as an element of interstate commerce, might be too oppressive to be submitted to. "It was," in the language of the court cited above, "to meet just such a case that the commerce clause of the Constitution was adopted."

It cannot be too strongly insisted upon, that

the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the States might choose to impose upon it, that the commerce clause was intended to secure. This clause, giving to Congress the power to regulate commerce among the States, and with foreign Nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution. *Cook v. Pennsylvania*, 97 U. S. 574 [Bk. 24, L. ed. 1018]; *Brown v. Maryland*, 12 Wheat. 446 [25 U. S. bk. 6, L. ed. 688]. And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States which was deemed essential to a more perfect union by the framers of the Constitution, if, at every stage of the transportation of goods and chattels through the country, the State within whose limits a part of this transportation must be done could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce.

The argument on this subject can never be better stated than it is by *Chief Justice Marshall* in *Gibbons v. Ogden*, 9 Wheat. 195-6 [22 U. S. bk. 6, L. ed. 70]. He there demonstrates that commerce among the States, like commerce with foreign nations, is necessarily a commerce which crosses state lines, and extends into the States; and the power of Congress to regulate it exists wherever that commerce is found. Speaking of navigation as an element of commerce, which it is, only as a means of transportation now largely superseded by railroads, he says: "The power of Congress, then, comprehends navigation within the limits of every State in the Union, so far as that navigation may be, in any manner, connected with 'commerce with foreign Nations, or among the several States, or with the Indian Tribes.'" It may, of consequence, pass the jurisdictional line of New York and act upon the very waters (the Hudson River) to which the prohibition now under consideration applies." P. 197 [70]. So the same power may pass the line of the State of Illinois and act upon its restriction upon the right of transportation extending over several States, including that one.

In the case of *Telegraph Co. v. Texas* [supra] the court held that "A telegraph company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods;" and that "both companies are instruments of commerce, and their business is commerce itself." And relying upon the case of the *State Freight Tax* [supra] already referred to, the court said that a tax by the State of Texas upon all messages carried within its borders was forbidden by the commerce clause of the Constitution, as being a tax upon commerce among the States; and observed that "The tax is the same on every message sent, and because it is sent, without regard to the distance carried or the price charged." * * * Clearly, if a fixed tax for every two thousand pounds of freight carried is a tax on the freight, or for every measured ton of a vessel a tax on tonnage, or for every passenger carried a tax on the passenger, or for the sale

of goods a tax on the goods, this must be a tax on the messages. As such, so far as it operates on private messages sent out of the State, it is a regulation of foreign and interstate commerce and beyond the power of the State. That is fully established by the cases already cited."

In the case of *Welton v. Missouri*, 91 U. S. 275 [Bk. 23, L. ed. 847], it was said: "It will not be denied that that portion of commerce with foreign countries and between the States which consists in the transportation and exchange of commodities is of national importance, and admits and requires uniformity of regulation. The very object of investing this power in the General Government was to insure this uniformity against discriminating state legislation."

And in *Mobile County v. Kimball*, 102 U. S. 691 [Bk. 26, L. ed. 238], the same idea is very clearly stated in the following language: "Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. For the regulation of commerce as thus defined there can be only one system of rules, applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible. Language affirming the exclusiveness of the grant of power over commerce as thus defined may not be inaccurate, when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce."

In the case of *Gloucester Ferry Co. v. Pennsylvania* [supra], decided two years ago, the court declared without dissent that: "It needs no argument to show that the commerce with foreign Nations as between the States, which consists in the transportation of persons and property between them, is a subject of national character and requires uniformity of regulation." And still later, in the case of *Pickard v. Pullman Southern Car Co.* [supra], the whole subject is very fully re-examined; and a tax of the State of Tennessee upon sleeping cars of that company, which were used in carrying passengers through the State, and into it and out of it, was held void as a regulation of commerce among the States.

The case of *Stone v. Farmers Loan & T. Co.* [supra], argued at the same term as the present, while it does not decide the latter, evidently does not support the construction placed by the Supreme Court of Illinois upon the case of *Munn v. Illinois*, and the other cases on which the court relies.

We must, therefore, hold that it is not, and never has been, the deliberate opinion of a majority of this court that a statute of a State which attempts to regulate the fares and charges by railroad companies within its limits, for a transportation which constitutes a part of commerce among the States, is a valid law.

Let us see precisely what is the degree of interference with transportation of property or persons from one State to another which this statute proposes. A citizen of New York has goods which he desires to have transported by

the railroad companies from that city to the interior of the State of Illinois. A continuous line of rail over which a car loaded with these goods can be carried, and is carried habitually, connects the place of shipment with the place of delivery. He undertakes to make a contract with a person engaged in the carrying business at the end of this route from whence the goods are to start, and he is told by the carrier: "I am free to make a fair and reasonable contract for this carriage to the line of the State of Illinois, but when the car which carries these goods is to cross the line of that State, pursuing at the same time this continuous track, I am met by a law of Illinois which forbids me to make a free contract concerning this transportation within that State, and subjects me to certain rules by which I am to be governed as to the charges which the same railroad company in Illinois may make, or has made, with reference to other persons and other places of delivery." So that while that carrier might be willing to carry these goods from the City of New York to the City of Peoria at the rate of fifteen cents per hundred pounds, he is not permitted to do so because the Illinois Railroad Company has already charged at the rate of twenty-five cents per hundred pounds for carriage to Gilman, in Illinois, which is eighty-six miles shorter than the distance to Peoria.

So, also, in the present case; the owner of corn, the principal product of the country, desiring to transport it from Peoria, in Illinois, to New York, finds a Railroad Company willing to do this at the rate of fifteen cents per hundred pounds for a carload, but is compelled to pay at the rate of twenty-five cents per hundred pounds, because the Railroad Company has received from a person residing at Gilman twenty-five cents per hundred pounds for the transportation of a carload of the same class of freight over the same line of road from Gilman to New York. This is the result of the Statute of Illinois, in its endeavor to prevent unjust discrimination, as construed by the Supreme Court of that State. The effect of it is that whatever may be the rate of transportation per mile charged by the Railroad Company from Gilman to Sheldon, a distance of twenty-three miles, in which the loading and the unloading of the freight is the largest expense incurred by the Railroad Company, the same rate per mile must be charged from Peoria to the City of New York.

The obvious injustice of such a rule as this, which railroad companies are by heavy penalties compelled to conform to, in regard to commerce among the States, when applied to transportation which includes Illinois in a long line of carriage through several States, shows the value of the constitutional provision which confides the power of regulating interstate commerce to the Congress of the United States, whose enlarged view of the interests of all the States, and of the railroads concerned, better fits it to establish just and equitable rules.

Of the justice or propriety of the principle which lies at the foundation of the Illinois Statute it is not the province of this court to speak. As restricted to a transportation which begins and ends within the limits of the State, it may be very just and equitable, and it cer-

tainly is the province of the State Legislature to determine that question. But when it is attempted to apply the transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States cannot be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and cannot be safely and wisely remitted to local rules and local regulations, we think is clear from what has already been said. And if it be a regulation of commerce, as we think we have demonstrated it is, and as the Illinois Court concedes it to be, it must be of that national character, and the regulation can only appropriately exist by general rules and principles, which demand that it should be done by the Congress of the United States under the commerce clause of the Constitution.

The judgment of the Supreme Court of Illinois is therefore reversed, and the case remanded to that court for further proceedings in conformity with this opinion.

Mr. Justice Bradley, dissenting:

The Chief Justice, Mr. Justice Gray, and myself dissent from the opinion and judgment of the court in this case, and I am authorized to state the reasons upon which our dissent is founded:

The Wabash, St. Louis & Pacific Railway Company, an Illinois corporation, plaintiff in error, was sued by the State of Illinois to recover a penalty for the breach of its laws, passed "to prevent extortion and unjust discrimination in the rates charged for the transportation of passengers and freight on railroads in the State." The law sued on was originally passed in 1871, and revised in 1878, and the material portions of its most important section are in the following words, to wit:

"If any such railroad corporation shall charge, collect or receive for the transportation of any passenger or freight of any description, upon its railroad, for any distance, within this State, the same or a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation, in the same direction, of any passenger or like quantity of freight, of the same class, over a greater distance of the same railroad; * * * or if it shall charge, collect or receive from any person or persons, for the use and transportation of any railroad car or cars upon its railroad, for any distance, the same or a greater amount of toll or compensation than it at the same time charged, collected or received from any other person or persons, for the use and transportation of any railroad car of the same class or number, for a like purpose, being transported in the same direction, over a greater distance of the same railroad: * * * all such discriminating rates, charges, collections, or receipts, whether made directly or by means of rebate, drawback or other shift or evasion, shall be deemed and taken, against any such railroad corporation, as *prima facie* evidence of unjust discrimina-

tion, prohibited by the provisions of this Act; * * * *Provided, however*, That nothing herein contained shall be so construed as to prevent railroad corporations from issuing commutation, excursion or thousand mile tickets, as the same are now issued by such corporations."

A penalty of not less than \$1,000, and not more than \$5,000, for the first offense is imposed for the violation of the law; and it was for this penalty that the Company was sued in the Ford County Circuit Court.

The declaration alleged, in substance, that the Company charged certain parties fifteen cents per hundred pounds for carrying a load of freight from Peoria, in the State of Illinois, to New York, one hundred and nine miles of the distance being in Illinois, whilst at the same time it charged certain other parties twenty-five cents per hundred pounds for carrying a like load of the same class of freight from Gilman, also in the State of Illinois, to New York, twenty-three miles of the distance being in Illinois, both places being on the line of the road. This allegation was substantially admitted, and judgment was finally rendered in favor of the State, and was sustained by the Supreme Court of the State, to which the present writ of error was directed.

The main point insisted on by the Railway Company in its defense was that the law on which the action was founded is unconstitutional in its application to their case, as being a regulation of interstate commerce. They also contended that a gross charge from Peoria or Gilman to New York was no evidence of any particular charge within the State of Illinois.

The construction given to the law by the Supreme Court of Illinois is to be received by us, on a writ of error brought for the purpose of questioning its constitutionality. That construction is clearly exhibited in the following announcement of the opinion of that court when the case was brought before it a second time. The court says:

"We see no reason to depart from the conclusion reached in this case when it was here before. See *People v. W. St. L. & P. Railway Co.* 104 Ill. 476. But to avoid misapprehension, we deem it desirable to state explicitly that we disclaim any idea that Illinois has authority to regulate commerce in any other State. We understand and simply hold that, in the absence of anything showing to the contrary, a single and entire contract to carry for a gross sum from Gilman, in this State, to the City of New York, implies necessarily that that sum is charged proportionately for the carriage on every part of that distance; and that a single and entire contract to carry for a gross sum from Peoria, in this State, to the City of New York, implies the same thing; and that, therefore, when it is shown that there is charged for carriage upon the same line less from Peoria to New York (the greater distance), than from Gilman to New York (the less distance), and nothing is shown to the effect that such inequality in charge is all for carriage entirely beyond the limits of this State, a *prima facie* case is made out of unjust discrimination, under our statute, occurring within this State. We hold that the excess in the charge for the less distance presumably affects every part of the line of carriage between Gilman and the

state line, proportionately with the balance of the line. The judgment is affirmed." *Wabash St. L. & P. R. Co. v. Illinois*, 105 Ill. 236.

We have no doubt that this view of the presumed equal distribution of the charge to every part of the route is correct. If one tenth, or any other proportion, of the whole route of transportation was in Illinois, the clear presumption is, if nothing be shown to the contrary (as nothing was shown), that the like proportion of the whole charge was made for the transportation in that State.

The principal question in this case, therefore, is whether, in the absence of congressional legislation, a State Legislature has the power to regulate the charges made by the railroads of the State for transporting goods and passengers to and from places within the State, when such goods or passengers are brought from, or carried to, points without the State, and are, therefore, in course of transportation from another State, or to another State. It is contended that as such transportation is commerce between or among different States, the power does not exist. The majority of the court so hold. We feel obliged to dissent from that opinion. We think that the State does not lose its power to regulate the charges of its own railroads in its own territory, simply because the goods or persons transported have been brought from or are destined to a point beyond the State in another State.

The case before us is not embarrassed by any allegation of a contract between the State and the Company; it is a question of the power to regulate, pure and simple. The State has never contracted away or attempted to contract away this power.

It is also unembarrassed by any federal legislation on the subject. No one disputes that Congress might, if it saw fit, under its power to regulate commerce among the several States, regulate the matter under consideration; but it has not done so. The question rests solely and entirely upon the power of the State, when unrestrained by any contract, or by any action of the legislative department of the United States. Does it follow, then, that because Congress has the power to regulate this matter, though it has not exercised that power, therefore the State is divested of all power of regulation? That is the question before us.

We had supposed that this question was concluded by the previous decisions of this court; that all local arrangements and regulations respecting highways, turnpikes, railroads, bridges, canals, ferries, dams and wharves, within the State, their construction and repair, and the charges to be made for their use, though materially affecting commerce, both internal and external, and thereby incidentally operating to a certain extent as regulations of interstate commerce, were within the power and jurisdiction of the several States. That is still our opinion.

It is almost a work of supererogation to refer to the cases. They are legion. A few, only, will be selected and referred to:

The first great case on the subject was that of *Wilson v. Black Bird Creek etc. Co.* 2 Pet. 245 [27 U. S. bk. 7, L. ed. 412], where the State of Delaware had authorized a dam in a navigable tide water creek of that State, communicating

with Delaware Bay; and *Chief Justice* Marshall, delivering the unanimous opinion of the court, said: "The value of the property on its banks must be enhanced by excluding the water from the marsh, and the health of the inhabitants probably improved. Measures calculated to produce these objects, provided they do not come into collision with the powers of the General Government, are undoubtedly within those which are reserved to the States. But the measure authorized by this Act stops a navigable creek, and must be supposed to abridge the rights of those who have been accustomed to use it. But this abridgment, unless it comes in conflict with the Constitution or a law of the United States, is an affair between the Government of Delaware and its citizens, of which this court can take no cognizance. The counsel for the plaintiff in error insist that it comes in conflict with the power of the United States 'to regulate commerce with foreign Nations and among the several States.' If Congress had passed any Act which bore upon the case, any Act in execution of the power to regulate commerce, the object of which was to control state legislation over those small navigable creeks into which the tide flows, and which abound throughout the lower country of the Middle and Southern States, we should feel not much difficulty in saying that a state law coming in conflict with such Act would be void. But Congress has passed no such Act. The repugnancy of the law of Delaware to the Constitution is placed entirely on its repugnancy to the power to regulate commerce with foreign nations and among the several States; a power which has not been so exercised as to affect the question. We do not think the Act empowering the Blackbird Creek Marsh Company to place a dam across the creek can, under all the circumstances of the case, be considered as repugnant to the power to regulate commerce in its dormant state, or as being in conflict with any law passed on the subject."

This case was, in all things, affirmed by the later case of *Gilman v. Philadelphia*, 3 Wall. 713 [70 U. S. bk. 18, L. ed. 98]. The Legislature of Pennsylvania authorized the City of Philadelphia to erect a permanent bridge across the Schuylkill River, a navigable water, at the foot of Chestnut Street. It was sought to restrain the erection of this bridge on the same grounds which had been urged in the *Blackbird Creek Case*; but the Circuit Court of the United States refused to interfere, and dismissed a bill for an injunction. The decision was sustained by this court, which held that it was for Congress to determine when its full power to regulate commerce should be brought into activity, and as to the regulations and sanctions which should be provided; and that, until the dormant power of the Constitution is awakened and made effective by appropriate legislation, the reserved power of the States is plenary, and its exercise in good faith cannot be made the subject of review by this court.

These principles are reaffirmed in the still more recent case of *Escanaba etc. Co. v. Chicago*, 107 U. S. 678 [Bk. 27, L. ed. 442]. In that case the authorities of Chicago, under the powers conferred upon them by the Legislature of Illinois, regulated the times for opening and closing the draws in the bridges crossing the

Chicago River, so as to accommodate the local travel across them at certain times, and to allow the passage of vessels at others. This operated as a regulation of the commerce on the river, including interstate and foreign, as well as domestic commerce. But there being no legislation of Congress to the contrary, this court held that the power was constitutionally exercised. Commerce was affected; commerce was even incidentally regulated; but the jurisdiction of the State, and of the city acting under state authority, was unhesitatingly recognized by the court. *Mr. Justice* Field, delivering the opinion of the court, said: "The Chicago River and its branches must, therefore, be deemed navigable waters of the United States, over which Congress under its commercial power may exercise control to the extent necessary to protect, preserve and improve the free navigation. But the States have full power to regulate within their limits matters of internal police, including in that general designation whatever will promote the peace, comfort, convenience and prosperity of the people. This power embraces the construction of roads, canals and bridges, and the establishment of ferries, and it can generally be exercised more wisely by the States than by a distant authority. * * * Nowhere could the power to control the bridges in that city, their construction, form and strength, and the size of their draws, and the manner and times of using them, be better vested than with the State, or the authority of the city upon whom it has devolved that duty. When its power is exercised, so as to unnecessarily obstruct the navigation of the river or its branches, Congress may interfere and remove the obstruction. * * * But until Congress acts on the subject, the power of the State over bridges across its navigable streams is plenary."

The doctrines announced in these cases apply not only to dams in, and bridges over, navigable streams, but to all structures and appliances in a State which may incidentally interfere with commerce, or which may be erected or created for the furtherance of commerce, whether by water or by land. It is matter of common knowledge that, from the beginning of the government, the States have exercised almost exclusive control over roads, bridges, ferries, wharves and harbors. No one has doubted their right to do so. It is recognized in the great case of *Gibbons v. Ogden*, where *Chief Justice* Marshall, after enumerating some of the powers reserved to the States, says: "They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the General Government; all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of the State, and those which respect turnpike roads, ferries, etc., are component parts of this mass." And he adds (what is very pertinent to this discussion): "No direct general power over these objects is granted to Congress; and, consequently, they remain subject to state legislation. If the legislative power of the Union can reach them, it must be for national purposes; it must be where the power is expressly given

for a special purpose; or is clearly incidental to some power which is expressly given."

The case of *Parkersburg etc. Trans. Co. v. Parkersburg*, 107 U. S. 681 [Bk. 27, L. ed. 584], related to wharves. The City of Parkersburg had built certain wharves for the accommodation of vessels, principally steamboats, navigating the Ohio River. The transportation company, being the owner of several steamboats plying on that river, complained of the wharfage charges as being extortionate and an unconstitutional interference with the commerce of the Ohio River. It was shown that the charges were imposed by authority derived from the state laws; and we held that until Congress interfered, the charges for wharfage was a matter of state law, and of state jurisdiction. We then said: "Wharves, levees and landing places are essential to commerce by water, no less than a navigable channel and a clear river. But they are attached to the land; they are private property, real estate; and they are primarily, at least, subject to the local state laws. * * * Until Congress has acted, the courts of the United States cannot assume control over the subject as a matter of federal cognizance. It is Congress, and not the judicial department, to which the Constitution has given the power to regulate commerce with foreign nations and among the several States. The courts can never take the initiative on the subject."

There is a class of subjects, it is true, pertaining to interstate and foreign commerce, which require general and uniform rules for the whole country, so as to obviate unjust discriminations against any part, and in respect of which local regulations made by the States would be repugnant to the power vested in Congress, and, therefore, unconstitutional; but there are other subjects of local character and interest which not only admit of, but are generally best regulated by state authority. This distinction is pointed out and enforced in the case of *Cooley v. Port Wardens of Phila.* 12 How. 299 [58 U. S. bk. 13, L. ed. 996]. In that case it was held that the pilotage regulations of the different courts of the country belong to the latter class, and are susceptible of state regulation. This case has been approved in several subsequent decisions. *Gilman v. Philadelphia, ubi supra*; *Crandall v. Nevada*, 6 Wall. 35, 42 [78 U. S. bk. 18, L. ed. 745]; *Ex parte McNeil*, 13 Wall. 236 [50 U. S. bk. 20, L. ed. 624]; *Osborne v. Mobile*, 16 Wall. 482 [83 U. S. bk. 21, L. ed. 473]; *Chicago etc. R. Co. v. Fuller*, 17 Wall. 569 [84 U. S. bk. 21, L. ed. 714]; *Roddi v. Heartt*, 21 Wall. 581, 582 [88 U. S. bk. 23, L. ed. 664]; *Packet Co. v. Keokuk*, 95 U. S. 88 [Bk. 24, L. ed. 381]; *Pound v. Turck*, 95 U. S. 462 [Bk. 24, L. ed. 526]; *Hall v. De Cuir*, 95 U. S. 488 [Bk. 24, L. ed. 548]; *Wilson v. McNamee*, 102 U. S. 575 [Bk. 26, L. ed. 235]; *Mobile Co. v. Kimball*, 102 U. S. 698 [Bk. 26, L. ed. 240]; *Packet Co. v. Trustees, Catlettsburg*, 105 U. S. 562 [Bk. 26, L. ed. 1170].

It is hardly necessary to argue that, in reference to this rule, railroads, canals, turnpikes, bridges, ferries and wharves belong to the category of local subjects, local means and local aids of commercial intercourse. Congress may establish national roads, canals and bridges, 'it is true; but we speak of those, hitherto the most part, which are constructed and estab-

lished under state authority; and in reference to these, it seems to us very clear that, in the absence of congressional legislation to the contrary, they are not only susceptible of state regulation, but properly amenable to it, irrespective of other considerations to which we shall refer.

The highways in a State are the highways of the State. Convenient ways and means of intercommunication are the first evidence of the civilization of a people. The highways of a country are not of private but of public institution and regulation. In modern times, it is true, government is in the habit, in some countries of letting out the construction of important highways, requiring a large expenditure of capital, to agents, generally corporate bodies created for the purpose, and giving to them the right of taxing those who travel or transport goods thereon, as a means of obtaining compensation for their outlay. But a superintending power over the highways, and the charges imposed upon the public for their use, always remains in the government. This is not only its indefeasible right, but is necessary for the protection of the people against extortion and abuse. These positions we deem to be incontrovertible. Indeed, they are adjudged law in the decisions of this court. Railroads and railroad corporations are in this category.

Now, since every railroad may be, and generally is, a medium of transportation for interstate commerce, and affects that commerce; and since the charges of fare and freight for such transportation affect and incidentally regulate that commerce; and since the railroad could not be built, and the charges upon it could not be exacted, without authority from the State, it follows as a necessary consequence that the State, in the exercise of its undoubted functions and sovereignty, does in the establishment and regulation of railroads, to a certain and a very material extent, not only do that which affects, but incidentally regulates commerce. It does so by the very Act of authorizing the construction of railroads and the collection of fares and freights thereon. No one doubts its powers to do this. The very being of the plaintiffs in error, the very existence of their railroad, the very power they exercise of charging fares and freights, are all derived from the State. And yet, according to the argument of the plaintiffs in error, pursued to its legitimate consequences, the Act of the State in doing all this ought to be regarded as null and void because it operates as a regulation of commerce among the States. Not only does the right to charge fares and freights at all, come to a railroad company from the grant of the State, but the amount of such charges is also regulated by the state law, either by the charter of the company, or by legislative regulations, or by the general law that the charges shall be reasonable; and that is state law and not United States law. Where else but from the laws of the State does the railroad company get its right to charge any fares or freight at all? And since its being, its franchises, its powers, its road, its right to charge, all come from the State, and are the creation of state law, how can it be contended that the State has no power of regulation over those charges, and over the conduct of the company in the trans-

directly affect those without." The law was sustained, and the bill of complaint was dismissed.

We do not see how this case can be distinguished from that now under consideration. The fact that in *Peik's Case* there was a classification of freights and a limitation of charges, and in the present case a prohibition of discrimination in the charges, is a distinction without a difference. The opinion is brief, it is true, but all the principles involved in it were so fully discussed in the cases immediately preceding, beginning with that of *Munn v. Illinois*, that no extended discussion of *Peik's Case* was deemed necessary. All the justices who concurred in the opinion were entirely satisfied with it. The cases were all argued at the same time, or in reference to each other, and were considered together. But there stands the judgment of the court, and, in our apprehension, the judgment in the present case is directly opposed to it.

We have omitted to cite a number of cases corroborating the views we have expressed. The case of *State Tax on R. Gross Receipts*, 15 Wall. 284 [82 U. S. bk. 21, L. ed. 164], is weighted with arguments and considerations in this direction. We would also refer to the cases of *Osborne v. Mobile*, 10 Wall. 479 [88 U. S. bk. 21, L. ed. 470]; *Chicago etc. R. Co. v. Fuller*, 17 Wall. 560 [84 U. S. bk. 21, L. ed. 710]; *R. R. Commission Cases*, 116 U. S. 307, 334, 335 [Bk. 29, L. ed. 636, 645].

It is supposed that the decision in *Hall v. De Cuir*, 95 U. S. 485 [Bk. 24, L. ed. 547], supports the contention of the plaintiffs in error. We think not. What was that case? A Statute of Louisiana, as construed by its courts, prohibited those engaged in the business of carrying passengers, in that State (including those engaged in interstate commerce), from making any discrimination on account of race or color in the use of the accommodations in their conveyances; a direct regulation of commerce, and within the reason of the tax cases before referred to. A steamer which regularly plied between New Orleans and Vicksburg had a cabin specially set apart for white persons, and De Cuir, a colored person, being refused admission to that cabin, sued for damages. We held that the law (as above suggested) was a direct regulation of commerce and a burden upon it. It compelled the steamboat proprietors to place colored persons traveling from one place to another in Louisiana, in the cabin set apart for white persons, many of whom were bound to another State; and, therefore, in its operation was a regulation of interstate commerce. It was against the rule that, in the absence of action by Congress, commerce must remain free and untrammelled. By that rule the proprietor of the vessel was at liberty to adopt such reasonable rules and regulations for the disposition and comfort of passengers upon his boat, while pursuing its voyage, as seemed to him most for the interest of all concerned. The statute took away from him this power so long as he was within Louisiana. We especially distinguished the case from those of *Munn v. Illinois*, *Peik v. R. R. Co.*, and the cognate cases, as belonging to a different category, and governed by different consideration; and the difference between them seems to us very apparent.

The *Chief Justice*, in delivering the opinion of the court said: "There can be no doubt but

that exclusive power has been conferred upon Congress in respect to the regulation of commerce among the several States. The difficulty has never been as to the existence of this power, but as to what is to be deemed an encroachment upon it; for, as has been often said, 'Legislation may in a great variety of ways affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution.' *Sherlock v. Alling*, 93 U. S. 103 [Bk. 23, L. ed. 820]; *State Tax on R. Gross Receipts* [supra]. Thus, in *Munn v. Illinois*, 94 U. S. 113 [Bk. 24, L. ed. 77], it was decided that a State might regulate the charges of public warehouses, and, in *Chic. B. & Q. R. Co. v. Outts*, 94 U. S. 155 [Bk. 24, L. ed. 94], of railroads situate entirely within the State, even though those engaged in commerce among the States might sometimes use the warehouses or the railroads in the prosecution of their business." After referring to the cases of dams and bridges over navigable waters, and of turnpikes and ferries, the *Chief Justice* continued: "By such statutes the States regulate, as a matter of domestic concern, the instruments of commerce situated wholly within their own jurisdictions, and over which they have exclusive governmental control, except when employed in interstate commerce. As they can only be used in the State, their regulation for all purposes may properly be assumed by the State, until Congress acts in reference to their foreign or interstate relations. When Congress does act, the state laws are superseded, only to the extent that they affect commerce outside the State as it comes within the State." He then added: "But we think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without, or goes out from within." The distinction here taken seems to us sound and to distinguish the present case from that of *De Cuir*. In the *Peik Case*, and others of like character, the State regulated the charges made upon an instrument of commerce (a railroad) situated within the State and under its jurisdiction; such charges being made by virtue of the State's authority; in the *De Cuir Case* it attempted, as the law operated, to regulate the manner of carrying passengers on an instrument of commerce having no fixed location, by plying on navigable waters within and without the State; in other words, it attempted to regulate interstate commerce itself, directly, in a matter in which it had no special prerogative to legislate.

Other cases are referred to by the plaintiff in error in support of their contention; but we think that no case can be found which is not clearly distinguishable from the present on some or one of the grounds already referred to.

The inconvenience which it has been supposed in argument would follow from the execution of the laws of Illinois we think have been greatly exaggerated. But if it should be found to present any real difficulty in the modes of transacting business on through lines, it is

always in the power of Congress to make such reasonable regulations as the interests of interstate commerce may demand, without denuding the States of their just powers over their own roads and their own corporations.

Sabine ROBBINS, *Plff. in Err.*,

v.

TAXING DISTRICT OF SHELBY COUNTY, TENNESSEE.

(From Lawyers' ed. U. S. Reports, Bk. 30, p. 694.)

1. **The power of Congress to regulate interstate commerce is exclusive** when its subjects are national in character, or admit only of one uniform system or plan of regulation.
2. Where its power is exclusive, the **failure of Congress to make express regulations** indicates its will that the subject shall be left free from any restrictions or impositions.
3. **A State cannot levy a tax, or impose any other restriction upon the citizens or inhabitants of other States for selling or seeking to sell their goods in such State before they are introduced therein.**
4. **The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce.** Such commerce is not subject to state taxation, even though there be no discrimination between it and domestic commerce.

(Submitted Jan. 8, 1886. Submission set aside and argument ordered March 8, 1886. Argued Nov. 5, 1886. Decided March 7, 1877.)

IN ERROR to the Supreme Court of the State of Tennessee. Reported below, 18 Lea, 303. *Reversed.*

The history and facts of the case appear in the opinion of the court and in the dissenting opinion by the Chief Justice. See also the following case of *Corson v. Maryland*.

Messrs. Luke E. Wright and F. T. Edmonson, for plaintiff in error:

The Act in question is in violation of that part of article 1, section 8, of the Constitution of the United States, which declares that "The Congress shall have power to regulate commerce among the several States."

Congress is vested with the exclusive power to regulate commerce with foreign Nations and among the States.

County of Mobile v. Kimball, 102 U. S. 691 (26: 238); *Passenger Cases*, 48 U. S. 7 How. 283 (12: 702); *Gloucester Ferry Co. v. Pa.* 114 U. S. 196 (29: 158).

Congress has not only the right but it is the duty of Congress to take care that commerce is not obstructed by state legislation.

Pensacola Tel. Co. v. W. U. Tel. Co. 96 U. S. 1 (24: 706).

It is settled that a tax directly on commerce or aimed at commerce is unconstitutional.

State Freight Tax Case, 82 U. S. 15 Wall. 232 (21: 146); *State Tax on R. Gross Receipts*, 82 U. S. 15 Wall. 284 (21: 164).

The effect of the Act complained of is to draw a distinction between resident and non-resident merchants. Its object is not revenue, but exclusion. It allows the merchants of the Taxing District to do business on terms more favorable than nonresident merchants, and forbids the latter from coming into equal and fair competition with the former.

The right to tax carries with it the right to exclude, so that, if this stands, the Legislature can declare that no person shall, on any terms, offer to sell goods in said District, unless he first establish a commercial house therein.

Mr. S. P. Walker, for defendant in error:

The statute makes no reference whatever to the place of residence of the "drummer." He is equally subject to the tax whether he be a resident of the taxing district, or a resident of some other portion of the State, or of some other State. In any and all cases the privilege tax is alike imposed. Given the vocation of "drummer," and the statute applies, without any distinction or discrimination whatever. There is clearly, therefore, no violation of section 2, article 4, upon which the decision in *Ward v. Maryland*, 79 U. S. 13 Wall. 418 (20: 449), was rested. The statute is not directed against the "drummer's" principal, but against the "drummer" himself, as pursuing a particular vocation declared to be a taxable privilege. But if the statute be looked upon as an effort to tax the principal through the agent (for which view, we submit there is no foundation), it would still be free from objections urged against it, for that it equally applies to all "drummers," without reference to principal's place of residence. "The general power of the State to impose taxes, in the way of licenses, upon all pursuits and occupations within its limits," is unquestionable.

Welton v. Missouri, 91 U. S. 278 (23: 348).

The language of this court, in *Osborne v. Mobile*, 83 U. S. 16 Wall. 479, 481 (21: 470, 473), is equally pertinent here: "There was no discrimination in the taxation of Alabama between it (the plaintiff in error) and the corporations and citizens of that State. The tax for license was the same by whomsoever the business was transacted. There is nothing in the case, therefore, which brings it within the case of *Ward v. Maryland*. It seems rather to be governed by the principles settled in *Woodruff v. Parham*, 75 U. S. 8 Wall. 123 (19: 382)."

As is fully shown in the opinion of the state court, the classification of the statute is based on the character of the pursuit, and not on the fact of residence; and it is not subject to the objections that were sustained in *Ward v. Maryland*, *supra*.

Mr. Justice Bradley delivered the opinion of the court:

This case originated in the following manner: Sabine Robbins, the plaintiff in error, in February, 1884, was engaged at the City of Memphis, in the State of Tennessee, in soliciting the sale of goods for the firm of Rose, Robbins & Co., of Cincinnati, in the State of Ohio, dealers

in paper, and other articles of stationery, and exhibited samples for the purpose of effecting such sales,—an employment usually denominated as that of a “drummer.” There was in force at that time a Statute of Tennessee, relating to the subject of taxation in the taxing districts of the State, applicable, however, only to the Taxing District of Shelby County (formerly the City of Memphis), by which it was enacted, amongst other things, that “All drummers, and all persons not having a regular licensed house of business in the Taxing District, offering for sale or selling goods, wares, or merchandise therein, by sample, shall be required to pay to the county trustee the sum of ten dollars (\$10) per week, or twenty-five dollars per month, for such privilege; and no license shall be issued for a longer period than three months.” Act of 1881, chap. 96, § 16.

The business of selling by sample and nearly sixty other occupations had been by law declared to be privileges, and were taxed as such, and it was made a misdemeanor, punishable by a fine of not less than \$5 nor more than \$50, to exercise any of such occupations without having first paid the tax or obtained the license required therefor.

Under this law Robbins, who had not paid the tax nor taken a license, was prosecuted, convicted and sentenced to pay a fine of \$10, together with the state and county tax, and costs; and on appeal to the Supreme Court of the State, the judgment was affirmed. This writ of error is brought to review the judgment of the supreme court, on the ground that the law imposing the tax was repugnant to that clause of the Constitution of the United States which declares that Congress shall have power to regulate commerce among the several States.

On the trial of the cause in the inferior court, a jury being waived, the following agreed statement of facts was submitted to the court, to wit:

“Sabine Robbins is a citizen and resident of Cincinnati, Ohio, and on the — day of —, 1884, was engaged in the business of drumming in the Taxing District of Shelby County, Tenn.—*i. e.* soliciting trade by the use of samples for the house or firm for which he worked as a drummer, said firm being the firm of ‘Rose, Robbins & Co.’ doing business in Cincinnati, and all the members of said firm being citizens and residents of Cincinnati, Ohio. While engaged in the act of drumming for said firm, and for the claimed offense of not having taken out the required license for doing said business, the defendant, Sabine Robbins, was arrested by one of the Memphis or Taxing District police force and carried before the Hon. D. P. Hadden, president of the Taxing District, and fined for the offense of drumming without a license. It is admitted the firm of ‘Rose, Robbins & Co.’ are engaged in the selling of paper, writing materials, and such articles as are used in the book stores of the Taxing District of Shelby County, and that it was a line of such articles for the sale of which the said defendant herein was drumming at the time of his arrest.”

This was all the evidence, and thereupon the court rendered judgment against the defendant, to which he excepted, and a bill of exceptions was taken.

The principal question argued before the Supreme Court of Tennessee was as to the

constitutionality of the Act which imposed the tax on drummers; and the court decided that it was constitutional and valid. [13 Lea, 803.]

That is the question before us, and it is one of great importance to the people of the United States, both as it respects their business interests and their constitutional rights. It is presented in a nutshell, and does not, at this day, require for its solution any great elaboration of argument or review of authorities. Certain principles have been already established by the decisions of this court which will conduct us to a satisfactory decision. Among those principles are the following:

1. The Constitution of the United States having given to Congress the power to regulate commerce, not only with foreign Nations, but among the several States, that power is necessarily exclusive whenever the subjects of it are national in their character, or admit only of one uniform system, or plan of regulation. This was decided in the case of *Cooley v. Board of Wardens of Phila.* 53 U. S. 12 How. 299, 819 [18: 996, 1004], and was virtually involved in the case of *Gibbons v. Ogden*, 23 U. S. 9 Wheat. 1 [6: 28], and has been confirmed in many subsequent cases, amongst others, in *Brown v. Md.* 25 U. S. 12 Wheat. 419 [6: 678]; *Passenger Cases*, 48 U. S. 7 How. 283 [12: 702]; *Grondall v. Nevada*, 78 U. S. 6 Wall. 85, 42 [18: 745, 746]; *Ward v. Md.* 79 U. S. 12 Wall. 418, 480 [20: 449, 452]; *State Freight Tax Cases*, 83 U. S. 15 Wall. 232, 279 [21: 146, 162]; *Henderson v. Mayor of N. Y.* 92 U. S. 259, 272 [23: 548, 549]; *R. R. Co. v. Husen*, 95 U. S. 465, 469 [24: 527, 529]; *Mobile v. Kimball*, 102 U. S. 691, 697 [26: 288, 239]; *Gloucester Ferry Co. v. Pa.* 114 U. S. 196, 203 [29: 158, 161]; *Wabash, etc. R. Co. v. Ill.* 118 U. S. 557 [ante, 244].

2. Another established doctrine of this court is that, where the power of Congress to regulate is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the States, except in matters of local concern only, as hereafter mentioned, is repugnant to such freedom. This was held by Mr. Justice Johnson in *Gibbons v. Ogden*, 23 U. S. 9 Wheat. 1, 222 [6: 28, 76]; by Mr. Justice Grier, in the *Passenger Cases*, 48 U. S. 7 How. 283, 462 [12: 702, 777]; and has been affirmed in subsequent cases. *State Freight Tax Cases*, and *R. R. Co. v. Husen*, [supra]; *Welton v. Missouri*, 91 U. S. 275, 282 [23: 347, 850]; *County of Mobile v. Kimball* [supra]; *Brown v. Houston*, 114 U. S. 623, 631 [29: 257, 260]; *Walling v. Mich.* 116 U. S. 448, 455 [29: 691, 694]; *Pickard v. Pullman Southern Car Co.* 117 U. S. 84 [29: 785]; *Wabash, etc. R. Co. v. Ill.* [supra].

3. It is also an established principle, as already indicated, that the only way in which commerce between the States can be legitimately affected by state laws is when, by virtue of its police power, and its jurisdiction over persons and property within its limits, a State provides for the security of the lives, limbs, health and comfort of persons and the protection of property; or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries and other commer-

cial facilities; the passage of inspection laws to secure the due quality and measure of products and commodities; the passage of laws to regulate or restrict the sale of articles deemed injurious to the health or morals of the community; the imposition of taxes upon persons residing within the State or belonging to its population, and upon avocations and employments pursued therein, not directly connected with foreign or interstate commerce or with some other employment or business exercised under authority of the Constitution and laws of the United States; and the imposition of taxes upon all property within the State, mingled with and forming part of the great mass of property therein. But in making such internal regulations a State cannot impose taxes upon persons passing through the State, or coming into it merely for a temporary purpose, especially if connected with interstate or foreign commerce; nor can it impose such taxes upon property imported into the State from abroad, or from another State, and not yet become part of the common mass of property therein; and no discrimination can be made, by any such regulations, adversely to the persons or property of other States; and no regulations can be made directly affecting interstate commerce. Any taxation or regulation of the latter character would be an unauthorized interference with the power given to Congress over the subject.

For authorities on this last head it is only necessary to refer to those already cited.

In a word, it may be said that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems. The doctrine of the freedom of that commerce, except as regulated by Congress, is so firmly established that it is unnecessary to enlarge further upon the subject.

In view of these fundamental principles, which are to govern our decision, we may approach the question submitted to us in the present case, and inquire whether it is competent for a State to levy a tax or impose any other restriction upon the citizens or inhabitants of other States, for selling or seeking to sell their goods in such State before they are introduced therein. Do not such restrictions affect the very foundation of interstate trade? How is a manufacturer, or a merchant, of one State, to sell his goods in another State, without, in some way, obtaining orders therefor? Must he be compelled to send them at a venture, without knowing whether there is any demand for them? This may, undoubtedly, be safely done with regard to some products for which there is always a market and a demand, or where the course of trade has established a general and unlimited demand. A raiser of farm produce in New Jersey or Connecticut, or a manufacturer of leather or wooden ware, may perhaps safely take his goods to the City of New York and be sure of finding a stable and reliable market for them. But there are hundreds, perhaps thousands, of articles which no person would think of exporting to another State without first procuring an order for them. It is true, a merchant or manufacturer in one State may erect or hire a warehouse or store in another State, in which to place his goods, and await the chances of being able to sell

them. But this would require a warehouse or a store in every State with which he might desire to trade.

Surely, he cannot be compelled to take this inconvenient and expensive course. In certain branches of business, it may be adopted with advantage. Many manufacturers do open houses or places of business in other States than those in which they reside, and send their goods there to be kept on sale. But this is a matter of convenience, and not of compulsion, and would neither suit the convenience nor be within the ability of many others engaged in the same kinds of business, and would be entirely unsuited to many branches of business. In these cases, then, what shall the merchant or manufacturer do, who wishes to sell his goods in other States? Must he sit still in his factory or warehouse, and wait for the people of those States to come to him? This would be a silly and ruinous proceeding.

The only other way, and the one, perhaps, which most extensively prevails, is to obtain orders from persons residing or doing business in those other States. But how is the merchant or manufacturer to secure such orders. If he may be taxed by such States for doing so, who shall limit the tax? It may amount to prohibition. To say that such a tax is not a burden upon interstate commerce is to speak at least unadvisedly and without due attention to the truth of things.

It may be suggested that the merchant or manufacturer has the postoffice at his command, and may solicit orders through the mails. We do not suppose, however, that anyone would seriously contend that this is the only way in which his business can be transacted without being amenable to exactions on the part of the State. Besides, why could not the State to which his letters might be sent, tax him for soliciting orders in this way, as well as in any other way?

The truth is that, in numberless instances, the most feasible, if not the only practicable, way for the merchant or manufacturer to obtain orders in other States is to obtain them by personal application, either by himself, or by some one employed by him for that purpose; and in many branches of business he must necessarily exhibit samples for the purpose of determining the kind and quality of the goods he proposes to sell, or which the other party desires to purchase. But the right of taxation, if it exists at all, is not confined to selling by sample. It embraces every act of sale, whether by word of mouth only, or by the exhibition of samples. If the right exists, any New York or Chicago merchant visiting New Orleans or Jacksonville, for pleasure or for his health, and casually taking an order for goods to be sent from his warehouse, could be made liable to pay a tax for so doing, or be convicted of a misdemeanor for not having taken out a license. The right to tax would apply equally as well to the principal as to his agent, and to a single act of sale as to a hundred acts.

But it will be said that a denial of this power of taxation will interfere with the right of the State to tax business pursuits and callings carried on within its limits, and its right to require licenses for carrying on those which are declared to be privileges. This may be true to a

certain extent; but only in those cases in which the States themselves, as well as individual citizens, are subject to the restraints of the higher law of the Constitution. And this interference will be very limited in its operation. It will only prevent the levy of a tax, or the requirement of a license, for making negotiations in the conduct of interstate commerce; and it may well be asked where the State gets authority for imposing burdens on that branch of business any more than for imposing a tax on the business of importing from foreign countries, or even on that of postmaster or United States Marshal. The mere calling the business of a drummer a privilege cannot make it so. Can the State Legislature make it a Tennessee privilege to carry on the business of importing goods from foreign countries? If not, has it any better right to make it a state privilege to carry on interstate commerce? It seems to be forgotten, in argument, that the people of this country are citizens of the United States, as well as of the individual States, and that they have some rights under the Constitution and laws of the former, independent of the latter, and free from any interference or restraint from them.

To deny to the State the power to lay the tax, or require the license in question, will not, in any perceptible degree, diminish its resources or its just power of taxation. It is very true that if the goods when sold were in the State, and part of its general mass of property, they would be liable to taxation; but when brought into the State in consequence of the sale they will be equally liable; so that, in the end, the State will derive just as much revenue from them as if they were there before the sale. As soon as the goods are in the State and become part of its general mass of property, they will become liable to be taxed in the same manner as other property of similar character, as was distinctly held by this court in the case of *Brown v. Houston*, 114 U. S. 823 [29: 257]. When goods are sent from one State to another for sale, or, in consequence of a sale, they become part of its general property, and amenable to its laws; provided that no discrimination be made against them as goods from another State, and that they be not taxed by reason of being brought from another State, but only taxed in the usual way as other goods are. *Brown v. Houston*, *qua supra*; *Machine Co. v. Gage*, 100 U. S. 676 [25: 754]. But to tax the sale of such goods, or the offer to sell them, before they are brought into the State, is a very different thing, and seems to us clearly a tax on interstate commerce itself.

It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers—those of Tennessee and those of other States; that all are taxed alike. But that does not meet the difficulty. Interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State. This was decided in the case of *The State Freight Tax Cases* [*supra*]. The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce. A New Orleans merchant cannot be taxed there for ordering goods from

London or New York, because, in the one case, it is an act of foreign, and, in the other, of interstate commerce, both of which are subject to regulation by Congress alone.

It would not be difficult, however, to show that the tax authorized by the State of Tennessee in the present case is discriminative against the merchants and manufacturers of other States. They can only sell their goods in Memphis by the employment of drummers and by means of samples; whilst the merchants and manufacturers of Memphis, having regular licensed houses of business there, have no occasion for such agents; and if they had, they are not subject to any tax therefor. They are taxed for their licensed houses, it is true; but so, it is presumable, are the merchants and manufacturers of other States in the places where they reside; and the tax on drummers operates greatly to their disadvantage in comparison with the merchants and manufacturers of Memphis. And such was undoubtedly one of its objects. This kind of taxation is usually imposed at the instance and solicitation of domestic dealers, as a means of protecting them from foreign competition.

And in many cases there may be some reason in their desire for such protection. But this shows in a still stronger light the unconstitutionality of the tax. It shows that it not only operates as a restriction upon interstate commerce, but that it is intended to have that effect as one of its principal objects. And if a State can, in this way, impose restrictions upon interstate commerce for the benefit and protection of its own citizens, we are brought back to the condition of things which existed before the adoption of the Constitution, and which was one of the principal causes that led to it.

If the selling of goods by sample and the employment of drummers for that purpose, injuriously affect the local interest of the States, Congress, if applied to, will undoubtedly make such reasonable regulations as the case may demand. And Congress alone can do it; for it is obvious that such regulations should be based on a uniform system applicable to the whole country, and not left to the varied, discordant or retaliatory enactments of forty different States. The confusion into which the commerce of the country would be thrown by being subject to state legislation on this subject, would be but a repetition of the disorder which prevailed under the Articles of Confederation.

To say that the tax, if invalid as against drummers from other States, operates as a discrimination against the drummers of Tennessee, against whom it is conceded to be valid, is no argument; because the State is not bound to tax its own drummers; and if it does so whilst having no power to tax those of other States, it acts of its own free will, and is itself the author of such discrimination. As before said, the State may tax its own internal commerce; but that does not give it any right to tax interstate commerce.

The judgment of the Supreme Court of Tennessee is reversed, and the plaintiff in error must be discharged.

Mr. Chief Justice Waite, dissenting:
I am unable to agree to this judgment. The case, as I understand it, is this:

In January, 1879, the State of Tennessee abolished the charter of the City of Memphis and created the Taxing District of Shelby County as its successor. By a statute passed April 4, 1881, to provide means for the support of the Taxing District, it was, among other things, enacted "That all drummers and all persons not having a licensed house of business in the Taxing District, offering for sale or selling goods, wares, or merchandise therein by sample, shall be required to pay to the county trustees the sum of ten dollars per week, or twenty-five dollars per month, for such privilege; and no license shall be issued for a longer period than three months."

Sabine Robbins, a citizen of Ohio, employed by the firm of Rose, Robbins & Co., also citizens of Ohio, engaged in business as merchants at the City of Cincinnati, in that State, has been convicted of a violation of this statute because he solicited trade for his firm in the Taxing District, by the use of samples, without a license. This it is now decided was wrong, because the statute under which the conviction was had, in so far as it applies to the business in which Robbins was engaged, is a regulation of interstate commerce, and, therefore, repugnant to the commerce clause of the Constitution of the United States. To this I cannot give my assent.

The license fee is demanded for the privilege of selling goods by sample within the Taxing District. The fee is exacted from all alike who do that kind of business, unless they have "a licensed house of business" in the District. There is no discrimination between citizens of the State and citizens of other States. The tax is upon the business, and this I have always understood to be lawful, whether the business was carried on by a citizen of the State under whose authority the exaction was made, or a citizen of another State, unless there was discrimination against citizens of other States. In *Osborne v. Mobile*, 88 U. S. 16 Wall. 481 [21: 472], it is said "The whole court agreed that a tax on business carried on within the State, and without discrimination between its citizens and the citizens of other States, might be constitutionally imposed and collected." And I cannot believe that if Robbins had opened an office for his business within the Taxing District, at which he kept and exhibited his samples, it would be held that he would not be liable to the tax; and this whether he stayed there all the time or came only at intervals. But what can be the difference in principle, so far as this question is concerned, whether he takes a room permanently in a business block of the District where, when he comes, he sends his boxes and exhibits his wares, or engages a room temporarily at a hotel or private house and carries on his business there during his stay? Or even whether he takes his sample boxes around with him to his different customers and shows his wares from them? In either case he goes to the District to ply his trade and make his sales from the goods he exhibits. He does not sell those goods, but he sells others like them. It is true that his business was to solicit orders for his principals, but in doing so he bargained for them, carried on business for them in the District by means of the samples of their goods, which had been furnished him for that

purpose. To all intents and purposes he had his goods with him for sale, for what he sold was like what he exhibited as the subjects of sale. I am unable to see any difference in principle between a tax on a seller by sample and a tax on a peddler; and yet I can hardly believe it would be contended that the provision of the same statute now in question, which fixes a license fee for all peddlers in the District, would be held to be unconstitutional in its application to peddlers who came with their goods from another State and expected to go back again.

As the law is valid so far as the inhabitants of the State are concerned, no inhabitant can engage in this business unless he pays the tax. If citizens of other States cannot be taxed in the same way for the same business, there will be discrimination against the inhabitants of Tennessee and in favor of those of other States. This could never have been intended by the Legislature, and I cannot believe the Constitution of the United States makes such a thing necessary. The Constitution gives the citizens of each State all the privileges and immunities of citizens in the several States; but this certainly does not guarantee to those who are doing business in States other than their own immunities from taxation on that business to which citizens of the State where the business is carried on are subjected.

This case shows the need of such authority in the States. This Taxing District is situated on the western boundary of Tennessee. To get into another State it is only necessary to cross the Mississippi River to Arkansas. It may be said to be an historical fact that the charter of Memphis was abolished and the Taxing District established because of the oppressive debt of Memphis, and the records of this court furnish abundant evidence of the heavy taxation to which property and business within the limits of both the old corporation and the new have been for many years necessarily subjected. Merchants in Tennessee are by law required to pay taxes on the amount of their stocks on hand, and a privilege tax besides. Under these circumstances it is easy to see that if a merchant from another State could carry on a business in the District by sending his agents there with samples of his goods to secure orders for deliveries from his stock at home, he would enjoy a privilege of exemption from taxation which the local merchant would not have unless in some form he could be subjected to taxation for what he did in the locality. The same would be true in respect to all inhabitants of the State who were sellers by sample in this District, but who had no place of business there. And so they, like citizens of other States, were required to pay for the privilege. Thus all were treated alike, whether they were citizens of Tennessee or of some other State, and under these circumstances I can see no constitutional objection to such a taxation of citizens of the other States for their business in the District.

I have treated the case as a conviction of a "drummer" for selling goods by sample. That is what Robbins was found guilty of, and that is what this statute makes an offense. The license is only required of "drummers and all persons not having a licensed house of business in the Taxing District, offering for sale or sell-

certain extent; but only in those cases in which the States themselves, as well as individual citizens, are subject to the restraints of the higher law of the Constitution. And this interference will be very limited in its operation. It will only prevent the levy of a tax, or the requirement of a license, for making negotiations in the conduct of interstate commerce; and it may well be asked where the State gets authority for imposing burdens on that branch of business any more than for imposing a tax on the business of importing from foreign countries, or even on that of postmaster or United States Marshal. The mere calling the business of a drummer a privilege cannot make it so. Can the State Legislature make it a Tennessee privilege to carry on the business of importing goods from foreign countries? If not, has it any better right to make it a state privilege to carry on interstate commerce? It seems to be forgotten, in argument, that the people of this country are citizens of the United States, as well as of the individual States, and that they have some rights under the Constitution and laws of the former, independent of the latter, and free from any interference or restraint from them.

To deny to the State the power to lay the tax, or require the license in question, will not, in any perceptible degree, diminish its resources or its just power of taxation. It is very true that if the goods when sold were in the State, and part of its general mass of property, they would be liable to taxation; but when brought into the State in consequence of the sale they will be equally liable; so that, in the end, the State will derive just as much revenue from them as if they were there before the sale. As soon as the goods are in the State and become part of its general mass of property, they will become liable to be taxed in the same manner as other property of similar character, as was distinctly held by this court in the case of *Brown v. Houston*, 114 U. S. 622 [29: 257]. When goods are sent from one State to another for sale, or, in consequence of a sale, they become part of its general property, and amenable to its laws; provided that no discrimination be made against them as goods from another State, and that they be not taxed by reason of being brought from another State, but only taxed in the usual way as other goods are. *Brown v. Houston*, *qua supra*; *Machine Co. v. Gage*, 100 U. S. 676 [25: 754]. But to tax the sale of such goods, or the offer to sell them, before they are brought into the State, is a very different thing, and seems to us clearly a tax on interstate commerce itself.

It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers—those of Tennessee and those of other States; that all are taxed alike. But that does not meet the difficulty. Interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State. This was decided in the case of *The State Freight Tax Cases* [*supra*]. The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce. A New Orleans merchant cannot be taxed there for ordering goods from

London or New York, because, in the one case, it is an act of foreign, and, in the other, of interstate commerce, both of which are subject to regulation by Congress alone.

It would not be difficult, however, to show that the tax authorized by the State of Tennessee in the present case is discriminative against the merchants and manufacturers of other States. They can only sell their goods in Memphis by the employment of drummers and by means of samples; whilst the merchants and manufacturers of Memphis, having regular licensed houses of business there, have no occasion for such agents; and if they had, they are not subject to any tax therefor. They are taxed for their licensed houses, it is true; but so, it is presumable, are the merchants and manufacturers of other States in the places where they reside; and the tax on drummers operates greatly to their disadvantage in comparison with the merchants and manufacturers of Memphis. And such was undoubtedly one of its objects. This kind of taxation is usually imposed at the instance and solicitation of domestic dealers, as a means of protecting them from foreign competition.

And in many cases there may be some reason in their desire for such protection. But this shows in a still stronger light the unconstitutionality of the tax. It shows that it not only operates as a restriction upon interstate commerce, but that it is intended to have that effect as one of its principal objects. And if a State can, in this way, impose restrictions upon interstate commerce for the benefit and protection of its own citizens, we are brought back to the condition of things which existed before the adoption of the Constitution, and which was one of the principal causes that led to it.

If the selling of goods by sample and the employment of drummers for that purpose, injuriously affect the local interest of the States, Congress, if applied to, will undoubtedly make such reasonable regulations as the case may demand. And Congress alone can do it; for it is obvious that such regulations should be based on a uniform system applicable to the whole country, and not left to the varied, discordant or retaliatory enactments of forty different States. The confusion into which the commerce of the country would be thrown by being subject to state legislation on this subject, would be but a repetition of the disorder which prevailed under the Articles of Confederation.

To say that the tax, if invalid as against drummers from other States, operates as a discrimination against the drummers of Tennessee, against whom it is conceded to be valid, is no argument; because the State is not bound to tax its own drummers; and if it does so whilst having no power to tax those of other States, it acts of its own free will, and is itself the author of such discrimination. As before said, the State may tax its own internal commerce; but that does not give it any right to tax interstate commerce.

The judgment of the Supreme Court of Tennessee is reversed, and the plaintiff in error must be discharged.

Mr. Chief Justice Waite, dissenting:

I am unable to agree to this judgment. The case, as I understand it, is this:

In January, 1879, the State of Tennessee abolished the charter of the City of Memphis and created the Taxing District of Shelby County as its successor. By a statute passed April 4, 1881, to provide means for the support of the Taxing District, it was, among other things, enacted "That all drummers and all persons not having a licensed house of business in the Taxing District, offering for sale or selling goods, wares, or merchandise therein by sample, shall be required to pay to the county trustees the sum of ten dollars per week, or twenty-five dollars per month, for such privilege; and no license shall be issued for a longer period than three months."

Sabine Robbins, a citizen of Ohio, employed by the firm of Rose, Robbins & Co., also citizens of Ohio, engaged in business as merchants at the City of Cincinnati, in that State, has been convicted of a violation of this statute because he solicited trade for his firm in the Taxing District, by the use of samples, without a license. This it is now decided was wrong, because the statute under which the conviction was had, in so far as it applies to the business in which Robbins was engaged, is a regulation of interstate commerce, and, therefore, repugnant to the commerce clause of the Constitution of the United States. To this I cannot give my assent.

The license fee is demanded for the privilege of selling goods by sample within the Taxing District. The fee is exacted from all alike who do that kind of business, unless they have "a licensed house of business" in the District. There is no discrimination between citizens of the State and citizens of other States. The tax is upon the business, and this I have always understood to be lawful, whether the business was carried on by a citizen of the State under whose authority the exaction was made, or a citizen of another State, unless there was discrimination against citizens of other States. In *Osborne v. Mobile*, 83 U. S. 16 Wall. 481 [21: 472], it is said "The whole court agreed that a tax on business carried on within the State, and without discrimination between its citizens and the citizens of other States, might be constitutionally imposed and collected." And I cannot believe that if Robbins had opened an office for his business within the Taxing District, at which he kept and exhibited his samples, it would be held that he would not be liable to the tax; and this whether he stayed there all the time or came only at intervals. But what can be the difference in principle, so far as this question is concerned, whether he takes a room permanently in a business block of the District where, when he comes, he sends his boxes and exhibits his wares, or engages a room temporarily at a hotel or private house and carries on his business there during his stay? Or even whether he takes his sample boxes around with him to his different customers and shows his wares from them? In either case he goes to the District to ply his trade and make his sales from the goods he exhibits. He does not sell those goods, but he sells others like them. It is true that his business was to solicit orders for his principals, but in doing so he bargained for them, carried on business for them in the District by means of the samples of their goods, which had been furnished him for that

purpose. To all intents and purposes he had his goods with him for sale, for what he sold was like what he exhibited as the subjects of sale. I am unable to see any difference in principle between a tax on a seller by sample and a tax on a peddler; and yet I can hardly believe it would be contended that the provision of the same statute now in question, which fixes a license fee for all peddlers in the District, would be held to be unconstitutional in its application to peddlers who came with their goods from another State and expected to go back again.

As the law is valid so far as the inhabitants of the State are concerned, no inhabitant can engage in this business unless he pays the tax. If citizens of other States cannot be taxed in the same way for the same business, there will be discrimination against the inhabitants of Tennessee and in favor of those of other States. This could never have been intended by the Legislature, and I cannot believe the Constitution of the United States makes such a thing necessary. The Constitution gives the citizens of each State all the privileges and immunities of citizens in the several States; but this certainly does not guarantee to those who are doing business in States other than their own immunities from taxation on that business to which citizens of the State where the business is carried on are subjected.

This case shows the need of such authority in the States. This Taxing District is situated on the western boundary of Tennessee. To get into another State it is only necessary to cross the Mississippi River to Arkansas. It may be said to be an historical fact that the charter of Memphis was abolished and the Taxing District established because of the oppressive debt of Memphis, and the records of this court furnish abundant evidence of the heavy taxation to which property and business within the limits of both the old corporation and the new have been for many years necessarily subjected. Merchants in Tennessee are by law required to pay taxes on the amount of their stocks on hand, and a privilege tax besides. Under these circumstances it is easy to see that if a merchant from another State could carry on a business in the District by sending his agents there with samples of his goods to secure orders for deliveries from his stock at home, he would enjoy a privilege of exemption from taxation which the local merchant would not have unless in some form he could be subjected to taxation for what he did in the locality. The same would be true in respect to all inhabitants of the State who were sellers by sample in this District, but who had no place of business there. And so they, like citizens of other States, were required to pay for the privilege. Thus all were treated alike, whether they were citizens of Tennessee or of some other State, and under these circumstances I can see no constitutional objection to such a taxation of citizens of the other States for their business in the District.

I have treated the case as a conviction of a "drummer" for selling goods by sample. That is what Robbins was found guilty of, and that is what this statute makes an offense. The license is only required of "drummers and all persons not having a licensed house of business in the Taxing District, offering for sale or sell-

ing goods, wares or merchandise therein by sample." The Supreme Court of Tennessee decided that this means nothing more than that any person who sells by sample shall pay the tax, and to that I agree. It will be time enough to consider whether a nonresident can be taxed for merely soliciting orders without having samples when such a case arises. That is not this case.

Mr. Justice Field and *Mr. Justice Gray* concur in this dissent.

GEORGE W. CORSON, *Plff. in Err.*,

v.

STATE OF MARYLAND.

(From Lawyers' ed. U. S. Reports, Bk. 30, p. 799.)

A State cannot levy a license tax or impose any other restriction upon the citizens or inhabitants of other States for selling or seeking to sell their goods in such State before they are introduced therein.

(Argued and submitted April 5, 1886. Reargument ordered May 10, 1886. Reargued and submitted Nov. 5, 1886. Decided March 7, 1887.)

IN ERROR to the Court of Appeals of the State of Maryland. Reported below, 57 Md. 251. *Reversed.*

The case sufficiently appears in the opinion of the court.

Messrs. Henry D. Loney and *S. T. Wallis*, for plaintiff in error:

The power of Congress to regulate commerce between the States, whether legislatively exercised or not, in respect to any specific matter in controversy, is held to be exclusive without exception; save in matters of a local character and without any national bearing or application.

Brown v. Houston, 114 U. S. 622 (29: 257).

Of course, the case now under consideration belongs to the sphere of national commerce and control, if it is at all within the scope of the constitutional provision. The license here is imposed upon citizens and residents of other States than Maryland, contracting in respect to property situate beyond the limits of Maryland, and to be transported to that State, under the contract, by the usual channels of interstate commerce. If the legislation impeached interferes with the commerce, by which the goods sold and being in New York are to be transported to Baltimore, for the purpose of being mingled with the mass of property in Maryland, and before they are so mingled, it is plainly a state regulation of commerce and forbidden by the Constitution.

Welton v. Missouri, 91 U. S. 275, 281 (23: 347, 349).

"Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. For the regulation of commerce, as thus defined, there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone

adopt such a system. Action upon it by separate States is not, therefore, permissible."

County of Mobile v. Kimball, 102 U. S. 691 (26: 238).

Nor is the application of this principle to be varied or escaped by the substitution of a license for direct taxation of the merchandise sold and transported.

Cook v. Pa. 97 U. S. 570 (24: 1016); *Machine Co. v. Gage*, 100 U. S. 678 (25: 755).

The State of Maryland has no more right to tax the goods of a New Yorker, in New York, than those of an Englishman, in London. Nor can the temporary stay or residence of the foreign citizen in Maryland, without change of his residence or place of business, and without any removal of his goods to Maryland, render the taxation of those goods, by the latter State, any more allowable. This court has already held that illegal taxation is one of those deprivations of property which are within the scope of constitutional protection.

R. R. Co. v. Jackson, 74 U. S. 7 Wall. 263 (19: 88); *State Tax on Foreign Held Bonds*, 83 U. S. 15 Wall. 800 (21: 179); *Hagar v. Reclamation Dist.* 111 U. S. 701 (28: 569).

Messrs. Charles B. Roberts, Atty-Gen. of Maryland, and *Charles J. M. Gwinn*, for defendant in error:

The court of Appeals of Maryland decided, in this cause, that the provisions of the Maryland Code, amended by the Maryland Act of 1880, chapter 349, under which the particular indictment was found, required that all persons, whether residents or nonresidents of the State of Maryland, before offering to sell or selling, by sample in that State, packages of tea or other merchandise stored within the limits of any other State, should obtain the license so to do from the State of Maryland, which was required by article 56 of the Code of that State, as amended by the Act of 1880, chapter 349. The construction thus given by the Court of Appeals of Maryland to the scope of the license laws of Maryland, which are in controversy here, is authoritative in this court.

Christy v. Pridgen, 71 U. S. 4 Wall. 196, 203 (18: 322, 325); *Atcard v. State*, 86 U. S. 19 Wall. 635, 639 (22: 215, 216); *Burgess v. Seligman*, 107 U. S. 20, 33, 34 (27: 359, 365); *Flash v. Conn.*, 109 U. S. 371, 379 (27: 966, 970).

It is in general within the constitutional power of every State to tax occupations, within the control of a State, by requiring persons who wish to pursue them, to obtain, before doing so, a license from certain designated officers.

Nathan v. Louisiana, 49 U. S. 8 How. 80 (12: 995); *Welton v. Missouri*, 91 U. S. 278 (23: 348).

Such license is a tax. No employment thus under state control is absolutely exempt from the liability to be thus taxed. "The necessities of the government may require that the lowest employment, as well as the most lucrative, shall contribute to its support; and, if any are exempted, motives of policy will govern the discrimination."

Cooley, Tax, 1st ed. 385; *Burr. Tax*, § 77; *License Tax Cases*, 72 U. S. 5 Wall. 472, 473 (18: 501).

The selling of goods by sample within any particular State is conducting a business in

such State. As a business it is subject to taxation, unless there be some constitutional reason exempting it from the burden.

Cooley, Tax. 1st ed. 384; *McCulloch v. Md.* 17 U. S. 4 Wheat. 428, 429 (4: 607); *State Tax on Foreign Held Bonds*, 82 U. S. 15 Wall. 319 (21: 186); *Shepherd v. Sumter Co. Comrs.* 59 Ga. 535.

The provisions of the Maryland Code, which are in controversy in this case, as amended by the Maryland Act of 1880, chapter 349, were not in violation of article 4, section 2, subsection 1, of the Constitution of the United States, because their provisions apply equally to citizens of the State of Maryland and to citizens of the other several States.

Machine Co. v. Gage, 100 U. S. 679 (25: 755).

The vendor appropriated the specific quantities of teas sold for the benefit of the vendee, and engaged that such specific quantities should be shipped to him. The vendee assented to the appropriation made by the vendor and upon his terms. The property in the goods therefore passed to the vendee.

Chitty, Cont. 11 Eng. ed. 357; *Gillett v. Hill*, 2 Crompt. & M. 585; *Dixon v. Yates*, 5 B. & Ad. 818; 27 E. C. L. 90; *Thompson v. Balt. & O. R. R. Co.* 28 Md. 405.

There was not only a constructive but also an actual delivery of the property in Maryland.

Magruder v. Gage, 33 Md. 348; *Kribs v. Jones*, 44 Md. 406.

Under such circumstances the effect of the sale to Kenney of the particular tea, and of its shipment to him as a purchaser, was to bring the property, thus sold and shipped, within the jurisdiction of the State of Maryland; to incorporate and intermix it with the mass of property in the State; to deprive it of its distinctive character as an import, and to subject it to the taxing power of that State.

Hovell v. State, 3 Gill, 23; *Providence Bank v. Billings*, 29 U. S. 4 Pet. 564 (7: 956); *Brown v. Md.* 25 U. S. 12 Wheat. 441-2 (6: 686); *Pervear v. Commonwealth*, 72 U. S. 5 Wall. 479 (18: 609); *Waring v. Mayor*, 75 U. S. 8 Wall. 122-3 (19: 346); *Woodruff v. Parham*, Id. 139 (19: 387).

Mr. Justice Bradley delivered the opinion of the court:

This case does not differ materially from that of *Robbins v. Taxing District of Shelby County*, [ante, 45], just decided. The Code of Maryland, as amended in 1880, provides that "No person or corporation other than the grower, maker or manufacturer shall barter or sell, or otherwise dispose of, or shall offer for sale any goods, chattels, wares, or merchandise within this State, without first obtaining a license in the manner herein prescribed." A violation of this law was made an indictable offense; and the plaintiff in error, a citizen and resident of New York, was indicted for offering to sell and for selling by sample, in the City of Baltimore, without license, certain goods for a New York firm, to be shipped from New York directly to the purchaser. The plaintiff in error demurred to the indictment, but it was sustained both by the court of original jurisdiction and by the Court of Appeals of Maryland on writ of error. The constitutionality of the law was duly raised, and the law was sustained.

INTER 8.

The same principles apply to this case which were considered in that of *Robbins*, and the same result must be declared.

The judgment of the Court of Appeals of Maryland is reversed, and the plaintiff in error must be discharged.

Mr. Chief Justice Waite concurring:

Mr. Justice Field, Mr. Justice Gray, and myself agree to this judgment, but on different grounds from those stated in the opinion of the court. It is not denied that the Statute of Maryland requires a nonresident merchant desiring to sell by sample in that State to pay for a license to do that business a sum to be ascertained by the amount of his stock in trade in the State where he resides and in which he has his principal place of business. This differs materially from the Statute of Tennessee, which was considered in *Robbins v. Taxing District of Shelby County*, just decided, and is in its effect, as we think, a tax on commerce among the States. The charge for the privilege to the nonresident is measured by his capacity for doing business all over the United States, and without any reference to the amount done or to be done in Maryland.

JAMES C. FARGO, As President of the
MERCHANTS DISPATCH TRANSPORTATION
COMPANY, *Plff. in Err.*,

v.
WILLIAM C. STEVENS, As Auditor-General
of The STATE OF MICHIGAN.

(From Lawyers' ed. U. S. Reports, Bk. 80.)

- *1. A state statute which levies a tax upon the gross receipts of railroads for the carriage of freights and passengers into, out of, or through the State, is a tax upon commerce among the States, and therefore void.
2. While a State may tax the money actually within the State, after it has passed beyond the stage of compensation for carrying persons or property, as it may tax other money or property within its limits, a tax upon receipts for this class of carriage specifically is a tax upon the commerce out of which it arises; and, if that be interstate commerce, it is void under the Constitution.
3. The States can not be permitted, under the guise of a tax upon business transacted within their borders, to impose a burden upon commerce among the States, when the business so taxed is itself interstate commerce.

(Submitted December 9, 1886. Decided April 4, 1887.)

IN ERROR to the Supreme Court of the State of Michigan. *Reversed.*

The history and facts of the case appear in the opinion of the court.

Mr. Ashley Pond, for plaintiff in error:

Taxation by the State of Michigan, of an association organized and domiciled in the State of New York, based upon the estimated gross earnings of its cars within the State of Michigan, while engaged solely in traffic which cross-

*Head notes by Mr. Justice MILLER.

es the state line, such earnings being also received and possessed by such association in the State of New York, operates as a regulation of commerce, is extraterritorial and void.

It is respectfully submitted that the recent cases of *Gloucester Ferry Co. v. Pa.* 114 U. S. 196, and *Pickard v. Pullman Southern Car Co.* 117 U. S. 34 (Bk. 29, L. ed. 158, 785), and the principle of *Wabash etc. R. R. Co. v. Illinois*, decided October 25, 1886 (Bk. 30, L. ed. 244), are decisive of the case at bar.

Interstate communication cannot be restricted; and the terms upon which commerce may be engaged in cannot be prescribed by state authority.

Gibbons v. Ogden, 9 Wheat. 1 (22 U. S. bk. 6, L. ed. 23); *Brown v. Maryland*, 12 Wheat. 419 (25 U. S. bk. 6, L. ed. 678); *Passenger Cases*, 7 How. 283 (48 U. S. bk. 12, L. ed. 702); *Henderson v. Wickham*, 92 U. S. 269 (Bk. 23, L. ed. 543); *Head Money Cases*, 112 U. S. 580 (Bk. 28, L. ed. 798.)

The tax cannot be sustained as a tax upon the property of the company within the State. The company has no property taxable within the State. Its cars are within the State only in transit while engaged in interstate transportation or commerce. They cannot be there taxed as property, being owned in New York.

Hayes v. Pacific Mail Steamship Co. 17 How. 596 (58 U. S. bk. 15, L. ed. 254).

The tax cannot be sustained as a tax upon the business of the company, for that business is not local but is interstate, and is wholly beyond state regulation.

The cases of *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 365 (Bk. 27, L. ed. 419), and *Gloucester Ferry Co. v. Pa.* 114 U. S. 196 (Bk. 29, L. ed. 158), illustrate the difference between a valid tax upon the property of a domestic corporation engaged in interstate commerce, and an invalid tax upon the business of a foreign corporation engaged solely in interstate commerce.

See also *Moran v. New Orleans*, 112 U. S. 69 (Bk. 28, L. ed. 653).

The tax cannot be sustained as an exercise of the restrictive power of the State over foreign corporations; for under that power there can be no regulation of commerce by the State.

The Supreme Court of Michigan fails to distinguish this case from that of *State Tax on Railway Gross Receipts*, 15 Wall. 284 (82 U. S. bk. 21, L. ed. 164), in which a tax on the gross receipts of a Pennsylvania company, which had been actually garnered into its treasury in that State, was in question.

The court also specifically declares the tax to be one upon business done in the State, and deems it within the purview of *Osborne v. Mobile*, without distinguishing that the license in that case was of a business carried on in the City of Mobile, which was entirely local in its nature.

Mr. Edward Bacon with *Mr. Moses Taggart*, Atty-Gen. of Michigan, for defendant in error:

There are, in the different States of the Union, two well known systems of railroad taxation: one, such as that used in Tennessee, according to a valuation (See *State R. R. Tax Cases*, 92 U. S. 601, 603 (Bk. 23, L. ed. 669)); the other, such as that used in Michigan, according to gross receipts, a small percentage thereof being taken by the

State annually as specific taxes in lieu of all other taxation.

Howell's Statutes of Michigan, chap. 90, entitled *Commissioner of Railroads*, § 1, being § 3291 of said statutes; *State Treasurer v. Auditor-Gen.* 46 Mich. 231, 233; *Chicago etc. R. Co. v. Auditor-Gen.* 53 Mich. 79. See also *State R. R. Tax Cases*, 92 U. S. 611 (Bk. 23, L. ed. 666).

Is it true that the Merchants Dispatch Transportation Company did not carry on, in the State of Michigan, any business liable to state taxation?

Osborne v. Mobile, 16 Wall. 479 (83 U. S. bk. 21, L. ed. 470); *Telegraph Co. v. Texas*, 105 U. S. 464 (Bk. 26, L. ed. 1068).

The laws of New York, under which the bill states that the complainant was organized and was taxed, include statutes of the same force and effect as the Michigan Statute complained of in the bill; and a decision in the complainant's favor, against the Michigan Statute, would entitle it to a decision in its favor against the New York Statute, so far as interstate commerce is concerned.

The Court of Appeals of the State of New York has declared the validity of these statutes.

People v. Home Ins. Co. 92 N. Y. 846; *People v. Equitable Trust Co.* 96 N. Y. 894-896; *People v. Gold etc. Tel. Co.* 98 N. Y. 73.

The Act No. 152 of the Laws of Michigan for 1883 (also New York Statutes and similar statutes of other States), was enacted in reliance upon principles recognized by the decision of this court.

Osborne v. Mobile, 16 Wall. 479 (83 U. S. bk. 21, L. ed. 470).

The complainant has been claiming and exercising extensively, in Michigan, franchises granted by the laws of New York.

No good reason can be shown why the State which creates important corporate franchises for commercial corporations should have a right to tax the exercise thereof, while at the same time another State, wherein the same franchises are assumed and exercised (to a greater extent perhaps, and with more profit than elsewhere) should be forever powerless to tax such franchises or business carried on in the exercise thereof.

Baltimore etc. R. R. Co. v. Koontz, 104 U. S. 11 (Bk. 26, L. ed. 644); *Stone v. Ill. Cent. R. R. Co.* 116 U. S. 852 (Bk. 29, L. ed. 651); *Canada S. R. R. Co. v. Gebhard*, 109 U. S. 587 (Bk. 27, L. ed. 1023); *State Tax on R. Gross Receipts*, 15 Wall. 296 (82 U. S. bk. 21, L. ed. 168); *Minot v. Philadelphia etc. R. R. Co.* 18 Wall. 281 (85 U. S. bk. 21, L. ed. 896); *St. Clair v. Cox*, 106 U. S. 857 (Bk. 27, L. ed. 225); *Diamond Match Co. v. Powers*, 51 Mich. 148; *Talcott v. McCormick Harvesting Machine Co.* 51 Mich. 7; *Coe v. Errol*, 116 U. S. 524 (Bk. 29, L. ed. 717); *Telegraph Co. v. Texas*, 105 U. S. 464-5 and *Relife v. Rundle*, 103 U. S. 225-6 (Bk. 26, L. ed. 1068, 839); *Baltimore R. R. Co. v. Md.* 21 Wall. 456 (88 U. S. bk. 22, L. ed. 678).

Gloucester Ferry Co. v. Pa. 114 U. S. 196 (Bk. 29, L. ed. 158) is relied upon by the plaintiff in error; but the decision of no issue joined in that case can be relevant here. The Gloucester Ferry Company was doing no more business in Pennsylvania than any foreign corporation owning a line of steamships carrying on commerce between European ports and

Philadelphia. It merely obtained a lease of a sufficient landing place on the Pennsylvania shore; 114 U. S. 205 (Bk. 29: 162) and on page 203 this court uses the following language:

"The business of landing and receiving passengers and freight at the wharf in Philadelphia is a necessary incident to, indeed is a part of, their transportation across the Delaware River from New Jersey. Without it that transportation would be impossible. Transportation implies the taking up of persons or property at some point and putting them down at another. A tax, therefore, upon such receiving and landing of passengers and freight is a tax upon their transportation; that is, upon the commerce between the two States involved in such transportation."

The case of *Pickard v. Pullman Palace Car Co.* 117 U. S. 84 (Bk. 29, L. ed. 785), is distinguishable. In that case the company had no office in the State (Tenn.) through which its cars ran.

A corporation which seeks by its agents to establish a domicile of business in a State other than that of its own creation must take that domicile, subject to the responsibilities and burdens imposed by the laws which it finds in force there.

Atty-Gen. v. Bay State Min. Co. 99 Mass. 153; *Ricker v. American etc. Co.* 140 Mass. 350; *Carroll Iron Co. v. McLaren*, 5 H. L. Cas. 416, 449.

The Tennessee Statute imposing the tax in *Pickard v. Pullman Palace Car Co. supra*, was objectionable because it purported to make entirely illegal certain interstate commerce, except on payment of the license fee as a condition precedent, and was therefore no better than a statute to collect, at the state line, duties on interstate commerce.

The method of ascertaining taxes measured by gross receipts has been approved by this court and by the Supreme Court of Michigan.

State Tax on Railway Gross Receipts, 15 Wall. 284 (82 U. S. bk. 21, L. ed. 164); *Delaware R. R. Tax*, 18 Wall. 206 (85 U. S. bk. 21, L. ed. 889); *Erie R. Co. v. Pa.* 21 Wall. 492 (88 U. S. bk. 22, L. ed. 595); *State Treasurer v. Auditor-Gen.* 46 Mich. 281, 282; *Chicago etc. R. Co. v. Auditor-Gen.* 58 Mich. 79. In this connection see *Woodruff v. Parham*, 8 Wall. 123 (75 U. S. bk. 19, L. ed. 382); *Savings Society v. Coits*, 6 Wall. 594 (78 U. S. bk. 18, L. ed. 897); *Provident Sav. Institution v. Mass.* 6 Wall. 611 (73 U. S. bk. 18, L. ed. 907).

Summary. The tax in question is valid for the following reasons:

The tax is on business done in the exercise of corporate franchises, introduced by permission of the State of Michigan.

The tax is on such business done by means of the complainant's permanently established local agents and offices in Michigan, with every facility for carrying on business between places within the State, whenever profitable.

The tax is necessary to the safety of the State's revenue, from railroad companies and express companies.

The tax is upon railroad business so affecting and controlling public interests of the people of the State of Michigan that such business ought not to escape taxation in the State.

The complainant ought not to escape tax-

ation in Michigan, merely because the final receipts of its earnings in Michigan was at its chief office in the City of New York.

The business by which all right to such earnings accrued was completed within the State of Michigan; and according to the ordinary course of such business, any suit to collect such earnings must be brought in Michigan, where the contracts therefor were made and fulfilled.

Mr. Justice Miller delivered the opinion of the court:

This is a writ of error to the Supreme Court of the State of Michigan to bring here for review a decree sustaining a demurrer to the complainant's bill in chancery, and dismissing the bill. The complainant brought suit as President of the Merchants' Dispatch Transportation Company, averring that said company is a joint stock association, organized and existing under the laws of the State of New York, and by the laws of that State authorized to sue in the name of its president. The bill, so far as it presents the questions on which this court can have jurisdiction, charges as follows:

"Second. That during the year ending with the 31st day of December, A. D. 1888, the said Transportation Company was engaged in the business of soliciting and contracting for the transportation of freight required to be carried over connecting lines of railroad in order to reach its destination, and, for the prosecution of its said business, it had agencies located generally throughout the United States and the Dominion of Canada; the said Transportation Company issued through bills of lading for such freight, and caused the same to be carried by the appropriate railroad companies; and, as compensation for its service in the premises, the said Transportation Company was paid by the said railroad companies a definite proportion of the through rate charged and collected by said companies for the carriage of said freights.

"Third. That during the said year the said Transportation Company was possessed of certain freight cars which were used and run by the railroad companies in whose possession they changed from time to time to be for the transportation, upon their own and connecting lines of railroad, of through freight, principally between the City of New York, in the State of New York, and Boston, in the State of Massachusetts, and Chicago, in the State of Illinois, and other points and commercial centers in the West, Northwest and Southwest, without the said State of Michigan; that said cars were not used for the carriage of freight between points situate within the said State of Michigan, but wholly for the transportation of freight, either passing through the State or originating at points without said State and destined to points within, or originating at points within said State and destined to points without; that the said several railroad companies thus making use of said cars during the said year paid to the said Transportation Company as compensation therefor a definite sum per mile for the distance traveled by the said cars over their respective lines.

"Fourth. That the said Transportation Company during the said year was not running or

interested in any special fast, through, or other stock, coal or refrigerator car freight line, or doing business in or running cars over any of the railroads of said State of Michigan, otherwise than as in the preceding paragraphs stated.

"Fifth. That prior to the first day of April, A. D. 1884, the Commissioner of Railroads of the State of Michigan transmitted to the said Transportation Company certain blank forms of a report to be made to him pursuant to the provisions of an Act of the Legislature of the State of Michigan approved June 5, 1883, entitled 'An Act to Provide for the Taxation of Persons, Copartnerships, Associations, Car-loading Companies, and Fast Freight Lines Engaged in the Business of Running Cars Over Any of the Railroads of This State, and not Being Exclusively the Property of Any Railroad Company Paying Taxes on Their Gross Receipts,' with the requirement that the said Transportation Company should make up and return said report to the office of said commissioner on or before the first day of April, 1884, under the penalties of said Act; that on or about said first day of April, in compliance with said demand, but protesting that the same was without authority of law, and that said Act was invalid—or if valid, was not applicable to the said Transportation Company—the said Transportation Company made and filed with said commissioner a report, duly verified, setting forth that the gross amount of the receipts of the said Transportation Company for the mileage of said cars during said year 1883, while in use in the transportation of freight between points without said State and passing through said State in transit, estimated and prorated according to the mileage of said cars within said State of Michigan while so in use, was the sum of \$95,714.50; and while in the use of transportation of freight from points without to points within said State of Michigan, and from points within to points without said State, estimated and prorated according to the mileage of said cars within the State of Michigan while so in use, was the sum of \$28,890.01, making in the aggregate the sum of \$124,604.51; that during said year it received no moneys whatever on business done solely within the said State of Michigan, and no moneys which were or could be regarded as earned during said year within the limits of said State of Michigan other than as hereinbefore and in said report set forth.

"Sixth. That by the terms of said Act it is the duty of said Commissioner of Railroads to make and file with the Auditor-General of said State of Michigan, prior to the first day of June each year a computation based upon the report of each person, association, copartnership, or corporation taxable thereunder, of the amount of tax to become due from them respectively, and each such person, association, copartnership or corporation is required on or before the first day of July in such year to pay to the Treasurer of said State of Michigan, upon the statement of the Auditor-General thereof, 2½ per cent upon its gross receipts as computed by the said Commissioner of Railroads and derived from loading, renting or hiring of cars to any railroad or other corporation, association, copartnership or party. It was also provided in said Act that for the said taxes an interest thereon, and the penalty imposed for delay in the pay-

ment thereof, the said State should have a lien upon all the property of the person, association, copartnership, or corporation so taxed, and in default of the payment of said tax by and within the time so prescribed the Auditor-General of said State was authorized to issue his warrant to the sheriff of any county in said State, commanding him to levy the same, together with 10 per cent for his fees, by distress and sale of any of the property of the corporation or party neglecting or refusing to pay such tax wherever the same may be found within the county or State.

"Seventh. That the said Commissioner of Railroads has computed and determined that the amount of the gross receipts of the said Transportation Company under the said Act is the said sum of \$28,890.01, and that there is due from said Transportation Company to the State of Michigan, as a tax thereon, the sum of \$722.25, and has transmitted said computation to the said Auditor-General; and your orator shows that unless said tax is paid by the said Transportation Company on or before the first day of July, 1884, it will become the duty of the said Auditor-General under the said Act, and the said Auditor-General threatens that he will proceed to enforce payment of the said tax against said Transportation Company by the seizure and sale of the property of said Transportation Company under the provisions of said Act.

"Eighth. That your orator is advised and so charges, that the said Act as to the said gross receipts of the said Transportation Company, or of any of its receipts or earnings from the use of its cars, within the State of Michigan, and the transaction of its business in the manner aforesaid, is in violation of the Constitution of the United States, and void, and that said Act is inapplicable to the said Transportation Company, and inoperative for further reasons appearing upon its face; and that said Transportation Company is not amenable thereto.

"Ninth. That the chief officers of the said Transportation Company for the transaction of corporate business was, during said year, and is in the City of New York, in the State of New York, and that all the moneys earned by it, as set forth in the second and third paragraphs hereof, were paid to it at its said office; that said Company during said year had no funds or property whatsoever within the State of Michigan, except cars in transit and office furniture in the possession of agents; and that during said year the said Transportation Company was subject to taxation and was taxed on account of its property and earnings within and under the laws of the State of New York."

The bill then prays for a subpoena against William C. Stevens, Auditor-General of the State of Michigan, and for an injunction to prevent him from proceeding in the collection of said taxes. To this bill the defendant Stevens demurred, and the Circuit Court for the County of Washtenaw, in which this suit was brought, overruled that demurrer. From this decree the defendant appealed to the Supreme Court of the State, where the judgment of the lower court was reversed, the demurrer sustained, and the bill dismissed. To reverse that decree this writ of error was sued out.

The contention of the plaintiff in error is that the Statute of Michigan, the material parts of which are recited in the bill, is void as a regulation of commerce among the States, which, by the Constitution of the United States, is confided exclusively to Congress. Art. 1, § 8, clause 3. It will be observed that the bill shows that the tax finally assessed by the Auditor of State, against the Transportation Company, was for the \$28,890.01 of the gross receipts which the Company had returned to the commissioner as money received for the transportation of freight from points without to points within the State of Michigan, and from points within to points without that State; and that no tax was assessed on the \$95,714.50 received for transportation passing entirely through the State to and from other States.

There is nothing in the opinion of the Supreme Court of the State, which is found in the transcript of the record, to explain this discrimination. There is nothing in the Statute of the State on which this tax rests which makes such a distinction; nor is there anything in the commissioner's requirement for a report which suggests it. It must have been, therefore, upon some idea of the authorities of the State that the one was interstate commerce and the other was not, which we are at a loss to comprehend. Freight carried from a point without the State to some point within the State of Michigan as the end of its voyage; and freight carried from some point within that State to other States is as much commerce among the States as that which passes entirely through the State from its point of original shipment to its destination. This is clearly stated and decided in the case of *Phila. & Reading Railroad Co. v. Pa.* commonly called the case of *The State Freight Tax*, 15 Wall. 232 [82 U. S. bk. 21, L. ed. 146], in which it is held that a tax upon freight taken up within the State and carried out of it, or taken up without the State and brought within it, is a burden on interstate commerce, and therefore a violation of the constitutional provision that Congress shall have power to regulate commerce with foreign nations and among the several States. And in *Wabash R. Co. v. Ill.* 118 U. S. 557 [Bk. 30, L. ed. 244], it is held that a statute attempting to regulate the rates of compensation for transportation of freight from New York to Peoria, in the State of Illinois, or from Peoria, to New York, is a regulation of commerce among the States. The same principle is established in *Crandall v. Nevada*, 6 Wall. 35 [73 U. S. bk. 13, L. ed. 745].

The Statute of the State of Michigan of 1883, under which this tax is imposed, is entitled "An Act to Provide for the Taxations of Persons, Copartnerships, Associations, Carloading Companies, Corporations, and Fast Freight Lines Engaged in the Business of Running Cars over Any of the Railroads of This State, and Not Being Exclusively the Property of any Railroad Company Paying Taxes on Their Gross Receipts." Sections 1 and 2 require reports to be made to the commissioner of railroads of the gross amount of their receipts for freight earned within the limits of The State from all persons and corporations running railroad cars within the State. The commissioner is by section 4 required to make and file with

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the Auditor-General, on the first day of June of each year, a computation of the amount of tax which would become due on the first day of July next succeeding from each person, association, or corporation liable to pay such taxes. Each one of these is by section 5 required to pay to the State Treasurer, upon the statement of the Auditor-General, an annual tax of 2½ per cent upon its gross receipts, as computed by the Commissioner of Railroads.

It will thus be seen that the Act imposed a tax upon all the gross receipts of the Merchants Dispatch Transportation Company, a corporation under the laws of the State of New York, and with its principal place of business in that State, on account of goods transported by it in the State of Michigan; and the bill states that the Company carried no freight, the transportation of which was between points exclusively within that State.

The subject of the attempts by the States to impose burdens upon what has come to be known as interstate commerce or traffic, and which is called in the Constitution of the United States "commerce among the States," by statutes which endeavor to regulate the exercise of that commerce, as to the mode by which it shall be conducted, or by the imposition of taxes upon the articles of commerce, or upon the transportation of those articles, has been very much agitated of late years. It has received the attentive consideration of this court in many cases, and especially within the last five years, and has occupied Congress for a time quite as long. The recent Act, approved February 4, 1887, entitled "An Act to Regulate Commerce," passed after many years of effort in that body, is evidence that Congress has at last undertaken a duty imposed upon it by the Constitution of the United States, in the declaration that it shall have power "to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes." Congress has freely exercised this power so far as relates to commerce with foreign Nations and with Indian Tribes, but in regard to commerce among the several States it has, until this Act, refrained from the passage of any very important regulation upon this subject, except perhaps the statutes regulating steamboats and their occupation upon the navigable waters of the country.

With reference to the utterances of this court until within a very short time past, as to what constitutes commerce among the several States, and also as to what enactments by the State Legislatures are in violation of the constitutional provision on that subject, it may be admitted that the court has not always employed the same language, and that all of the judges of the court who have written opinions for it may not have meant precisely the same thing. Still, we think the more recent opinions of the court have pretty clearly established principles upon that subject which can be readily applied to most cases requiring the construction of the constitutional provision, and that these recent decisions leave no room to doubt that the Statute of Michigan, as interpreted by its supreme court in the present case, is forbidden as a regulation of commerce among the States, the power to make which is withheld from the State.

The whole question has been so fully considered in these decisions, and the cases themselves so carefully reviewed that it would be doing little more than repeating the language of the arguments used in them to go over the ground again. The cases of *The State Freight Tax* and *State Tax on Railway Gross Receipts*, which were considered together and decided at the December Term, 1872, and reported in 15 Wallace, pp. 282 to 328 [82 U. S. bk. 21, 146-189], present the points in the case now before us perhaps as clearly as any which have been before this court. A Statute of the State of Pennsylvania imposed upon all the railroad corporations doing business within that State, as well as steamboat companies and others engaged in the carrying trade, a specific tax on each 2,000 pounds of freight carried, graduated according to the articles transported. These were arranged into three classes, on the first of which a tax of two cents per ton was laid, upon the second three cents, and upon the third five cents. The Reading Railroad Company, a party to the suit, in making its report under this statute, divided its freight on which the tax was to be levied into two classes, namely: freight transported between points within the State and freight which either passed from within the State out of it or from without the State into it. The Supreme Court of the State of Pennsylvania decided that all the freight carried, without regard to its destination, was liable to the tax imposed by the statute. This court, however, held that freight carried entirely through the State from without, and the other class of freight brought into the State from without or carried from within to points without, all came under the description of "commerce among the States," within the meaning of the Constitution of the United States; and it held also that freight transported from and to points exclusively within the limits of the State, was internal commerce and not commerce among the States. The taxing law of the State was, therefore, valid as to the latter class of transportation; but with regard to the others it was invalid, because it was interstate commerce, and the State could lay no tax upon it. In that case, which was very thoroughly argued and very fully considered, the case of *Grandall v. Nevada*, 6 Wall. 35 [73 U. S. bk. 18, L. ed. 745], was cited as showing, in regard to transportation, what was strictly internal commerce of a State and what was interstate commerce. The court said: "It is not at all material that the tax is levied upon all freight, as well that which is wholly internal as that embarked in interstate trade. We are not at this moment inquiring further than whether taxing goods carried because they are carried, is a regulation of carriage. The State may tax its internal commerce; but if an Act to tax interstate or foreign commerce is unconstitutional, it is not cured by including in its provisions subjects within the domain of the State. Nor is a rule prescribed for carriage of goods through, out of, or into a State any less a regulation of transportation because the same rule may be applied to carriage which is wholly internal. Doubtless a State may regulate its internal commerce as it pleases. If a State chooses to exact conditions for allowing the passage or carriage of persons or freight through it into another

State the nature of the exaction is not changed by adding to it similar conditions for allowing transportation wholly within the State."

In the case of *The Erie Railway Company* (a corporation of the State of New York) v. *Pennsylvania*, decided at the same time, it appeared that the road of that company was constructed for a short distance through a part of the State of Pennsylvania, and that a similar tax was levied upon it for freight carried over its road. This was held to be invalid for the reasons given in the case of the Reading Road.

In the other case of *State Tax on Railway Gross Receipts*, which was also a suit between the Reading Railway Company and the State of Pennsylvania, an Act of the Legislature of that State was relied on which declared that "In addition to the taxes now provided by law, every railroad, canal and transportation company incorporated under the laws of this Commonwealth, and not liable to the tax upon income under existing laws, shall pay to the Commonwealth a tax of three fourths of 1 per centum upon the gross receipts of said company; and the said tax shall be paid semi-annually upon the first days of July and January, commencing on the first day of July, 1866."

This tax was held to be valid. The grounds upon which it was distinguished from the one in the preceding case upon freight were, that the corporation, being a creation of the Legislature of Pennsylvania and holding and enjoying all its franchises under the authority of that State, this was a tax upon the franchises which it derived from the State, and was for that reason within the power of the State, and that, in determining the mode in which the State could tax the franchises which it had conferred, it was not limited to a fixed sum upon the value of them, but it could be graduated by and proportioned to either the value of the privileges granted or the extent or results of their exercise. "Very manifestly," said the court, "this is a tax upon the railroad company, measured in amount by the extent of its business, or the degree to which its franchise is exercised." Another reason given for the distinction is that "The tax is not levied, and, indeed such a tax cannot be, until the expiration of each half year, and until the money received for freights, and from other sources of income, has actually come into the company's hands. Then it has lost its distinctive character as freight earned, by having become incorporated into the general mass of the company's property. While it must be conceded that a tax upon interstate transportation is invalid, there seems to be no stronger reason for denying the power of a State to tax the fruits of such transportation after they have become intermingled with the general property of the carrier, than there is for denying her power to tax goods which have been imported, after their original packages have been broken, and after they have been mixed with the mass of personal property in the country. *Brown v. Md.* 12 Wheat. 420 [25 U. S. bk. 6, L. ed. 678].

The distinction between that case, which is mainly relied upon by the Supreme Court of Michigan in support of its decree, and the one which we now have before us, is very obvious, and is twofold: first, the corporation which was the subject of that taxation was a Pennsylvania

corporation, having the situs of its business within the State which created it and endowed it with its franchises. Upon these franchises thus conferred by the State, it was asserted, the State had a right to levy a tax; second, this tax was levied upon money in the treasury of the corporation, upon property within the limits of the State, which had passed beyond the stage of compensation for freight and had become like any other property or money liable to taxation by the State. The case before us has neither of these qualities. The Corporation upon which this tax is levied is not a Corporation of the State of Michigan, and has never been organized or acknowledged as a corporation of that State. The money which it received for freight carried within the State probably never was within the State, being paid to the Company either at the beginning or the end of its route; and certainly at the time the tax was levied it was neither money nor property of the Corporation within the State of Michigan.

The proposition that the States can, by way of a tax upon business transacted within their limits, or upon the franchises of corporations which they have chartered, regulate such business or the affairs of such corporations, has often been set up as a defense to the allegation that the taxation was such an interference with commerce as violated the constitutional provisions now under consideration. But where the business so taxed is commerce itself, and is commerce among the States or with foreign Nations, the constitutional provision cannot thereby be evaded; nor can the States, by granting franchises to corporations engaged in the business of the transportation of persons or merchandise among them, which is itself interstate commerce, acquire the right to regulate that commerce, either by taxation or in any other way.

This is illustrated in the case of *Cook v. Pa.* 97 U. S. 566 [Bk. 24, L. ed. 1015]. The State of Pennsylvania, by her laws, had laid a tax upon the amount of sales of goods made by auctioneers, and had so modified and amended this class of taxes that in the end it remained a discriminating tax upon goods so sold and imported from abroad. This court held that the tax which the auctioneer was required to pay into the treasury was a tax upon the goods sold, and, as this tax was three quarters of 1 per cent upon foreign drugs, glass, earthenware, hides, marble work and dye woods, that it was a tax upon the goods so described for the privilege of selling them at auction. The argument was made that this was a tax exclusively upon the business of the auctioneer, which the State had a right to levy. In that case, as in others, it was claimed that the privilege of being an auctioneer derived from the State by license, was subject to such taxation as the State chose to impose, but the proposition was overruled; and this court held that the tax was a regulation of commerce with foreign Nations, and that the fact that it was a tax upon the business of an auctioneer did not relieve it from the objection arising from the constitutional provision.

The same question arose in the case of *The Gloucester Ferry Co. v. Pa.* 114 U. S. 196 [Bk. 29, L. ed. 156]. That company was a corpora-

tion chartered by the State of New Jersey to run a ferry carrying passengers and freight between the Town of Gloucester, in that State, and the City of Philadelphia, in the State of Pennsylvania. It had no property within the State of Pennsylvania, but it leased a landing place or wharf in that city for its business. The Auditor-General and Treasurer of the State of Pennsylvania assessed a tax upon the capital stock of this corporation under the laws of that State, which the company refused to pay. Its validity was sustained by the State Supreme Court, and the question was brought to this court by a writ of error. It was insisted that the tax was justified as a tax upon the business of the corporation, which, it was claimed, was largely transacted in the City of Philadelphia. The Supreme Court of the State, in giving its decision, stated that the single question presented for consideration was whether the company did business within the State of Pennsylvania within the period for which the taxes were imposed; and it held that it did because it received and landed passengers and freight at its wharf in the City of Philadelphia. The argument was very much urged in this court that the licensing of ferries across navigable rivers, whether dividing two States or otherwise, had always been within the control of the States, and that this, being a mere tax upon the business of that corporation carried on largely within the State of Pennsylvania, was within the power of that State to regulate. But this court held, after an extensive review of the previous cases, that the business of ferrying across a navigable stream between two States was necessarily commerce among the States, and could not be taxed as was attempted in that case.

In the case of *Pickard v. Pullman Southern Car Co.* 117 U. S. 34 [Bk. 29, L. ed. 785], decided at the last term of the court, it was shown that the Legislature of Tennessee had imposed what it called a privilege tax under the constitution of that State of \$50 per annum upon every sleeping car or coach run or used upon a railroad in that State, not owned by the railroad company so running or using it. This, it will be perceived, is very much like the tax in the case before us, except that it is a specific tax of \$50 per annum upon the car instead of a tax upon the gross receipts arising from the use of the car by its owner. In that case, after an exhaustive review of the previous decisions in this class of cases by Mr. Justice Blatchford, who delivered the opinion of the court, it was held that, as these cars were not property located within the State, it was a tax for the privilege of carrying passengers in that class of cars through the State, which was interstate commerce, and for that reason the tax could not be sustained.

Two cases have been decided at the present term of the court in which these questions have been considered, one of them at least involving the subject now under consideration, namely, that of *Sabine Robbins v. Taxing District of Shelby Co. Tenn.* [ante, 45]. A Statute of that State declared that "All drummers, and all persons not having a regular licensed house of business in the taxing district, offering for sale or selling goods, wares, or merchandise therein by sample, shall be required to pay to the

county trustee the sum of \$10 per week, or \$25 per month, for such privilege." Robbins was prosecuted for a violation of this law, and on the trial it appeared that he was a resident and citizen of Cincinnati, Ohio, who transacted the business of drumming in the taxing district of Shelby County, that is, soliciting trade by the use of samples, for the firm by which he was employed, whose place of business was in Cincinnati, and all the members of which were residents and citizens of that city. It was argued in that case, as in the others we have just considered, that the State had a right to tax the business of selling by samples goods to be afterwards delivered, and to impose a tax upon the persons called "drummers" engaged in that business. It was further insisted that, since the license tax applied to persons residing within the State as well as those who might come from other States to engage in that business, that it was not a tax discriminating against other States, or the products of other States, and was valid as a tax upon that class of business done within the State. The whole subject is reconsidered again in this case by *Mr. Justice Bradley*, who delivered the opinion of the court, in which it is held that the business in which Robbins was engaged, namely: that of selling goods by sample, which were in the State of Ohio at the time and were to be delivered in the City of Memphis, Tennessee, constituted interstate commerce, and that, so far as this tax was to be imposed upon Robbins for doing that kind of business, it was a tax upon interstate commerce, and therefore not within the power of the State to enforce.

In the case of *Wabash R. Co. v. Ill.* [*supra*,]

the question presented related to a statutory regulation of that State as to compensation for carrying freight. It was held by the Supreme Court of Illinois to embrace all contracts for transportation by railroad which came into or went out of the State, as well as that which was wholly within its limits, and although the controversy did not arise in regard to a tax upon interstate commerce, yet the general question was fully considered as to what was interstate commerce and what was commerce exclusively within the State, and how far the former could be thus regulated by a statute of a State. This court held in that case that no statute of a State in regard to the transportation of goods over railroads within its borders which was a part of a continuous voyage to or from points outside of that State, and thus properly interstate commerce, could regulate the compensation to be paid for such transportation; that the carriage of passengers or freight between different points is commerce and except where that is wholly and exclusively within the limits of a State it is not subject in its material features to be regulated by the State Legislature.

In many other cases, indeed, in the three last cases mentioned, the whole subject has been fully examined and considered with all the authorities, and especially decisions of this court relating thereto. The result is so clearly against the Statute of Michigan as applied by its supreme court that we think the judgment of that court cannot stand.

The decree of the Supreme Court of Michigan is reversed, with directions for further proceedings in accordance with this opinion.

THE INTERSTATE COMMERCE COMMISSION.

Re ATCHISON, TOPEKA & SANTA FÉ R. R. CO.

Petitioning railroad company relieved temporarily from the operation of the **fourth section**, on certain conditions.

(April 23, 1887.)

THE petition presented to the Commission was as follows:

To the Honorable, the Interstate Commission:

Your petitioner, the Atchison, Topeka & Santa Fé Railroad Company, is a corporation organized under the laws of the State of Kansas. By ownership, lease or contract of and with the lines of railroad from Kansas City and Atchison on the Missouri River to and from Pueblo in the State of Colorado; Albuquerque in the Territory of New Mexico; El Paso and Galveston in the State of Texas; Mojave, San Diego, Los Angeles and Colton in the State of California; and by contract or agreement with the Southern Pacific Company in California; with the Mexican Central Railway in Mexico; with the Denver and Rio Grande Railway in Colorado; and with the various lines or systems of railroads running eastward from said Kansas City or Atchison; your petitioner is engaged in the transportation of passengers and property under a common control, management or arrangement, for a continuous carriage or shipment between points in California,

points in the Republic of Mexico, and El Paso and Galveston in Texas, on the one part, and New York, Boston, Philadelphia, Baltimore and all others points on the Atlantic seaboard and points intermediate between said initial and terminal points on the other part.

Wherefore, your petitioner and its connecting lines come within the operation of the Interstate Commerce Act of February 4, 1887.

But in such continuous carriage or shipment of through freight or passengers, your petitioner is in competition with sundry common carriers who are not subject to the operation or effect of said Interstate Commerce Law, viz.:

I. To and from all California points: 1. The Canadian Pacific Railway. 2. The Pacific Mail Steamship Company. 3. Ocean competition via Cape Horn, both steam and sail, and mainly in foreign bottoms.

II. To and from all Mexican and Texan points: 4. Water and rail competition at Vera Cruz in Mexico, and Galveston in Texas.

These several competitors being either without local traffic, or the local traffic being beyond and outside of the controlling effect of the law, they can fix through rates below the minimum possible to your petitioner, if your petitioner is obligated to be governed or limited by the rates which would be just and reasonable for local or intermediate traffic.

In an honest effort to comply with the requirements of the fourth section of the Law, and to avoid appealing to your Honorable

thence by water to New York, or by direct rail connection at El Paso with St. Louis and points west of the Atlantic seaboard.

While your petitioner has therefore reduced its local rates to the lowest possible minimum, to conform in good faith with the requirements of the Interstate Law and yet endeavor to meet the competition above recited on through Mexican business, said rates are above those fixed by its said competitors, and with the necessary result of diverting such business to the rival lines, in an increasing ratio, which must shortly deprive it of all participation therein.

With the Vera Cruz route beyond the jurisdiction of the Interstate Law, and the Texas & Pacific Company relieved from its operation on such Mexican traffic by the recent order of your Honorable Board*; it is manifest that your petitioner should receive like consideration to enable it to meet such rival rates and enjoy its fair proportion of such business; and the action of your Honorable Board in thus relieving the Texas & Pacific Road has been judicially indorsed by the order of *District Judge* Pardee of recent date.† The grounds on which this dual action is predicated and the circumstances which justify the same apply to your petitioner with equal force.

Wherefore, the premises considered, Your petitioner prays that an order be entered by your Honorable Board, authorizing your petitioner "to charge less for longer than for shorter distances for the transportation of passengers or property" over its line to or from the following points, which are competitive as above set forth, viz.:

1. To or from Kansas City and Atchison in the State of Kansas, or through Kansas City and Atchison to or from all competitive points east thereof, including New York, Boston, Philadelphia, Baltimore and other competitive points on the Atlantic seaboard, on the one part, or to and from San Francisco, Oakland, Sacramento, Marysville, Stockton, San José, Los Angeles, Colton, Ballona, San Diego and other competitive points in the State of California on the other part.

2. To or from Galveston in the State of Texas or through Galveston on the one part to or from the competitive points in California above specified on the other part.

3. To or from said Galveston or through the same on the one part to or from all points in the Republic of Mexico and including El Paso, Texas, on the other part.

4. To or from Kansas City and Atchison in Kansas, or through the same on the one part to and from all points in the Republic of Mexico, including El Paso, Texas, on the other part.

5. To or from Kansas City and Atchison, Kansas, or through the same on the one part to or from Galveston, Texas, or through the same on the other part.

Said relief between the points above named is prayed for, to such extent as will enable the Atchison, Topeka & Santa Fé Railroad Company and connecting lines to make such rates between the points of shipment and the points of destination on property that may be transported as competition may render necessary; and your petitioner prays for such other and

*See ante, 22. †See ante, 30.

further relief as it may be entitled to or as to your Honorable Commission may seem just and lawful.

Messrs. Britton & Gray, for petitioner.

By the Commission:

Application having been made to the Interstate Commerce Commission, under section 4 of the Act of Congress, entitled "An Act to Regulate Commerce," by the Atchison, Topeka & Santa Fé Railroad Company, a common carrier, subject to the provisions of said Act, for authority to charge less for a longer than for a shorter distance in certain cases, that is to say for the transportation of property: first, between San Francisco, Sacramento, Stockton, Marysville, San José, Oakland, Los Angeles and San Diego in California; Portland and Astoria in Oregon; Tacoma in Washington Territory; Victoria in British Columbia; and El Paso in Texas on the one hand; and New York, Boston, Philadelphia, Baltimore, Newport News, Richmond and all points commonly rated with them, or either of them, on the other hand: second, between the same western points and Chicago, St. Louis, Memphis, New Orleans and points east thereof; third, between the same western points, and Galveston and Houston in Texas, and points on the Mississippi River and east thereof, at lower rates than are charged between the same points respectively, and local points on the line of said petitioner, or between intermediate points on the same line;

And said common carrier having presented as a reason for granting its said application the existence of water competition and other competing agencies not subject to the "Act to Regulate Commerce," claiming that the rates to and from the said points which must be met in order to obtain through business are too low to enable said common carrier to carry on its business if applied to intermediate local points; and further claiming that great disturbance of business will occur if the provisions of the fourth section of said Act are immediately applied according to the construction thereof which shall treat the business above distinguished as substantially similar in its circumstances and conditions; and it appearing to the Commission, after an investigation of said petition and the facts presented in support thereof, to be a proper case for a temporary order until the Commission can make a complete examination of the matters alleged as reasons for relieving said common carrier from the operation of said section of said Act;

It is ordered that the said application be, and the same is hereby, granted temporarily, subject to modification or revocation by the Commission at any time, upon hearing or otherwise; and the said Atchison, Topeka & Santa Fé Railroad Company is hereby temporarily relieved from the operation of section 4 of said Act, to the extent specified in the recitals of this order, and for a period not greater than seventy-five days from this date; subject, however, to the restriction that while this order remains in force said common carrier shall not charge or receive compensation for the transportation of property between stations on its line where more is charged for a shorter than for a longer haul which shall be greater than the rates

hitherto in force prior to the 20th day of April, instant.

It is a further condition of this order that a printed copy hereof shall be forthwith publicly posted and kept with the schedule rates and charges at every station upon the line of said company for the use of the public.

(April 27, 1887.)

THE Commission examined at Atlanta a large number of persons interested in traffic on southern railroads.

(April 29, 1887.)

Re UNION PACIFIC R. CO.

THE following petition of the Union Pacific Railway Company to the Interstate Commerce Commission, asking to be relieved from the operation of the fourth section of the Interstate Law, was filed with the Secretary at Washington:

To the Honorable the Interstate Commerce Commission: The petition of the Union Pacific Railway Company respectfully represents that it is a railroad company engaged in the transportation of passengers and freight between the Atlantic and Pacific coasts, such transportation being conducted through various States and Territories of the United States, as will appear from the map of the lines operated by it hereunto annexed. The through transportation upon such lines is necessarily conducted under circumstances and conditions substantially dissimilar from those under which the intermediate local transportation is conducted.

In respect of the through transportation, your petitioner is subject to competition with the Canadian Pacific Railroad Company, the Pacific Mail Steamship Company and clipper ships, tramp steamers, and other vessels running between the Pacific and Atlantic ports, some or all of which are beyond the control of Your Honorable Commission in respect of their rates for transportation and their competition with the lines of your petitioner for traffic.

Your petitioner and other companies engaged in the transportation of passengers and freights between the Atlantic and Pacific coasts, have caused to be prepared two tariffs for transcontinental business: one upon the assumption that the fourth section of the Act creating the Commission does, and the other upon the assumption that such section does not, apply to cases in which competing agencies enter, which is not answerable to the operation of said law.

In case your petitioner shall adhere to the tariff for transcontinental business, prepared on the assumption that such section of said Act does apply to cases in which competing agencies enter which are not answerable to the operation of this law, the natural and necessary result therefrom would be that your petitioner would lose the whole or by far the greater part of its through transcontinental business, which would of necessity be diverted to the line of the Canadian Pacific Railroad Company, the Pacific Mail Steamship Company and the clipper ships, tramp steamers and other vessels between the Atlantic and Pacific ports, and such

diversion of such traffic would take place for the reason that the establishment of rates which could be reasonably or justly fixed for intermediate traffic would require and necessitate the charging by your petitioner of so high a rate for the through traffic as to be substantially prohibitory.

The effect of putting in operation the tariff for transcontinental business prepared on the assumption that the fourth section of said Act did apply to cases in which competing agencies enter which are not answerable to the operations of this law, has been that the through transcontinental business of your petitioner has, since the adoption of such tariff, been reduced by at least 90 per cent, and the amount of such through transcontinental business now being done, by your petitioner is very inconsiderable; on the other hand, if the rates for intermediate local traffic should be reduced to rates not greater than those which are requisite in order to enable your petitioner to do any substantial part of the through business the whole earnings of the roads operated by your petitioner would be wholly inadequate to the payment of their fixed charges.

While your petitioner verily believes that the circumstances and conditions of the transportation of passengers and freight for such through business are actually dissimilar from those under which the transportation of passengers and freight in the course of the intermediate traffic has to be conducted, still the penalties which are prescribed under the said Act are so stringent and severe that your petitioner has not heretofore felt authorized without the assent of the Commission to put in force such tariffs for through transportation as are requisite in order to enable your petitioner to perform any substantial or important part thereof, and it therefore respectfully invokes the action of this Honorable Commission on that behalf, and prays that, in the case above referred to, to wit: in respect of through transcontinental business, Your Honorable Commission will authorize your petitioner, and other lines associated with it in interest, to charge less for longer than for shorter distances for transportation of passengers and property, and will relieve your petitioner from the operation of the fourth section of the Act above referred to.

Your petitioner further shows that the circumstances and conditions above set forth are applicable not only to the through transcontinental business between points on the Atlantic coast and points on the Pacific coast, but also to business with points in the interior and on the Mississippi and Missouri Rivers, rates of freight to and from which are governed and controlled by water competition in the same manner in which water competition affects the rates for traffic between ports on the Atlantic seaboard and ports on the Pacific coast; that is to say, between Omaha, Council Bluffs, St. Joseph, Atchison, Kansas City, Leavenworth on the Missouri and intermediate points and points easterly, northwest and southeast thereof on the one hand, and points and places on Puget Sound and other places in Washington Territory, Victoria in British Columbia, Portland, Astoria and other points in Oregon, and San Francisco, Sacramento, Stockton, Marysville, San José, Oakland, Los Angeles, San

Diego and other California points on the other hand.

All the points herein before designated are subject to water competition via the Pacific and Atlantic Oceans, the Sacramento, San Joaquin, Columbia, Missouri and Mississippi Rivers and the Great Lakes, and are subject to competition by water and railway carriers not restrained by the Interstate Commerce Law. They are also subject to competition with the Canadian Pacific Line which, even if deemed to be affected in anywise by the law, has no considerable intermediate traffic to be affected by competitive rates to the Pacific coast, and hence is practically unrestrained. As a matter of fact the Canadian Pacific has taken canned goods from San Francisco destined to St. Louis and to points as far west as Dodge City, Kansas.

The like circumstances and conditions are also applicable in respect of foreign business, that is to say:

Between all points in Australia, New Zealand, British India, Japan and the islands of the Pacific and all points in the United States and Canada east of the ninety-seventh meridian of longitude, and between all points in Great Britain and Continental Europe on the one hand, and San Francisco, Sacramento, Stockton, San José, Oakland, Los Angeles and San Diego, California, and the Washington Territory, Oregon and British Columbia points herein before mentioned on the other.

A lower charge for longer than for shorter distances is necessary in respect to such foreign business, to enable the United States carriers to compete with foreign carriers not controlled by the law, and likewise necessary to enable United States producers, manufacturers and merchants to compete with foreign markets.

Wherefore, your petitioner prays that in respect of business between points above mentioned, Your Honorable Commission will authorize your petitioner and other lines associated with it in interest, as it has already authorized the Southern Pacific and its leased and associated roads, and the Northern Pacific and the Atchison, Topeka and Santa Fé and competitors of your petitioner to charge less for longer than for shorter distances for transportation of passengers and property, and will relieve your petitioner, as it has already relieved its said rival and competing lines, and as of the same date, from the operation of the fourth section of the Act above referred to, thereby placing this Company upon the same and equal footing with said other companies; or, if further investigation of the facts alleged in the foregoing petition may seem to be requisite or desirable, that such order may be made for a temporary suspension of said Act in respect of such traffic as may be equitable and proper; and your petitioner will ever pray, etc.

Charles F. Adams.

(April 30, 1887.)

THE Commission commenced its sessions at Mobile and heard the evidence of those interested in the iron business in Birmingham and vicinity, and received petitions from firms engaged in the lumber interest, all of them favor-

ing a suspension of the fourth section of the Interstate Act. But one witness appeared in favor of the enforcement of the law.

The Commission adjourned to meet in New Orleans on May 2.

Re OREGON RAILWAY & NAVIGATION CO.

THE Secretary of the Commission at Washington received by telegraph an application from the Oregon Railway & Navigation Company, asking to be relieved from the operation of section 4 of the Act.

The ground of the petition is that the Oregon Railway & Navigation Company's lines of railroad connect with the Northern Pacific and with the Union Pacific Railroads, and thus form links in through transcontinental lines to the Pacific coast. As the fourth section has been suspended as to these two roads, including transportation over the lines of the petitioner, the Oregon Company prays that it may be included in any order heretofore made suspending the operation of the section, so far as it applies to traffic passing over either the Union or Northern Pacific to or from the Pacific coast.

LEHIGH VALLEY R. R. CO., *Petitioner*, v. PHILADELPHIA & READING R. R. CO.

THE Lehigh Valley Railroad Company, by its general passenger agent, E. B. Byington, filed with the Secretary of the Commission a petition against the Philadelphia & Reading Railroad Company, asking for an investigation and decision of the question of free baggage allowance upon the registry and indemnity certificates of the Traders & Travelers Union of New York. The petition sets forth that,

"On March 30, 1887, the Philadelphia & Reading Railroad Company issued a circular in which its agents are instructed to allow 300 pounds of free baggage to passengers presenting certificates of registration and indemnity covering the same and issued by the Traders & Travelers Union of New York; while passengers who do not present such certificates are to be granted only the ordinary allowance of 150 pounds; that such exceptions in favor of the holders of these registry and indemnity certificates issued by the Traders & Travelers Union arise out of certain contracts which, it is claimed by the Philadelphia & Reading Railroad Company, are a sufficient warrant for the exception made in favor of the holders of these certificates, inasmuch as they secure to the Philadelphia & Reading Company a release from all ordinary liability for loss or injury to baggage covered by such certificates, and enables it to maintain in effect a system which prevents certain irregularities and abuses and increases the efficiency of their baggage service."

The petition alleges that the effect of such exemption in favor of the holders of these certificates is to force the Lehigh Valley Railroad Company to grant the same allowance upon the same terms, or in default thereof, to give an undue advantage to its competitor.

The petition asks a decision upon the question whether the allowance on the part of the Philadelphia & Reading Road is not in conflict with the Interstate Commerce Law. This is a formal presentation of the same question propounded some time ago by the Traders & Travelers Union [*ante*, 18], upon which the Commission declined to act until an actual case involving the question at issue had been presented.

(May 2, 1887.)

THE Commission commenced its sessions at New Orleans.

Chairman Cooley announced that to guard against misapprehensions the Commission deemed it wise to state that its authority is very limited in scope, and the Commissioners do not intend to go beyond it. The investigation they are making is not for any purpose of questioning the propriety, justice or expediency of the Interstate Commerce Law. The Commission had observed misapprehension in this matter in certain quarters during its inquiries.

A large number of witnesses were examined, including L. S. Sheldon, Receiver of the Texas & Pacific Railroad, J. C. Haskell of the Iberia Salt Works, R. L. Saunders of Jackson, Meridan & Vicksburg Railroad, J. W. Gibson of the Aberdeen Board of Trade, and others.

Most of them favored a suspension of the fourth section.

In opposition to the appeals of the railroads for a suspension of the fourth section, John J. Gragard, of the New Orleans Chamber of Commerce, presented a resolution of that body favoring the enforcement of the law. Mr. Gragard added that the testimony heretofore given was from railroads and persons whose interests lay in railroads. His observation and experience went to show that the sentiment of the people was in favor of an enforcement of the law. E. B. Stahlman, Vice President of the Louisville & Nashville Railroad, asked if it would be possible to get the people to testify. Mr. Gragard said the people were not organized, and were consequently not in a position to make a show against railroad attorneys.

N. D. Wallace, of the Produce Exchange, presented a memorial of the Produce Exchange, Sugar Exchange, Merchants & Manufacturers Association, and the Mechanics, Dealers & Lumermen's Exchange, acting jointly, calling for an enforcement of the law. He called to the stand in support of the allegations of the petition as witnesses: W. B. Campbell, E. L. Ranlett, Hugh McCloskey, President of the Produce Exchange, and E. Belknap, representing various mercantile interests, who presented facts and figures to show discriminations in rates.

The Commission adjourned to meet in Memphis.

(May 4, 1887.)

Re SUSPENSION OF FOURTH SECTION.

THE Commission heard parties interested in the enforcement of the fourth section of the Act, in Memphis.

(May 5, 1887.)

Re SUSPENSION OF FOURTH SECTION.

THE Commission concluded its labors in Memphis, after hearing evidence from merchants of Memphis, Louisville, Lexington, Little Rock and Newport, Ark., to the effect that the fourth section would be disastrous to the commerce and industries of the points named.

The Louisville & Nashville, the Nashville, Chattanooga & St. Louis, the Chesapeake & Ohio, and the Southwestern Railroads were granted two weeks' time to file arguments and statistical information in support of their petition for a temporary suspension of the section. Representatives of river interests were in attendance and asked leave to present their case in writing, which was granted.

(May 6, 1887.)

Re NEW YORK CENTRAL & HUDSON RIVER R. R. CO. *et al.*

A PETITION from the New York Central & Hudson River Railroad Company, by Chauncey M. Depew, the Lake Shore & Michigan Southern Railway Company, by John Newell, and the Pittsburg & Lake Erie Railway Company, by John Newell, was filed with the Commission, at Washington, asking that an order be made permitting the above named roads, and the New York, Pennsylvania & Ohio Railway Company and the New York, Lake Erie & Western Railway Company, to make such passenger and freight charges and rates from points upon the lines operated by the Pittsburg & Lake Erie Railway Company to the City of New York, the City of Boston, Eastern Pennsylvania, New York and New England points, as will be as low as those charged by the Pennsylvania Railway Company and its connections between said points, and lower than those charged from Youngstown and intermediate points to the Cities of Boston and New York and Eastern Pennsylvania, New York and New England points; and in the particulars named that they be relieved from the fourth section of the Act.

(May 7, 1887.)

Re GULLETT COTTON GIN CO.

THE Gullett Cotton Gin Company, of Amite City, Louisiana, filed with the Commission a petition asking for a permanent suspension of section 4 of the Act, so far as it may apply to the gins, feeders and condensers manufactured by that Company.

The petition represents that when the Company put down its plant, valued at \$100,000 at the isolated point above named on the Illinois Central Railroad, protection in freights was assured, as against competing companies in more central places, which assurance the Interstate Commerce Act renders impossible of fulfilment, to the great loss of the petitioners.

INTER 8.

Re Petition of CHICAGO ST. PAUL, MINNEAPOLIS & OMAHA R. R. Co.*

PETITION.

To the Honorable,

The Interstate Commerce Commission:

The petition of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation organized under the laws of Wisconsin, would respectfully show unto your Honorable Commission:

The Chicago, St. Paul, Minneapolis & Omaha Railway Company operates, under lease, a line between Minneapolis and St. Paul, in the State of Minnesota; and it owns and operates a line from St. Paul, Minnesota, through Superior, Wisconsin, to Duluth, Minnesota.

The distance from St. Paul to Duluth by this line is 176.6 miles, and its business between Minneapolis, St. Paul and Duluth thus passes out of Minnesota into Wisconsin, and thence returns into Minnesota at Duluth.

The Company also owns and operates a line from Superior Junction to Washburn, both in the State of Wisconsin. This line is used in connection with a portion of the line first above mentioned; and the distance from St. Paul to Washburn is 187.6 miles.

Duluth, Superior and Washburn are all ports on Lake Superior. All of the through business, to and from eastern points, between aforesaid lake ports and St. Paul and Minneapolis, is competitive with the St. Paul & Duluth Railroad Company. That company owns and operates a line of railroad from St. Paul and Minneapolis to Duluth, wholly within the State of Minnesota, and consequently is not amenable to the Interstate Law. The distance from St. Paul to Duluth by this line is 154 miles.

Duluth rates maintain via the Lakes between Superior and Washburn and all eastern points.

It thus appears that while business from Minneapolis and St. Paul via the Lakes to all eastern points is competitive between said railroads to Duluth on the one part, and to Superior and to Washburn on the other part, yet that, as Duluth is the terminal point of shipment common to both railroads, Duluth rates necessarily control the rates at Superior and at Washburn; so that to enable your petitioner to handle through business in competition with that going to or beyond Duluth via the St. Paul & Duluth R. R. Co., your petitioner has within the past four years expended for terminal facilities at Washburn, Wisconsin, more than \$500,000; at Duluth within the year last past more than \$300,000; and it is proposed to expend a large sum at Superior for the same purpose during the present season.

The tariffs of your petitioner, both through and local (hereinafter to be submitted), will show that its competitive rates for through business to Superior and Washburn are less in many instances than its local rates for shorter distances over the same line, the shorter being included with the longer distance. That result is inevitable, if competition on through business with Duluth rates is to be maintained. Other-

*In response to requests for precedents of forms of petitions and method of presentation of applications to the Commission, the following petition and brief are given. The decision thereon will be reported as soon as rendered.

wise the St. Paul and Duluth Railroad, not being within the operation of the Interstate Law, could make rates to Duluth which would be beyond the competitive power of your petitioner on its longer lines. No greater rates could be obtained than the value of the transportation to the shipper, and that would be measured by the Duluth rate.

The local rates of this company are believed to be just and reasonable. It has from time to time made material reductions in such rates of transportation for both passengers and traffic, so that the rates now received per ton per mile, and per passenger per mile, are as low as will permit of carriage at a profit. To fix Duluth rates as the maximum for its local rates would compel your petitioner to abandon its local traffic, or to carry it at a ruinous loss. On the other hand, an increase of its through rates to Superior or Washburn beyond the Duluth rates fixed by the St. Paul & Duluth Company would necessarily force it to abandon its competitive traffic.

Wherefore, your petitioner prays to be relieved from the provisions of section 4 of the Interstate Commerce Act of February 4, 1887, and to be authorized to charge less for longer than for shorter distances for the transportation of property between Minneapolis and St. Paul, Minnesota, on the one part, and Superior and Washburn, Wisconsin, and Duluth, Minnesota, on the other part; or for such other relief as will enable your petitioner to transact business between aforesaid points upon a basis competitive with rates of the St. Paul & Duluth Railroad Company between the two first named companies and Duluth.

Britton & Gray,

Solicitors for Petitioner.

E. W. Winter,

General Manager Chicago, St. Paul, Minneapolis & Omaha Railway Company.

County of Ramsey,)
State of Minnesota, } ss:

Personally appeared before me, a notary public, duly commissioned and qualified in and for the county and State aforesaid, E. W. Win-

ter, with whom I am personally acquainted, and whom I know to be the general manager of the Chicago, St. Paul, Minneapolis & Omaha Railway Co., the above named petitioner, and who made oath in due form of law that the facts stated in the foregoing petition as of petitioner's own knowledge, are true, and that those stated upon information and belief he believes to be true.

Sworn to and subscribed before me this 16th day of April, A. D. 1887.

[Seal.]

Geo. A. Hamilton,

Notary Public.

BRIEF.

Herewith are filed the existing local tariffs of the St. Paul & Duluth R. R., between St. Paul and Duluth, taking effect April 15, 1887 (exhibit C), and the Chicago, St. Paul, Minneapolis & Omaha R. R. between St. Paul and Duluth, Superior and Washburn, taking effect April 5, 1887. (Exhibit A).

The coincidence of through rates between these roads, and for such competitive points, is shown by the following table (given below), compiled from these tariffs for convenient understanding:

Examination of the Omaha Company's existing tariff (ex. A) will disclose:

1. That the rates between St. Paul and non-competitive intermediate stations on the Company's line are made to conform to the rates prescribed for through transportation between St. Paul and the Company's lake terminals at Duluth, Superior, and Washburn, and in no case exceed the rates thus prescribed to such lake points.

Thus the rates from Minneapolis or St. Paul to Turtle Lake station—seventy-five miles distant from Minneapolis and intermediate points—are less than the rates to the lake, and from this point onward nowhere exceed such local lake rates.

The slight increase in rates to stations beyond Turtle Lake, and named as South Chippewa Falls, Chippewa Falls, Eagle Point, O'Neil Creek, Bloomer, Cartwright, Chetek, Cameron, Hart's Siding, Rice Lake, Bear Creek, and

	Merchandise.					Special Car Load Classes.					Car Load Classes.						
	1	2	3	4	5	A	B	C	D	E	Wheat, barley, corn, &c.	Salt, Cement, Lime, &c.	Lumber.	Telegraph poles.	Horses and Mules.	Cattle and Swine.	
<i>St. Paul & Duluth Railroad:</i> Rates between St. Paul, Minneapolis, E. Minneapolis, or Stillwater, and Duluth.	45	85	25	20	10	14	12½	10½	9	8	10	8½	7	9	\$33 00	15	Tariff in effect April 15, 1877.
		per 100.					per 100.					per 100.			per car		
<i>Chicago, St. Paul, Minn. & Omaha Railroad:</i> Rates between St. Paul, Minneapolis, or Minnesota Transfer, and Duluth, Washburn, and Superior City.	45	85	25	20	15	14	12½	10½	10	8	10	8½	*33 00 †34 00	*15 †15½	Tariff in effect April 5, 1887.

Tariff in effect April 15, 1887.

Tariff in effect April 5, 1887.

* Washburn. † Superior City and Duluth.

Bashaw, is explained by the fact that these are points not on the line between St. Paul and the lake, but off therefrom, on the road between Eau Claire and Chicago Junction, as appears by the diagram attached to the original petition.

Comparison of such existing tariff (exhibit A) with the former tariff of February 18, 1884 (exhibit D herewith), will show the large deductions made in local rates to such intermediate noncompetitive points.

While space will not permit a tabulated statement showing deductions to all such points, the following is submitted as fairly illustrative thereof:

The through rates in effect from St. Paul or Minneapolis to eastern points on wheat and its products during the season of 1886 were as follows:

May 26 to July 20.

	Per Cwt.
To New York.....	27½c.
" Philadelphia.....	25½c.
" Baltimore.....	24½c.
" Boston, export.....	27½c.
" Boston, local.....	32½c.
" Albany.....	27½c.

of which this line received as its proportion of

		Merchandise.					Special Car Load Rates.
							5
Distance from Minneapolis:							
110 m.....	Spooner.....	Tariff of 1884.....	50	49	41	38	25
		Tariff of 1887.....	45	35	25	20	15
153 m.....	Cable.....	Tariff of 1884.....	68	58	47	40	30
		Tariff of 1887.....	45	35	25	20	15
190 m.....	Ashland Junction.....	Tariff of 1884.....	70	60	50	40	30
		Tariff of 1887.....	45	35	25	20	15

3. While a comparison between the rates shown in existing tariff (exhibit A) between St. Paul and the lake ports with the rates shown in tariff of August 23, 1886 (exhibit E herewith), will show a slight advance in the rates to the lake ports, such advance was necessary to prevent a further reduction in local rates to intermediate stations which the Company could not grant and continue local business with profit.

This Company has therefore conformed to both the spirit and letter of the Interstate Commerce Law; and, as by that Act intended, local shippers are receiving the full benefit of the largely reduced rates now established by it.

But the present opening of lake transportation will start the shipment of grain and other products to the Atlantic seaboard thereover. Through shipment, partly by rail and partly by water, must meet competing rates via other lines; and the Chicago, St. Paul, Minneapolis & Omaha Company must conform to such competing rate or retire from the business. The Company cannot do this, inasmuch as fully 90 per cent of its carriage between St. Paul and the lake ports is of merchandise coming from or going to eastern points, and but 10 per cent of its business of a local character. While rates for such through shipments for the present season have not yet been fixed, an approximate estimate thereof may be made upon the business of 1886.

The rates that were in effect between St. Paul and Washburn on through business interchanged with lake lines during the season of 1886 were as follows:

	1st.	2d.	3d.	4th.	5th.	Classes.
April 7						
to May 1,	- -	15	12	8	7	6c. per cwt.
May 1						
to July 10,	- -	20	15	10	8	6 "
July 10						
to close of navigation,		12	10	8	6	5 "

INTER S. v. 1.

5

through rate above named 5c. per cwt. from St. Paul or Minneapolis to Washburn.

July 20 to Aug. 1.

The rates were changed and made as follows:

	Per Cwt.
To New York.....	25c.
" Philadelphia.....	23c.
" Baltimore.....	22c.
" Boston, export.....	25c.
" Boston, local.....	30c.
" Albany.....	25c.

of which through rates this Company received as its proportion from St. Paul or Minneapolis to Washburn 2½c. per cwt.

August 1, to Close of Navigation.

These rates were again changed and made as follows:

	Per cwt.
To New York.....	27½c.
" Philadelphia.....	25½c.
" Albany.....	27½c.
" Boston, export.....	27½c.
" Boston, local.....	32½c.
" Baltimore.....	24½c.

of which through rates this line received as its proportion from St. Paul or Minneapolis to Washburn 5c. per cwt.

The following amount of business was interchanged with lake lines at the Port of Washburn during the navigating season of 1886:

Flour, - - - 496,077 barrels,
Mill stuffs, - - - 3,567,890 pounds,
Merchandise, - - - 14,729,831 pounds,
besides a large volume of miscellaneous freight not specified.

The average rate on the merchandise business was one and twenty-six hundredths cents per ton per mile (\$.0126).

The average rate on wheat and its products was fifty-three hundredths cents per ton per mile (\$.0053).

It thus appears that this Company received

from one fourth to one half of the rate now established between St. Paul and the lake port on such through business; and it cannot expect that higher rates will prevail during the coming season.

If, then, it is denied the privilege asked, of competing with the St. Paul & Duluth Company, *because* its share of such through transportation is *less* than its local rates between the same points, it must either perform local business at a loss, or retire from such through business, leaving its competitor, who is not amenable to the Federal Law, in sole possession of the field.

But we confidently submit that the facts thus presented establish that its transportation of "like kind of property" to, or destined for, points beyond the lake ports, is not performed "under substantially similar circumstances and conditions" with the carriage between intermediate stations on its own line. The dissimilar circumstances which create this obvious difference are:

1. Competition with a rival line not made subject to the Interstate Law, and which rival line may alter or change its rates between St. Paul and the lake without reference thereto, and wholly within its own pleasure.

2. Extension of such competition to the Atlantic seaboard without the control of the Interstate Law in the mode set forth by the fol-

lowing clipping from the *New York World* of April 15, 1887:

"Dodging the Interstate Law.

[Special to The World.]

"St. Paul, Minn., April 14. General Freight Agent Dodge, of the St. Paul and Duluth, has gone East to make arrangements whereby freight can be taken from New York City by the New York Central, a road wholly within the State, to Buffalo, there to be reshipped to Duluth by steamboat lines, which are not under control of the new Interstate Commerce Law. At Duluth the freight can be reshipped by the St. Paul and Duluth over a route wholly within this State. In this manner it is thought a rate can be established which is much cheaper than all rail rates via Chicago."

Wherefore, your petitioner asks that such order be made as prayed, viz.: that this Company, in the language of the statute, "be authorized to charge less for longer than for shorter distances for the transportation of passengers or property" between Minneapolis and St. Paul, Minnesota, on the one part, and Superior and Washburn, Wisconsin, and Duluth, Minnesota, on the other part, until the further order of this Honorable Commission.

Respectfully submitted.

Britton & Gray,

Attys. for Chicago, St. Paul,
Minneapolis & Omaha R. R. Co.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Re William J. HENNICK.

The Act of the late Legislative Assembly of the District of Columbia, imposing a license tax upon commercial agents, or drummers, whose business it is, as agents for nonresident manufacturers or wholesale dealers, to offer merchandise for sale is unconstitutional and void as a restriction upon interstate commerce.

(Decided May 9, 1887.)

HABEAS CORPUS. *Petitioner discharged.* The petitioner was arrested and convicted in the Police Court of this District for a violation of section 21 of the Act of the Legislative Assembly affirmed August 23, 1871, which is as follows:

Sec. 21. *And be it further enacted*, that a license tax shall be, and hereby is, imposed as follows, that is to say:

"First, Apothecaries shall pay, etc., etc.,

* * *

"Second, Auctioneers shall pay, etc., etc.,

* * *

"Third, Commercial Agents shall pay \$250. Every person residing in the District of Columbia, whose business it is, as agent for nonresident manufacturers or wholesale dealers, to offer for sale merchandise, shall be regarded as a commercial agent." Acts Sess. 1, p. 98.

After his conviction the petitioner sued out this writ of *habeas corpus*, the hearing upon which was certified by the justice holding "the criminal court to the general term, to be there heard in the first instance.

Messrs. Francis M. Darby, Francis Miller and Guion Miller, for petitioner:

The validity of this license was in question in *Humason's Case*, 2 MacArt. 158. It was contended that the law was illegal, as to commercial agents, because it was in effect an attempt to regulate commerce, and therefore, unconstitutional; but the court held the contrary. This decision, so far as it declares that the Act is not a regulation of commerce, has been overruled by the Supreme Court of the United States in the case of *Robbins v. Taxing District of Shelby Co.* 20 U. S. 489 (Bk. 30, L. ed. 694); *S. C. 1 Interstate Com. Rep. 45.*

This would seem to be conclusive of this case.

But it is claimed that this law was passed by the Legislative Assembly, by the authority of Congress, which has exclusive legislative power over this District.

Cohens v. Va. 6 Wheat. 441 (19 U. S. bk. 5, L. ed. 800).

But this court has decided that the Legislative Assembly had only municipal power of legislation; that it could not legislate on general subjects; and further that Congress could not give it power to do so.

Roach v. Van Rievick and Cooper v. Dist. Col. 4 MacArt. 171, 250; *Dist. Col. v. Wagaman*, 1 Cent. Rep. 823, 4 Mackey, 833; § 93 R. S. D. C.; *Dunphy v. Kleinschmidt*, 11 Wall. 610 (78 U. S. bk. 20, L. ed. 223).

It is certain, in view of the late decision of the United States Supreme Court that such a law is a regulation of interstate commerce, that Congress could not delegate to a mere municipal body its constitutional power over a great national interstate question.

As Congress could not clothe the Legislative Assembly with this power, its action in passing the License Law, was utterly void; and that law cannot gain any validity from the tacit acquiescence of Congress.

The rule of "ratification" is laid down in the case of *Mattingley v. Dist. Col.* 97 U. S. 687 (Bk. 24, L. ed. 1086).

It is contended that the fact that Congress has amended this law by repealing some of its provisions has given it the same effect as if it had been passed by Congress itself.

But the Legislative Assembly by the very terms of the organic Act, could not pass any law that the Legislature of the State could not. Can it be successfully contended that if, in disobedience of the restriction thus laid upon it, it attempted to exercise the highest constitutional function of Congress itself, the silence of Congress, or the repeal of some purely municipal regulations, is to be construed as a recognition and validation of this assumption of power.

Roach v. Van Rievwick, 4 MacArt. 171.

But the recent decision of the Supreme Court of the United States in the Tennessee case has conclusively settled that this law is, in effect, a regulation of commerce between the States; for in this connection, as in the case of the constitutional provision as to direct taxes, the District of Columbia and the territories must be included.

Loughborough v. Blake, 5 Wheat. 319 (18 U. S. bk. 5, L. ed. 98).

At least it is an attempt to regulate commerce between the District of Columbia, and (in the case at bar) the State of Maryland. It reaches out and affects the interests of that State, and is in effect an exercise of the national constitutional power of Congress to regulate commerce, and not of the exclusive power of local legislation over the District.

If it is an exercise of this national constitutional power, it must be subject to all the restrictions which the Constitution has imposed upon Congress. It must therefore be uniform. Either this regulation of commerce must be impartially applied to every man who engages in the business of a drummer, or it cannot be enforced against anyone.

The language of the supreme court on this subject, emphatic and oft repeated as it has been, is but an expansion of that of the Constitution itself.

Article 1, section 8, clause 1, says: "All duties, imposts and excises shall be uniform throughout the United States."

Chief Justice Marshall, 5 Wheat. 319 (18 U. S. bk. 5, L. ed. 98), says: "The power, then, to lay and collect duties, imposts and excises, may be exercised and must be exercised throughout the United States. Does this term designate the whole or any particular portion of the American Empire? Certainly this question can admit of but one answer. It is the name given to our great Republic, which is composed of States and Territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties and excises, should be observed in one than in the

other. Since, then, the power to lay and collect taxes, * * * is obviously coextensive with the power to lay and collect duties, imposts and excises, and since the latter extends throughout the United States, it follows that the power to impose direct taxes also extends throughout the United States."

Clause 6 of the same section provides that "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another."

See *Passenger Cases*, 7 How. 405 (48 U. S. bk. 12, L. ed. 753); *Gibbons v. Ogden*, 9 Wheat. 191 (23 U. S. bk. 6, L. ed. 69).

Now if this License Law does give or may give the City of Baltimore any preference over the City of Washington, or the contrary, it is in violation of this clause of the Constitution.

We contend therefore that even if Congress had formally passed this law and it had been regularly approved by the President, with all the forms prescribed for the enactment of laws of the United States, it would still be void, because of its violation of the fundamental requirement of all such legislation, to wit: that of uniformity throughout the limits of the country; *Exchange Bank of Columbus v. Hines*, 3 Ohio St. 1; Cited in *Gilman v. Sheboygan*, 2 Black. 510 (67 U. S. bk. 17, L. ed. 305); for this license tax is a tax on the articles to be sold by the drummer.

Brown v. Md. 12 Wheat. 444, 448 (25 U. S. bk. 6, L. ed. 687, 688); *Cook v. Pa.* 97 U. S. 566 (Bk. 24, L. ed. 1015); *License Tax Cases*, 5 Wall. 462 (72 U. S. bk. 18, L. ed. 497); *Welton v. Mo.* 91 U. S. 275 (Bk. 23, L. ed. 347).

Judge Tucker thought that "duties" as used in the Constitution, "were probably intended to comprehend every species of tax or contribution not included in the ordinary terms 'taxes and excises'."

Cited in *Pacific Ins. Co. v. Soule*, 7 Wall. 493 (74 U. S. bk. 19, L. ed. 98).

Cooley, Const. Law, p. 494.

Direct taxes must be laid by the rule of apportionment; all others by the rule of uniformity.

Veazie Bank v. Fenno, 8 Wall. 533 (75 U. S. bk. 19, L. ed. 432); *Scholey v. Rew*, 23 Wall. 331 (90 U. S. bk. 23, L. ed. 99).

In *Ward v. Md.* 12 Wall. 418 (79 U. S. bk. 20, L. ed. 449), Mr. Justice Bradley foreshadows the recent decision in the Tennessee case.

"It will not be denied that that portion of commerce with foreign countries and between the States, which consists of the transportation and exchange of commodities is of national importance, and admits and requires uniformity of regulation."

Welton v. Mo. 91 U. S. 275 (Bk. 23, L. ed. 347), cited and approved in *Tyner v. Rinker*, 102 U. S. 128 (Bk. 26, L. ed. 103).

In respect of commerce between the States which consists in the transportation, purchase, sale and exchange of commodities there can of necessity be only one system or plan of regulations; and that Congress alone can prescribe.

Mobile Co. v. Kimball, 102 U. S. 691 (Bk. 26, L. ed. 238); *Cooley v. Board of Wardens*, 12 How. 299 (53 U. S. bk. 18, L. ed. 696); *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196 (Bk. 29, L. ed. 158); *Brown v. Houston*, 114 U. S. 622 (Bk. 29, L. ed. 257); *Wallace v. Mich.* 116

U. S. 446 (Bk. 29, L. ed. 691); *Pickard v. Pullman etc. Car Co.* 117 U. S. 84 (Bk. 29, L. ed. 785).

But suppose this tax is levied by Congress as the exclusive legislative power in the District of Columbia for the support of the government of the District of Columbia, it is still a tax on the commerce of the States with the District of Columbia, and subjects that commerce to burdens to support the local expenses of the District of Columbia—Can Congress compel the States to do this?

Cooley, Const. Law, p. 499.

We submit that the recent decision of the supreme court is universal in its operation and cuts up by the roots all local regulation of commerce; that it declares that requiring a license for drummers is a regulation of commerce; that therefore such license can only be required by Congress; and that Congress can only exercise its power to regulate commerce by the exercise of its constitutional powers so to do, under the constitutional restriction that the operation of its laws shall be uniform throughout the limits of the United States.

Mr. Henry E. Davis, for the District:

I. The law is, in effect, the law of Congress.

The power of the Legislative Assembly, which emanated from Congress, extended "to all rightful subjects of legislation within the District consistent with the Constitution of the United States * * * subject to all the restrictions and limitations imposed upon States by the tenth section of the first article of the Constitution of the United States;" and all Acts of the Assembly were "subject to repeal or modification by the Congress of the United States."

R. S. D. C. §§ 49, 50.

The extent of the power thus conferred upon the Legislative Assembly was considered by this court in *Roach v. Van Rensick* and *Cooper v. Dist. Col.* 4 MacArt. 171, 250; and in *Dist. Col. v. Waggaman*, 1 Cent. Rep. 823, 4 Mackey, 328.

In the last mentioned case the very License Act under consideration was held as within the power; and in *Dist. Col. v. Oyster*, 1 Cent. Rep. 84, 4 Mackey, 385, the Act was administered by this court without any question or expression of doubt as to its being properly within the power granted and properly grantable by Congress to the Assembly.

The Act having, then, been within the power of the Assembly to pass, it was in full force and virtue from its passage, unless repealed or modified by Congress.

As was said by this court in *Roach v. Van Rensick* (4 MacArt. 173, 178), the "reluctance on the part of Bench and Bar to recognize legislation of the late government as valid, * * * has sometimes sought its excuse in the want of positive confirmation by Congress of the legislation in question. This, however, is a very unsatisfactory foundation for it. The organic Act, * * * which established the District Government, nowhere contains an intimation that the Acts of the new government are to be inoperative until or unless confirmed by Congress; but, on the contrary, by the strongest imputation, excludes such idea. The fiftieth section [of the revision] declares that all Acts of the Legislative Assembly shall at all times be subject to repeal or modification by the Congress of the United States. Until repealed or modified, the clear implication is that they are

to operate, *proprio vigore*. * * * It is plain to us that as far as Congress could confer the power of original and independent legislation, needing no confirmation, but complete and operative in itself, it has done so by the Act in question."

The effect of this is that the legislation in question, being that of a duly authorized and qualified agent of Congress in the Government of the District of Columbia, is that of Congress itself. And if that be not so, we have a distinct adoption by Congress of this legislation in the several Acts of February 17, 1878 (17 Stat. at L. 464), July 12, 1876 (§ 19, 19 Stat. at L. 88), and January 28, 1887, in part amending and in part repealing the Act of the Assembly; whereby, by the clearest implication, the rest of the Act is adopted.

II. The constitutional question.

The question raised by the petitioner is supposed to find support in article I, § 8 of the Constitution of the United States, which provides that "The Congress shall have power to lay and collect taxes, duties, imposts, and excises * * * but all duties, imposts, and excises shall be uniform throughout the United States" (clause 1), and that "The Congress shall have power * * * to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes" (clause 8); and in section 9 of the same article, which declares that "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another" (clause 6).

As to the first of these provisions, it is enough to say that the license tax in question is not a duty, an impost, or an excise, and is not, therefore, within that provision requiring uniformity throughout the United States. As to the last (§ 9, clause 6), the license law for the District of Columbia gives no preference to the ports of any State, or even of the District, over those of any other State; and it is not easily conceived how that clause can be thought to have any relevancy to the subject in hand.

A question seems, however, to be presented by the remaining of the three clauses above enumerated, viz.: whether, as a regulation of commerce, the license law for the District is invalid, as obnoxious to the Constitution of the United States?

1. It is not doubted that the law regulates commerce, in the sense of the Constitution. The opinion of the Supreme Court of the United States in the recent case of *Robbins v. Tazewell District of Shelby Co.* 120 U. S. 489 (Bk. 80, L. ed. 694); *S. C.* 1 Interstate Com. Rep. 45, closes the door to any possible contention on that head.

2. It is equally certain that, as above pointed out, the law is, in effect, an enactment by Congress.

3. The question, then, becomes, Has Congress power under the Constitution to pass such a law?

If not, it must be either because such power is not granted, or is denied, to Congress by the Constitution.

The power is undoubtedly granted in terms by article I, § 8, clause 17, whereby Congress is given power to exercise exclusive legislation

in all cases whatsoever over the District of Columbia. As was said by Marshall, *Ch. J.*, in *Loughborough v. Blake*, 5 Wheat. 324 (18 U. S. bk. 5, L. ed. 100); "On the extent of these terms, according to the common understanding of mankind, there can be no difference of opinion."

But it is contended that this broad grant is limited by the restrictions which the Constitution has imposed upon Congress. Granting this, what restriction of the Constitution upon the power of Congress affects the question under consideration? Petitioner's counsel cite but two such restrictions as of supposed applicability—that requiring uniformity of duties, imposts and excises, and that forbidding preference to the ports of one State over another; both of which have been noticed above.

Moreover, we have an explicit utterance of the Supreme Court of the United States, speaking by *Chief Justice Marshall*, on this subject. Touching the power to regulate commerce, that court says:

"This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution. These are expressed in plain terms. * * * If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign Nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its Constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments."

Gibbons v. Ogden, 9 Wheat. 196 (22 U. S. bk. 6, L. ed. 70).

What limitations, then, exist on the power of Congress in regulating commerce? Seemingly none, except those distinctly prescribed by the Constitution, which "are expressed in plain terms," and none of which applies to the case in hand.

The questions thus recur: Does the regulation of commerce complained of emanate from Congress? That it does is shown above. "Although Congress cannot enable a State to legislate, Congress may adopt the provisions of a State on any given subject." *A fortiori* may it adopt the legislation of its own agency, in the exercise of one of its undoubted powers. The adoption by Congress of any given legislation "gives it the same validity as if its provisions had been specifically made by Congress."

Id. 207 (73).

4. The recent decision of the Supreme Court of the United States (*Robbins v. Taxing District, supra*), in reality does not affect the question under consideration.

In that case it was held only that a given law of the State of Tennessee was invalid, as dealing with the subject of commerce, which, by the Constitution, was committed to Congress.

The power of Congress, its extent and its limitations in the premises, was not under consideration.

5. The petitioner has no right to complain of the District License Law. He is not a member of a foreign Nation, nor of an Indian Tribe, and the law does not affect commerce "among the several States."

The District of Columbia is not a State, in the meaning of the Constitution.

Hopburn v. Ellzey, 2 Cranch, 445 (6 U. S. bk. 2, L. ed. 832); *New Orleans v. Winter*, 1 Wheat. 91 (14 U. S. bk. 4, L. ed. 44); *Scott v. Jones*, 5 How. 377 (46 U. S. bk. 12, L. ed. 197); *Barney v. Baltimore*, 6 Wall. 287 (78 U. S. bk. 18, L. ed. 827); *Baltimore etc. R. R. Co. v. Harris*, 12 Wall. 86 (79 U. S. bk. 20, L. ed. 860).

In respect to regulating commerce, there is in the Constitution no prohibition upon either Congress or any State to discriminate for or against the District, as between it and such or any State. "The sole restraints" against abuse in this respect are those mentioned by *Chief Justice Marshall* in *Gibbons v. Ogden*; and disregard of those restraints can only be reached by counter legislation; they cannot be affected by any action of the judiciary.

Mr. Justice Merriek delivered the opinion of the court:

I have been assigned to announce the opinion of the court in the case of *William J. Henning*, certified to this court, from the criminal court.

The petitioner, as it appears by his petition, was convicted before the police court upon an information against him as a commercial agent, or drummer, so-called. The information states:

"That on the 14th day of April, 1887, at the City of Washington he did engage in the business of a commercial agent, to wit: the business of offering for sale as agent of Lyons, Conklin & Co., a firm doing business in the City of Baltimore, State of Maryland, certain goods, wares, and merchandise, by sample, catalogue, and otherwise, without having first obtained a license to do so; contrary to the provisions of an Act of the Legislative Assembly."

Prior to the decision of the Supreme Court of the United States at its present term, in the case of *Robbins v. Taxing District of Shelby County*, 120 U. S. 489 [Bk. 30, L. ed. 694]; *S. C. 1 Interstate Com. Rep.* 45, there had been very great diversity of opinion throughout the United States as to the power of a State to tax commercial agents who were transacting business by selling goods by sample or by soliciting contracts for sale of goods owned by persons in other States than where the solicitation or sale was made. That diversity of opinion not only pervaded the legal profession, but, as it appears by this recent decision of the supreme court, it still existed in that tribunal; so that there is a complete justification for those who entertained that opinion, and who urged the liability under such laws.

By justification I mean justification up to the time that that decision was pronounced. That decision being pronounced, however, it is obligatory upon all other tribunals and upon citizens of the United States. It is not obligatory upon the supreme court itself, as a final adju-

dication, because it is liable to be reviewed by it and reversed by it if, in its better judgment hereafter, it should entertain a different opinion from that which has been expressed by itself, because it is a well defined rule, announced by that court, that in constitutional questions, the rule of *stare decisis* is not obligatory upon itself. Constitutional questions are always open for revision by the supreme court itself, notwithstanding there may have been one or more decisions upon the subject. But, while open for revision by that court such decisions, until reversed by it, are obligatory upon all other tribunals, and demand implicit obedience from all citizens throughout this land.

In the case of *Robbins v. Shelby County* it was decided that a state law imposing a tax upon commercial agents who solicited contracts for sale of property owned by citizens of another State was beyond the power of the State to enact or enforce; that it was in contravention of the constitutional provision that Congress should have the exclusive power of regulating commerce between the States, a tax upon commercial agents or drummers of one State soliciting business within another State being a tax upon interstate commerce.

It was said in argument that that decision did not cover the whole proposition, that it was limited only to discriminations which were made by the Statute of Tennessee as against the citizens of other States, and that if the law had been equally as applicable to all travelers the decision would not cover it. But an inspection of that decision shows this to be a mistaken view of the subject. The court grasped the whole matter, discussed the whole matter, fully, and decided the precise point as law, as will be seen from the following quotation from the decision:

"But to tax the sale of such goods, or the offer to sell them, before they are brought into the State, is a very different thing, and seems to us clearly a tax on interstate commerce itself. It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers, those of Tennessee and those of other States, that all are taxed alike. But that does not meet the difficulty. Interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State. This was decided in the case of *State Freight Tax Cases*, 15 Wall. 232 [82 U. S. bk. 21, L. ed. 146]. The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made is interstate commerce. A New Orleans merchant cannot be taxed there for ordering goods from London or New York, because in the one case it is an act of foreign, and in the other of interstate commerce, both of which are subject to regulation by Congress alone."

Thus it will be seen that it does not put the decision at all upon the question of discrimination between drummers within the State and drummers outside the State; but it says that no law which imposes upon the person soliciting sales for merchants outside of the State is admissible, because that is a regulation of interstate commerce.

In connection with that decision it is well to

read an extract from the opinion of the Supreme Court of the United States in the case of *Walling v. Michigan*, in 116 U. S. 456 [Bk. 29, L. ed. 604], which is as follows:

"The subjects indeed upon which Congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the States; others are local, or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in the transportation, purchase, sale and exchange of commodities. Here there can of necessity be only one system or plan of regulation, and that Congress alone can prescribe. Its nonaction in such cases, with respect to any particular commodity or mode of transportation, is a declaration of its purpose that the commerce in that commodity or by that means of transportation shall be free. There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens, and against the products and citizens of other States. And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign Nations and among the States was to insure uniformity of regulation against conflicting and discriminating state legislation."

And further down on page 457 [695], it is said: "And after an examination of the causes which led to the adoption of the Federal Constitution, one of the principal of which was the necessity for the regulation of commerce and the laying of imposts and duties by a single government, the court says: 'But whatever may be the motive for the tax, whether revenue, restriction, retaliation, or protection of domestic manufactures, it is equally a regulation of commerce, and in effect an exercise of the power of laying duties on imports; and its exercise by the States is entirely at war with the spirit of the Constitution, and would render vain and nugatory the power granted to Congress in relation to those subjects. Can any power more destructive to the union and harmony of the States be exercised than that of imposing discriminating taxes or duties on imports from other States? Whatever may be the motive for such taxes, they cannot fail to beget irritation and lead to retaliation; and it is not difficult to foresee that an indulgence in such a course of legislation must inflame and produce a state of feeling that would seek its gratification in any measures regardless of the consequences.'"

Such is the declaration by the Supreme Court of the United States, of the spirit and scope of these constitutional provisions; that they are necessary to the harmony, and repose of the States; that they are necessary to the equal justice and equal privileges of the citizens of all the States of this Union; that they cannot be restricted at all; and that whatever rule is made with reference to them must be a uniform rule by the Congress of the United States acting as the National Legislature, regulating and controlling the commerce of the entire domain of

(May 5, 1897.)

SUSPENSION OF FOURTH SECTION.

The Commission concluded its labors in Memphis, after hearing evidence from merchants of Memphis, Louisville, Lexington, Rock and Newport, Ark., to the effect that the fourth section would be disastrous to commerce and industries of the points named.

Louisville & Nashville, the Nashville, Knoxville & St. Louis, the Chesapeake & Ohio and the Southwestern Railroads were given two weeks' time to file arguments and other information in support of their petition for a temporary suspension of the section. Representatives of river interests were in attendance and asked leave to present their case, which was granted.

(May 6, 1897.)

NEW YORK CENTRAL & HUDSON RIVER R. R. CO. *et al.*

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(May 7, 1897.)

GULLETT COTTON GIN CO.

Gullett Cotton Gin Company, of Amite, Louisiana, filed with the Commission asking for a permanent suspension on 4 of the Act, so far as it may apply to gins, feeders and condensers manufactured by that Company.

The petition represents that when the Company shut down its plant, valued at \$100,000 at the stated point above named on the Illinois Railroad, protection in freights was assured against competing companies in more places, which assurance the Interstate Commerce Act renders impossible of fulfillment, resulting in great loss of the petitioners.

B.

Re Petition of CHICAGO ST. PAUL, MINNEAPOLIS & OMAHA R. R. Co.*

PETITION.

To the Honorable,

The Interstate Commerce Commission:

The petition of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation organized under the laws of Wisconsin, would respectfully show unto your Honorable Commission:

The Chicago, St. Paul, Minneapolis & Omaha Railway Company operates, under lease, a line between Minneapolis and St. Paul, in the State of Minnesota; and it owns and operates a line from St. Paul, Minnesota, through Superior, Wisconsin, to Duluth, Minnesota.

The distance from St. Paul to Duluth by this line is 176.6 miles, and its business between Minneapolis, St. Paul and Duluth thus passes out of Minnesota into Wisconsin, and thence returns into Minnesota at Duluth.

The Company also owns and operates a line from Superior Junction to Washburn, both in the State of Wisconsin. This line is used in connection with a portion of the line first above mentioned; and the distance from St. Paul to Washburn is 187.6 miles.

Duluth, Superior and Washburn are all ports on Lake Superior. All of the through business, to and from eastern points, between aforesaid lake ports and St. Paul and Minneapolis, is competitive with the St. Paul & Duluth Railroad Company. That company owns and operates a line of railroad from St. Paul and Minneapolis to Duluth, wholly within the State of Minnesota, and consequently is not amenable to the Interstate Law. The distance from St. Paul to Duluth by this line is 154 miles.

Duluth rates maintain via the Lakes between Superior and Washburn and all eastern points.

It thus appears that while business from Minneapolis and St. Paul via the Lakes to all eastern points is competitive between said railroads to Duluth on the one part, and to Superior and to Washburn on the other part, yet that, as Duluth is the terminal point of shipment common to both railroads, Duluth rates necessarily control the rates at Superior and at Washburn; so that to enable your petitioner to handle through business in competition with that going to or beyond Duluth via the St. Paul & Duluth R. R. Co., your petitioner has within the past four years expended for terminal facilities at Washburn, Wisconsin, more than \$500,000; at Duluth within the year last past more than \$800,000; and it is proposed to expend a large sum at Superior for the same purpose during the present season.

The tariffs of your petitioner, both through and local (hereinafter to be submitted), will show that its competitive rates for through business to Superior and Washburn are less in many instances than its local rates for shorter distances over the same line, the shorter being included with the longer distance. That result is inevitable, if competition on through business with Duluth rates is to be maintained. Other-

*In response to requests for precedents of forms of petitions and method of presentation of applications to the Commission, the following petition and brief are given. The decision thereon will be reported as soon as rendered.

parts of the Union; and therefore any discrimination in favor of this community would be in violation of the spirit, if not the letter, of the Constitution of the United States.

But we need not go that far for the purposes of this case. It was only necessary to speak of it for the purpose of repelling the argument, and making it be seen how we regard the relations of this community to the legislative power of Congress and to the several States of the Union. It is enough for the purposes of this cause to say that the delegated power to the Legislative Assembly of this District was the delegation only of municipal power, and that any attempt to legislate in this respect is *ultra vires* a municipality as it is *ultra vires* the power of a State of this Union.

For these reasons the court is of opinion that the prosecution was without authority; that so far as this law operates on this class of cases it is null and void, and that the prisoner must be discharged from custody.

But it is necessary to add that this decision on this branch of the Law is not at all inconsistent with the decision that was made in the *Case of Waggaman*, where it was held that the Legislative Assembly was empowered to impose a license tax upon people doing business within the District of Columbia. All occupations which are limited to the District of Columbia are subject to the taxing power. That is what was held in that case, and there is nothing in this case at all inconsistent with it. If this party had taken out a license for the District, for the purpose of soliciting business within the District, for sales by people within the District, he might have been subject, and would have been subject, to the license law. But upon the face of this information it appears affirmatively that his exclusive business was to act as the agent of citizens of other States, soliciting contracts of sale for goods within those States, thereafter

to be brought under the dominion, and within the control of the taxing power of the District. Therefore, there is no inconsistency between the two decisions. They are entirely harmonious, and there can be no difficulty in maintaining that in the aspect in which this case is presented, it is directly in the face of the decision in *Robbins v. Shelby County*, directly in opposition to the whole current of decisions upon the commercial power of the United States as expounded by the Supreme Court of the United States, and cannot be permitted to stand as law.

Mr. Riddle: If I apprehend this decision correctly, it leaves the law to be enforced against the citizens of the District.

Mr. Justice Merrick: Unquestionably.

Mr. Riddle: The license law can be enforced against the citizens of the District?

Mr. Justice Merrick: Against citizens of the District who are soliciting sales for people within the District. But a citizen of the District who is employed as an agent of a citizen of another State, for the purpose of selling the goods of that citizen of the other State cannot be restrained from so doing by the Legislative Assembly.

Mr. Riddle: I quite apprehended that.

Mr. Justice Merrick: And further than that, I will say that if his business had been to solicit business as a drummer within the District, and he had mingled with it the business of the people of a State, he would be obnoxious to the law, not for soliciting business for citizens of States, but as acting as a drummer generally. But here, the information says that he is charged with doing exclusively the business of a commercial agent, soliciting and selling his goods for citizens of other States. That is the exclusive business with which he is charged, and therefore it may well stand with the other matter about which the counsel has made the inquiry.

THE INTERSTATE COMMERCE COMMISSION.

THE taking of testimony by the Commission in relation to the suspension of the Fourth Section under the petition of the Southern Railway & Steamship Association, closed at Memphis on May 5, and public sessions of the Commission were resumed at Washington on May 18.

(May 10-16, 1897.)

Re SUSPENSION OF FOURTH SECTION.

A PETITION was received from citizens of Palatka, Florida, remonstrating against the suspension of the Fourth Section. It recites that Palatka is at the head of deep water navigation of the St. John's River and possesses peculiar advantages as the distributing point for South Florida, of the benefit of which it has been deprived by artificial laws of railroads.

The Commission received from the Committee on Railroads and Transportation of the Prescott, Arizona, Board of Trade a protest

against "the suspension of section 4, and against the railroads being allowed to charge more to any part of the interior between the Mississippi River, Missouri River and the Pacific Coast than they do to the coast." The protest says:

"We here in the interior have been unmercifully treated and discriminated against for the last six years by the railroads. For instance, we have been charged from St. Louis to Prescott from \$700 to \$1,800 per car, while the same kind of goods would go to San Francisco for from \$125 to \$250 per car. The distance from St. Louis to San Francisco over the Atchafalaya, Topeka & Santa Fé Road and the Atlantic & Pacific Road is about 2,600 miles; from St. Louis to Prescott about 1,700 miles.

The Commission also received a petition from a committee of citizens of Newman, Ga., protesting against the suspension of the fourth section. The petition says:

"We respectfully submit that the enforcement of the fourth section means the growth of the smaller towns, more large towns and fewer large cities."

(May 17, 1887.)

DAILY ORDER OF BUSINESS.

THE Commission adopted and promulgated the following Daily Order of Business:

At 10 o'clock A. M., private session for the reception and disposition of new business. At 11 o'clock A. M., public session for hearings assigned and for the consideration of other matters which may be presented. At 3 o'clock P. M., private session for the disposition of unfinished business and for conference.

(May 18, 1887.)

THE Commission heard arguments upon application of the Queen & Crescent Railway system for a permanent suspension of the fourth section of the Act. John C. Gault, General Manager of the system, addressed the Commission. He stated that his road was willing and anxious to give the law a fair trial, and only asked to be relieved from water competition; that meant the Ohio and Mississippi Rivers, chiefly.

General Black, Commissioner of Pensions, representing the Board of Managers of the National Volunteer Soldiers' Home, next appeared before the Commission, asking for a suspension, a modification or some legal arrangement by which the inmates of the homes might be permitted to continue the enjoyment of the half fare rates on railroads.

Representative Cabell, of Virginia, appeared for the Board of Trade of Danville, Va., and made complaint against the Richmond & Danville Railroad. Since that road had acquired control of the Virginia Midland Railroad, he said, rates had been greatly advanced and the interests of the town ruined. After Mr. Cabell had spoken the hearing was adjourned for the day.

JURISDICTION OF THE COMMISSION.

1. The Interstate Commerce Law contemplates that the cases in which the Commission is authorized to make orders for suspension of its operation are exceptional cases, and that where only general reasons operate, the general law shall be left to its general course, however serious the consequences in particular cases.
2. Any order for suspension must be based upon investigation.
3. Incidental injuries under the Act must be borne for the public good, until the Legislature provides a remedy.
4. The mere probability that injury will result from the operation of the Act will not authorize the Commission to direct a suspension.

PETITION of the Minneapolis & Northwestern Railway Company, for a suspension of the Fourth Section.

The Commission, per Cooley, Chairman, transmitted the following communication to the petitioner:

INTER S.

Washington, May 18, 1887.

J. H. Hanley, Traffic Manager Minneapolis & Northwestern Railway Company:

Dear Sir: The Commission is in receipt of a telegram from you by which you urge the prompt making of an order of relief on the application heretofore filed for the suspension of the long and short haul clause "in so far as it affects at certain points, the business of the road under your charge."

You state, and no doubt believe, that the interests of the road are being very seriously injured by the enforcement of that clause. If relief could be given you without a stretch of authority, and without at the same time causing mischief to other interests, the Commission would take great pleasure in granting it. But what evidently appears to you very easy and simple does not seem to its members to be so; and however anxious they are that your interests should not continue to suffer, they are constrained to hold the application under advisement still longer. Perhaps the delay entitles you to some further statement of reasons than has heretofore been given; and although these cannot now be gone into at length, it is hoped that a brief summary will be sufficient to satisfy you that the Commission does not act arbitrarily, and would not willingly suffer mischief to continue, if a remedy both lawful and safe was within its power:

The fourth section of the Act to regulate commerce, as we all very well understand, was intended to establish the general law that more should not be charged for transportation for the shorter than for the longer haul over the same line in the same direction, under circumstances and conditions substantially similar. Railroad companies, including your own, had, before its passage, been accustomed in many cases to charge more for the shorter haul, judging for themselves whether the circumstances and conditions authorized or required it. Congress, in passing the Act, decided that the rule should thereafter preclude this greater charge; and in so doing it must be understood to have determined that, in its judgment, any incidental injuries that might flow from the enforcement of the general rule would be more than counterbalanced by resulting benefits.

Whatever opinion any member of the Commission may have of the correctness of this determination is of no moment now, for the Commission is as much bound by it as are the carriers of persons and property; and any questioning of it by any member would be an impertinence. The Commission, of course, does not expect to question it, but enforce it, so far as it may fall within its duty to do so. The Act, nevertheless, contemplates that there may be cases in which public interest will be subserved by suspending the general rule, so far as to except such cases from its operation. The Commission will not, at this time, enter upon a critical examination of the provision which was made for such suspension, but it may be useful to call your attention to a few considerations which are obvious on the face of the law:

First. It is obvious that the cases the law contemplates in which the Commission is authorized to make orders for suspension are exceptional cases; that is to say, cases whose facts which made them stand apart from the ordi-

nary cases; the Act does not define them; it does not state the grounds that shall warrant relief, but it plainly intends that these grounds in every case shall be special and peculiar, and that where only general reasons operate, the general law shall be left to its general course, however serious may be the consequences in particular cases and to particular roads and interests.

Second: It is also made plain by the Act that any order for suspension was intended to be based upon investigation which would satisfy the Commission that the case was in fact exceptional and fairly within the intent of the provision made for the relief. The jurisdiction of the Commission to make orders was evidently meant to be somewhat closely restricted. The Commission, in its correspondence and otherwise, is every day made aware of the prevalence in some quarters of a vague notion that power has been conferred upon it to interfere anywhere, and for any reasons satisfactory to itself, in order to prevent what it may think is likely to be harmful; but you, of course, indulge no such baseless notion. The Commission, as you will agree, must find its authority in the law and not in its own ideas of right or policy.

Third: It must be assumed that Congress intended the general Law, in its main feature at least, to be a permanent law for the country. It must therefore have contemplated that considerable sacrifices would necessarily have to be submitted to by some interests, while the general Law was being established, for the very obvious reason that it would be quite impossible to introduce considerable changes in a branch of the law which concerns so intimately the commerce of the country, without serious consequence to some private interests. In all such cases the incidental injuries, however great they may be, are necessarily borne for the general good; and if the Legislature misjudges as to what the general good demands, it is to be expected that in due time it will provide the remedy.

The first questions to confront the Commission upon its organization were raised under the fourth section of the Act. Cases in which companies charged more for the shorter than for the longer haul over the same line in the same direction were to be met with in all parts of the country. The reasons for doing this were thought by the managers in many cases to be absolutely imperative, and to concern the interests of the public quite as much as that of the roads themselves. The interests which were involved in the continuance of the custom were very great, and the anticipation of serious injury from any sudden changes was, in some quarters, quite general. The Commission, therefore, had very earnest appeals made to it in support of the corporation, applications for relief from boards of trade and other public or semi-public bodies, and from representatives of large business interests, which feared or professed to fear destruction or bankruptcy. In many cases the appeals seemed to be made in the belief that the probability of injury was of itself a sufficient warrant for the Commission to interfere and grant a relieving order.

It is scarcely necessary to say to you that any such belief is without legal support. The probability, or even the certainty, that injury

to corporations or to individuals will result is not by itself, under the Act, any ground for a suspension anywhere of its ordinary operations. It could not, in fact, be made a ground for relief, without giving the Commission such a general dispensing power as would not be consistent with sound principles of government. Congress has not intimated a purpose to give such a power. If the law in its general operation were to prove generally and equally mischievous in all directions, the Commission instead of having the greater power, for that reason, would, on the other hand, have no power of suspension whatever; for the simple and plain reason that there would then be no exceptional cases for it to act upon, and therefore no cases referred by the Act to its judgment.

But uniform effects were, of course, as far from being possible as they were from being contemplated. There must and will be exceptional cases. In the absence of any specification of these in the Act itself the Commission was obliged to determine as best it might what cases were probably in the mind of Congress when the exceptional relief was provided for. It also found itself confronted with the question whether the railroads might determine for themselves, but at their peril, whether in any particular case the circumstances and conditions were so far different as to justify the greater charge for the shorter haul, or whether, on the other hand, it was only upon and in view of such different circumstances and conditions that the Commission was empowered to act.

Upon these subjects the debates in Congress might be expected to throw some light; but the Commission felt itself justified, if not compelled, to look beyond the record, and to seek such aid in construction as might be derived from a study of the condition of things pertaining to the transportation of persons and property which Congress by the Act had undertaken to deal with.

The suspension authorized by the Act was to be ordered after investigation. This was plainly determined by the Act itself. If the order was to have any finality, it would be proper that the investigation should afford opportunity for a hearing to parties who opposed as well as to those who favored the application. This would require considerable time in every case; and had the Commission made no order, except upon full and final hearing, the majority of applications now on its files would, up to this time, have necessarily remained not acted upon. If the applications were taken up in their order, yours would have been among those not yet reached. This fact is mentioned as showing that the giving of temporary relief in some other cases has not placed your road in any worse position than it would necessarily have occupied if the temporary orders had not been made.

The Commission, however, deemed it wise to grant some temporary orders on an investigation not as complete as it expected finally to make. This was done in the belief that no considerable mischief could follow from allowing an existing condition of things to remain for a brief period, whether it was then suffered to stand or not, and that harmful results from a sudden change in the law might thereby to some extent be averted.

This course also gave the Commission such an opportunity for careful study of the system which Congress undertook to reform as would otherwise have been wanting. If the new Law had been left to operate universally, the old state of things would have been swept away at once, and the Commission, seeing only what had been substituted for it, would have been deprived of the best and most satisfactory means of making just comparison. Such a comparison was important, not merely to enable it to pass finally with full knowledge upon the exceptional cases, but also the better to prepare it to make in its periodical reports such suggestions and recommendations as might naturally be looked for.

The Commission felt that in whatever it was doing on any single application, it was acting not less for permanence than for the particular and special relief; and, without making the vain effort to prevent all injury, it deemed itself fully justified in granting orders of temporary suspension in some of the most obvious cases, and where special grounds for urgency were shown, without first making the investigation complete for final action, leaving other cases not thought to be so strong on the affirmative showing to take the more deliberate course. This method of proceeding the Commission at the time believed had important advantages, and it still believes will conduce to the best results in the end.

You speak strongly and earnestly of the reasons for granting your application. But in order to warrant its being granted it is not enough that the application, if considered by itself, appears to have merits. The Commission must consider in each case what effect the giving of relief to one applicant will have upon other interests; and your knowledge of railroad matters must enable you to perceive that in some sections of the country the granting of one application may so affect the interests of other roads as to create a necessity for the like relief to several more, the satisfaction of one claim begetting others which are equally meritorious, until, if all are satisfied, the exception becomes the rule.

But when such a result is probable, the reasons for declining to make any temporary order are very conclusive. The Commission cannot consent deliberately to enter upon a highway where, to all appearances, there will be no halting place within the limits of its lawful jurisdiction. If a general suspension of the "long and short haul clause" of the statute is not to be made by a single comprehensive order, neither should the same result be reached or approached by the granting of successive orders in individual cases. In whatever the Commission may do, it must keep in view the preservation of the general rule.

It is not our purpose in this communication to express any opinion as to what ought to be the final conclusion upon your application. The Commission is not yet prepared to give its decision; and the purpose of this answer to your telegram is merely to place before you some of the reasons which, up to this time, have precluded definite action. That injury results to the parties interested in your road, or to any other person, it sincerely regrets; and your belief that such is the case will be kept in mind

as a reason for action as prompt as under the circumstances shall seem consistent with duty. In these views the whole Commission concur.

Very Respectfully Yours,
T. M. Cooley, Chairman.

(May 19, 1887.)

Re INMATES OF NATIONAL HOMES.

The Commission cannot make an order or give an opinion in advance of an actual complaint and hearing. *So held,* in the case of an application on behalf of the inmates of the national homes for disabled volunteer soldiers and sailors, for a ruling as to whether the granting to them of half rate fares by railroads would be "**unjust discrimination**" within the meaning of section 2 of the Act.

IN response to the request of General J. C. Black, Commissioner of Pensions, presented on May 18, on behalf of the inmates of the national homes for disabled volunteer soldiers for half fare rates, when traveling from one home to another, the Commission, per **Schoonmaker, Commissioner**, replied as follows:

The meritorious character of this application, and the patriotic and humane reasons urged in support of it, are fully appreciated and admitted; but the Commission is not referred to any provision of the Act that authorizes it to make an order or express an opinion upon an *ex parte* application of this nature.

In the absence of such authority, an order or an opinion would have no validity or weight whatever. If the fair meaning of the second section, that the giving of half rates to members of the national homes for disabled volunteer soldiers and sailors, is the allowance of special rate, etc., for a like and contemporaneous service, for certain persons, not common to all, and under substantially similar circumstances and conditions, then such allowance would be unjust discrimination, otherwise not.

The trunk lines according to the petition, have taken the responsibility of assuming that the allowance of the half rates desired does not constitute unjust discrimination. Every carrier has the same right to assume its own construction of this provision.

The Commission cannot prematurely impose any construction on a carrier, however much some particular construction may be desired. Construction is a judicial act, involved in the decision of some controverted question. The jurisdiction of the Commission in such cases is limited to the discussion of complaints for alleged violation of the law, upon a hearing of the parties interested, and its opinion of the intent of the statute can then be announced. Any order or opinion in advance of a complaint or hearing would be misleading and unfair to those who might be affected by it, and would be unauthorized.

The Commission regrets that it has no power to comply with the request of the petition.

(May 21, 1887.)

**Re FILING COPIES OF JOINT TARIFF
BY TRAFFIC COMBINATIONS.**

In reply to an inquiry as to whether more than one member of a traffic combination con-

sisting of several railroad or freight lines must file copies of their agreements, joint tariffs, etc., *Secretary Moseley* wrote, by authority of the Commission, that, provided due notice be filed with the Commission, any one member or agent may file returns for all the members of a combination.

PROCEEDINGS BEFORE THE INTERSTATE COMMERCE COMMISSION

IN

THE MATTER OF VARIOUS PETITIONS FOR A SUSPENSION OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE.

See Re Southern Railway & Steamship Association, ante, 15.

PROCEEDINGS AT ATLANTA.

Names of Witnesses, in Order of Examination, etc.

C. A. Sindall, Secretary Southern R. R. & S. S. Association.
W. F. Shellman, Traffic Manager Central R. R. of Georgia.
T. M. Emerson, Gen. Freight & Passenger Agent, Atlantic Coast Line.
J. R. Ogden, Vice Com'r Southern R. R. & S. S. Association.
S. Hase, Gen. Traffic Manager Associated R. R.'s Va. & Carolinas.
J. M. Culp, Gen. Freight & Pass. Agent Louisville & Nashville R. R.
C. D. Owens, Traffic Manager C. & S. and S. F. & W. R. R.
T. S. Davant, Gen. Freight Agent East Tenn., Va. & Ga.
S. A. Pearce, Granite Quarrier, Columbia, South Carolina.
H. B. Hammett, Manufacturer of Cotton Goods, Greenville, S. C.
R. L. Caughrin, Newberry Cotton Mills.
D. E. Converse, Glendale & Clifton Cotton Mills.
Dr. C. E. Fleming, Board of Trade, Spartanburg, S. C.
Richard McCoy, Lime Interest, Riverton, Va.
R. E. Blankenship, Chamber of Commerce, Richmond, Va.
A. H. Christian, Manager Richmond Paper Company.
J. S. Ellett, Jobbing, Richmond, Va.
H. H. Smith, Cotton, Rome, Georgia.
L. Johnson, Naval Stores Protective Association.
M. F. Amorous, Lumber, Atlanta, Georgia.
Chas. E. Hockstrasser, Columbus, Ga., Board of Trade.
J. M. Thornburg, Chamber of Commerce, Nashville, Tenn.
W. E. Kyle, Gen. Freight & Pass. Agt. Cape Fear & Yadkin Val. R. R.

A. J. Mossett, Southern Transp. Co., Cincinnati, O.

William Calder, Wilmington Chamber of Commerce.

J. W. Ponder, Opelika, Alabama.

W. O. Harwell, Opelika, Alabama.

W. S. Chisholm, of counsel (argument).

J. F. Hanson, " "

D. P. Hill, " "

E. P. Alexander, " "

ATLANTA, GEORGIA, April 27, 1887.

THE COMMISSION met at 10 A. M. in the rooms of the city council, all the members being present.

The Chairman: Gentlemen, the Commission organized under the Interstate Commerce Law has received quite a number of petitions from railroads whose field of operations is in this part of the country, asking for exceptional orders under the Fourth Section of that Act, orders that, as the Commission believes, could only properly be made upon evidence, after an investigation. We have come here to-day for the purpose of taking such evidence as may be offered in support of those petitions, and also for the purpose of giving an opportunity to parties who may think their interests or the interests of the public require a denial of the prayer of the petitioners, to present evidence in support of that view of the question. We propose now to enter upon the taking of evidence. We shall receive it as we should if it were evidence in support of a judicial investigation, upon oath; but shall receive at the same time, such documentary evidence and such memorials, if any shall be offered, from public bodies, as it shall be proper to receive in that form.

As the petitions are numerous, and as our own time is limited, it has seemed proper to us that we should mark out to some extent in advance, a course of proceeding in order to

forms and rules permitted by the Commission. The publication of testimony at length is not, however, at present contemplated in connection with all future cases, but we shall endeavor to always present the facts as fully as a complete and intelligible report may seem to require. These proceedings, together with the opinion by Commissioner Walker, *Re Order of Railway Conductors*, page 18, *ante*, the communication of Chairman Cooley in reference to the jurisdiction and powers of the Commission, published on page 73, *ante*, and the petitions given as precedents on pages 58, 60 and 63, *ante*, furnish very full information as to the questions which may properly be presented to the Commission, and the manner in which they should be presented. [Ed.]

expedite our business, and in the hope that by doing so parties whose interests seemed to be identical should, as far as possible, be enabled to concentrate their evidence and their arguments. We hope that method will be taken here, as a necessary course, in order that we may have fully laid before us all the evidence and all the views of those who may think they have facts important for our consideration. We have not expected to take up each of these petitions by itself. It has seemed probable that the facts that would support one, must, to a large extent, support another; and that what would tend to disprove the one would, to a large extent, tend to disprove the others; so that the evidence will largely be taken for its bearing upon all the petitions together.

As we proceed, any petitioner desiring to present that which is special to himself, will have the opportunity to do so when he is upon the stand.

With these few remarks, sufficiently indicating the course we desire to have pursued, we shall for the time being, leave the matter in the hands of the petitioners, expecting that they will endeavor, as far as possible, to conform to the views expressed and present their evidence as succinctly, clearly, and concisely as may be found practicable.

Mr. E. B. Bullock of Atlanta. I have been requested to ask the Commission to be kind enough to suspend for a moment the regular order as indicated by the circular, that you may hear from the chairman of a large meeting which was held last night, representing the different cities, chambers of commerce, manufacturing interests, etc., who are affected and interested in this matter.

Mr. J. F. Hanson, of Macon, Georgia, then came forward, and, as Chairman of the meeting above referred to, submitted a memorial prepared by that body, asking for the permanent suspension of the Fourth Section of the Act to regulate commerce.

Mr. Hanson. This action was taken in pursuance of a notice posted up in the Kimball House, requesting all parties who had come representing localities or commercial bodies, to meet us last night. Our action was practically unanimous; in fact, I may say it was entirely unanimous; and this action we desire to present as the action of the business interests here represented independent of the railroads. I was also requested to ask the Commission to allow these commercial bodies to present their memorials, if possible, today, in order that they may go home, as many of them live at a great distance.

Mr. Norcross of Atlanta. As you have allowed some general matter to be introduced here—

The Chairman. We will take up this matter in order.

Mr. Norcross. I thought this proceeding was out of order.

The Chairman. It is not out of order, because we have allowed it by special order made for the purpose.

Mr. Norcross. I wish to present an argument.

The Chairman. We will not take it now. We will take it at some proper time. In the program marked out yesterday, a request was
INTER S.

made that the names of witnesses who were to be examined should be handed in this morning. Is that list now ready?

Mr. W. S. Chisholm of Savannah. At the meeting of the railroad companies held last evening, a list of witnesses was prepared. The proposition which you announced this morning was also considered, to wit: that it would be for the interest of all concerned to take up the petitions together so far as they bore upon the same points and the same questions. All of the railroads belonging to the Southern Railway & Steamship Association, of course, have joint interests, and those joint interests are set forth in their various petitions.

In addition to those roads there is the Charleston & Savannah Railway Company, and the Savannah, Florida & Western Railway Company, running from Charleston to Savannah, and from Savannah to various Florida points. It is proposed now that all of the petitions of the roads forming the Southern Railway & Steamship Association, and those of the Charleston & Savannah road and of the Savannah, Florida & Western road be taken together.

Charles A. Sindall then appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. E. P. Alexander:**

Q. Please state to the Commission what position you occupy.

A. I am secretary of the Southern Railway & Steamship Association.

Q. Are you familiar with the rates which are being worked generally in this territory?

A. Yes sir.

Q. I wish to question you first as to the rates that prevail and the method in which they are made, from northern and eastern cities to Mobile?

A. The rates to Mobile are made in competition with the steamship lines, the steamship lines making their rates to Mobile or New Orleans from the north.

Q. What are the lines?

A. The Cromwell line, the Morgan line, and the Mobile & New York Steamship Company.

Q. Where do those lines run?

A. The Cromwell and Morgan lines run from New York to New Orleans. The Mobile & New York line runs between those ports.

Q. Do the rates charged or made by those steamers generally control the rates to those places which other lines have to accept?

A. Yes sir, they make the rates. We have to accept those rates or go out of that business entirely.

Q. Will you illustrate that by giving the average figures of the present prevailing rates?

A. The present figures to Mobile and New Orleans are from fifty to fifty-five cents on first class by steamer. The rail lines are charging seventy-five cents.

Q. Are the rail lines able to maintain any better rates than the steamers?

A. No sir, they cannot maintain any higher rates than the difference in insurance will compensate for, and occasionally the difference in time.

Q. But generally the rates are controlled entirely by the steamship lines?

dication, because it is liable to be reviewed by it and reversed by it if, in its better judgment hereafter, it should entertain a different opinion from that which has been expressed by itself, because it is a well defined rule, announced by that court, that in constitutional questions, the rule of *stare decisis* is not obligatory upon itself. Constitutional questions are always open for revision by the supreme court itself, notwithstanding there may have been one or more decisions upon the subject. But, while open for revision by that court such decisions, until reversed by it, are obligatory upon all other tribunals, and demand implicit obedience from all citizens throughout this land.

In the case of *Robbins v. Shelby County* it was decided that a state law imposing a tax upon commercial agents who solicited contracts for sale of property owned by citizens of another State was beyond the power of the State to enact or enforce; that it was in contravention of the constitutional provision that Congress should have the exclusive power of regulating commerce between the States, a tax upon commercial agents or drummers of one State soliciting business within another State being a tax upon interstate commerce.

It was said in argument that that decision did not cover the whole proposition, that it was limited only to discriminations which were made by the Statute of Tennessee as against the citizens of other States, and that if the law had been equally as applicable to all travelers the decision would not cover it. But an inspection of that decision shows this to be a mistaken view of the subject. The court grasped the whole matter, discussed the whole matter, fully, and decided the precise point as law, as will be seen from the following quotation from the decision:

"But to tax the sale of such goods, or the offer to sell them, before they are brought into the State, is a very different thing, and seems to us clearly a tax on interstate commerce itself. It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers, those of Tennessee and those of other States, that all are taxed alike. But that does not meet the difficulty. Interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State. This was decided in the case of *State Freight Tax* (Case, 15 Wall. 232 [83 U. S. bk. 21, L. ed. 146]). The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made is interstate commerce. A New Orleans merchant cannot be taxed there for ordering goods from London or New York, because in the one case it is an act of foreign, and in the other of interstate commerce, both of which are subject to regulation by Congress alone."

Thus it will be seen that it does not put the decision at all upon the question of discrimination between drummers within the State and drummers outside the State; but it says that no law which imposes upon the person soliciting sales for merchants outside of the State is admissible, because that is a regulation of interstate commerce.

In connection with that decision it is well to

read an extract from the opinion of the Supreme Court of the United States in the case of *Walling v. Michigan*, in 116 U. S. 456 [Bk. 29, L. ed. 694], which is as follows:

"The subjects indeed upon which Congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the States; others are local, or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in the transportation, purchase, sale and exchange of commodities. Here there can of necessity be only one system or plan of regulation, and that Congress alone can prescribe. Its nonaction in such cases, with respect to any particular commodity or mode of transportation, is a declaration of its purpose that the commerce in that commodity or by that means of transportation shall be free. There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens, and against the products and citizens of other States. And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign Nations and among the States was to insure uniformity of regulation against conflicting and discriminating state legislation."

And further down on page 457 [695], it is said:

"And after an examination of the causes which led to the adoption of the Federal Constitution, one of the principal of which was the necessity for the regulation of commerce and the laying of imposts and duties by a single government, the court says: 'But whatever may be the motive for the tax, whether revenue, restriction, retaliation, or protection of domestic manufactures, it is equally a regulation of commerce, and in effect an exercise of the power of laying duties on imports; and its exercise by the States is entirely at war with the spirit of the Constitution, and would render vain and nugatory the power granted to Congress in relation to those subjects. Can any power more destructive to the union and harmony of the States be exercised than that of imposing discriminating taxes or duties on imports from other States? Whatever may be the motive for such taxes, they cannot fail to beget irritation and lead to retaliation; and it is not difficult to foresee that an indulgence in such a course of legislation must inflame and produce a state of feeling that would seek its gratification in any measures regardless of the consequences.'"

Such is the declaration by the Supreme Court of the United States, of the spirit and scope of these constitutional provisions; that they are necessary to the harmony, and repose of the States; that they are necessary to the equal justice and equal privileges of the citizens of all the States of this Union; that they cannot be restricted at all; and that whatever rule is made with reference to them must be a uniform rule by the Congress of the United States acting as the National Legislature, regulating and controlling the commerce of the entire domain of

United States, with a view to do equal justice between all the parts of the country and to away any possibility of prejudice or any action of injustice or discrimination by one part against another. That being so, it is manifest that any regulation upon this subject must be made by Congress, in its capacity as the National Legislature.

could Congress, if it had been so directed, have delegated to the Legislative Assembly of this District the power to pass any such law? That is not an open question in this case.

In the case of *The District v. Wagoner*, 100 U. S. 680, 4 Mackey, 333, this court said:

Rosch v. Van Hook, 7 Wash. Law. 20, this court held that the very broad powers which the organic Act of 1870 granted to the Legislative Assembly have the effect to clothe that body with only such powers as might be given to a municipal corporation, and that it was not competent for Congress to delegate the larger powers of general legislation which it had itself received from the Constitution.

These extracts have already shown by these extracts that the subject matter belongs to the larger class of general legislation,—belongs to Congress as the Legislature of the Nation. It could not, therefore, within this announcement, delegate any such part of its general legislative power to a municipal legislative body. It is manifestly outside the scope of a municipal body to legislate on this subject.

It would be marvelous indeed if, when the Constitution strips all the States of this Union of the power to legislate on this subject, it could be maintained that a municipal body could be clothed with any such faculty. If a State cannot, how can a body inferior to a State do so? Now can it be said to be within the power of a municipal corporation, when it is not the power of a sovereign State to legislate on this subject matter? It would seem manifest to stop at this point.

It has been said here in argument that, Congress of the United States having the exclusive legislative power of this District of Columbia, there is no restriction upon its capacity to act as such Legislature. If the question were before the court in that aspect, it might not be difficult to say that it is a proposition that cannot be entertained by any who recognize the comprehensive power of the Constitution, the object for which it was formed, or the purposes for which this District of Columbia is dedicated to national uses, to maintain a municipal body may be established here in legislation, in antagonism to the rights of the States of this Union.

A community is not even a State. It is an organized body to be legislated over by Congress. This District has surrendered its right of representation, and that representation is exercised in Congress; but still it is vested in Congress as the National Legislature, and it is exercised by Congress in subordination to the principles of the Constitution of the United States.

The argument, pushed to its extreme, simply is this: Congress is without constitutional restraint as to this District; the people are helpless, and not under the sanctions or protection of the Constitution of the United States.

at all; the United States has here a foreign territory in which it can legislate in antagonism to the interests of the States and in opposition to the policy which prevails in the Constitution, obligatory upon the States in their intercourse one with another to do equal and exact justice one as to the other and each as to all. Such an argument cannot have any sanction at the hands of this court. This District is set aside and dedicated to the uses of the Nation, and if there be anywhere on the face of the earth a locality where no discrimination should be made as against the rights of any of the States or any citizens of the United States, it should be upon this soil where all are equal, on which each citizen has an equal right and in which each State has an equal right, as regards all the other States and as regards the United States itself. This Territory is dedicated simply as a temple of justice, as a temple where the liberties of the Nation are to be sacredly preserved, and it is for that purpose that it should be exempt from hostile control or the possibility of antagonism with the purposes of the Union. Congress was vested with the power of exclusive legislation for this District, but not at all for the purpose of enabling it to legislate in any manner in hostility to the rights of any of the States of the Union.

Can it be supposed for an instant that any of the States would have ceded to the Government of the United States a district for the seat of its Government in which hostile legislation should be exercised towards the interests of the citizens of those States or the citizens of their sister States? We cannot suppose such a thing possible. We cannot suppose that when the Congress was vested with power to legislate over this District it was clothed with any power to act as such Legislature in hostility to the rights of the States or to do anything regarding the interests of the citizens of one State which any State of the Union could not do with regard to the citizens of any other State. We are subject to the Constitution of the United States. Here, if anywhere, the Constitution should be venerated, and the most sedulous regard should be had for each and all of its provisions, and we should rejoice that we are under its provisions; we should rejoice that we are under its protection; we should rejoice that we are set apart for the purpose of ministering to the temple of justice, the temple of "Equality of Laws" which has been established in our midst.

It seems impossible, therefore, to argue from the fact that Congress has exclusive legislation over this District that it has the power of the tyrant through this District over the States of the Union. The whole idea is inconsistent with the spirit of our institutions, utterly inconsistent with the object for which the Constitution was formed, and for which this district of country was set apart for the uses of the general government. Therefore, even if Congress had undertaken, with regard to this District, in its general capacity as the Legislature for the District, to pass such a law, it would have been outside the power of Congress so to do; because, as a National Legislature, it can only legislate under the commercial power upon the principle of uniformity, which is to pass laws equally operative upon any, every, and all

for as this law operates on this class of cases it is null and void, and that the prisoner must be discharged from custody.

But it is necessary to add that this decision on this branch of the Law is not at all inconsistent with the decision that was made in the *Case of Waggaman*, where it was held that the Legislative Assembly was empowered to impose a license tax upon people doing business within the District of Columbia. All occupations which are limited to the District of Columbia are subject to the taxing power. That is what was held in that case, and there is nothing in this case at all inconsistent with it. If this party had taken out a license for the District, for the purpose of soliciting business within the District, for sales by people within the District, he might have been subject, and would have been subject, to the license law. But upon the face of this information it appears affirmatively that his exclusive business was to act as the agent of citizens of other States, soliciting contracts of sale for goods within those States, thereafter

Mr. Justice Merrick: Against citizens of the District who are soliciting sales for people within the District. But a citizen of the District who is employed as an agent of a citizen of another State, for the purpose of selling the goods of that citizen of the other State cannot be restrained from so doing by the Legislative Assembly.

Mr. Riddle: I quite apprehended that.

Mr. Justice Merrick: And further than that, I will say that if his business had been to solicit business as a drummer within the District, and he had mingled with it the business of the people of a State, he would be obnoxious to the law, not for soliciting business for citizens of States, but as acting as a drummer generally. But here, the information says that he is charged with doing exclusively the business of a commercial agent, soliciting and selling his goods for citizens of other States. That is the exclusive business with which he is charged, and therefore it may well stand with the other matter about which the counsel has made the inquiry.

THE INTERSTATE COMMERCE COMMISSION.

THE taking of testimony by the Commission in relation to the suspension of the Fourth Section under the petition of the Southern Railway & Steamship Association, closed at Memphis on May 5, and public sessions of the Commission were resumed at Washington on May 18.

(May 10-18, 1887.)

Re SUSPENSION OF FOURTH SECTION.

A PETITION was received from citizens of Palatka, Florida, remonstrating against the suspension of the Fourth Section. It recites that Palatka is at the head of deep water navigation of the St. John's River and possesses peculiar advantages as the distributing point for South Florida, of the benefit of which it has been deprived by artificial laws of railroads.

The Commission received from the Committee on Railroads and Transportation of the Prescott, Arizona, Board of Trade a protest

against "the suspension of section 4, and against the railroads being allowed to charge more to any part of the interior between the Mississippi River, Missouri River and the Pacific Coast than they do to the coast." The protest says:

"We here in the interior have been unmercifully treated and discriminated against for the last six years by the railroads. For instance, we have been charged from St. Louis to Prescott from \$700 to \$1,800 per car, while the same kind of goods would go to San Francisco for from \$125 to \$250 per car. The distance from St. Louis to San Francisco over the Atchafalpa, Topeka & Santa Fé Road and the Atlantic & Pacific Road is about 2,600 miles; from St. Louis to Prescott about 1,700 miles.

The Commission also received a petition from a committee of citizens of Newman, Ga., protesting against the suspension of the fourth section. The petition says:

"We respectfully submit that the enforcement of the fourth section means the growth of the smaller towns, more large towns and fewer large cities."

(May 17, 1887.)

DAILY ORDER OF BUSINESS.

Commission adopted and promulgated following Daily Order of Business:

9 o'clock A. M., private session for the on and disposition of new business. At 10 o'clock A. M., public session for hearings and for the consideration of other matters which may be presented. At 3 o'clock P. M., private session for the disposition of unfinished business and for conference.

(May 18, 1887.)

Commission heard arguments upon application of the Queen & Crescent Railway for a permanent suspension of the fourth section of the Act. John C. Gault, General Manager of the system, addressed the session. He stated that his road was well equipped and anxious to give the law a fair trial, and asked to be relieved from water competition that meant the Ohio and Mississippi Rivers.

General Black, Commissioner of Pensions, visiting the Board of Managers of the National Volunteer Soldiers' Home, next appeared before the Commission, asking for a suspension of the law or some legal arrangement by which the inmates of the homes might be permitted to continue the enjoyment of the half rates on railroads.

Representative Cabell, of Virginia, appeared before the Board of Trade of Danville, Va., and complained against the Richmond & Danville Railroad. Since that road had acquired the Virginia Midland Railroad, he stated that the road had been greatly advanced and the interests of the town ruined. After Mr. Cabell spoke the hearing was adjourned for the

JURISDICTION OF THE COMMISSION.

Interstate Commerce Law contemplates that the cases in which the Commission is authorized to make orders for suspension of its operation are exceptional cases, and that where only general reasons operate, the general law should be left to its general course, however serious the consequences in particular cases.

Any order for suspension must be based upon a full investigation.

Incidental injuries under the Act must be shown for the public good, until the Legislature provides a remedy.

There is more probability that injury will result from the operation of the Act than from its suspension. The Commission is not authorized to make orders for suspension.

Application of the Minneapolis & Northwestern Railway Company, for a suspension of the fourth Section.

Commission, per Cooley, Chairman, received the following communication to the Commission:

8.

Washington, May 18, 1887.

J. H. Hanley, Traffic Manager Minneapolis & Northwestern Railway Company:

Dear Sir: The Commission is in receipt of a telegram from you by which you urge the prompt making of an order of relief on the application heretofore filed for the suspension of the long and short haul clause "in so far as it affects at certain points, the business of the road under your charge."

You state, and no doubt believe, that the interests of the road are being very seriously injured by the enforcement of that clause. If relief could be given you without a stretch of authority, and without at the same time causing mischief to other interests, the Commission would take great pleasure in granting it. But what evidently appears to you very easy and simple does not seem to its members to be so; and however anxious they are that your interests should not continue to suffer, they are constrained to hold the application under advisement still longer. Perhaps the delay entitles you to some further statement of reasons than has heretofore been given, and although these cannot now be gone into at length, it is hoped that a brief summary will be sufficient to satisfy you that the Commission does not act arbitrarily, and would not willingly suffer mischief to continue, if a remedy both lawful and safe was within its power.

The fourth section of the Act to regulate commerce, as we all very well understand, was intended to establish the general law that more should not be charged for transportation for the shorter than for the longer haul over the same line in the same direction, under circumstances and conditions substantially similar. Railroad companies, including your own, had, before its passage, been accustomed in many cases to charge more for the shorter haul, judging for themselves whether the circumstances and conditions authorized or required it. Congress, in passing the Act, decided that the rule should thereafter preclude this greater charge; and in so doing it must be understood to have determined that, in its judgment, any incidental injuries that might flow from the enforcement of the general rule would be more than counterbalanced by resulting benefits.

Whatever opinion any member of the Commission may have of the correctness of this determination is of no moment now, for the Commission is as much bound by it as are the carriers of persons and property; and any questioning of it by any member would be an impertinence. The Commission, of course, does not expect to question it, but enforce it, so far as it may fall within its duty to do so. The Act, nevertheless, contemplates that there may be cases in which public interest will be subserved by suspending the general rule, so far as to except such cases from its operation. The Commission will not, at this time, enter upon a critical examination of the provision which was made for such suspension, but it may be useful to call your attention to a few considerations which are obvious on the face of the law:

First. It is obvious that the cases the law contemplates in which the Commission is authorized to make orders for suspension are exceptional cases; that is to say, cases whose facts which made them stand apart from the ordi-

Commission such study of the system of reform as would be. If the new Law finally, the old state kept away at once, only what had been been deprived of means of making comparison was made it to pass finally exceptional cases, re it to make in its questions and recommendations be looked for. In whatever it was action, it was acting for the particular without making the injury, it deemed giving orders of ten of the most obvious grounds for urgency making the investigation, leaving other going on the affirmative deliberate course. The Commission at important advantages, due to the best re-

earnestly of the reaction. But in order granted it is not so, if considered by its. The Commission what effect the want will have upon knowledge of railroads to perceive that try the granting of act the interests of necessity for the like satisfaction of one h are equally merited, the exception

probable, the reason any temporary or. The Commission to enter upon a variances, there will be limits of its law suspension of the re" of the statute is comprehensive order, must be reached or of successive or whatever the Commission in view the present

his communication what ought to be your application. prepared to give its of this answer to place before you up to this time, have That injury results our road, or to any regretted; and your will be kept in mind

as a reason for action as prompt as under the circumstances shall seem consistent with duty.

In these views the whole Commission concur.

Very Respectfully Yours,

T. M. Cooley, Chairman.

(May 18, 1897.)

Re INMATES OF NATIONAL HOMES.

The Commission cannot make an order or give an opinion in advance of an actual complaint and hearing. So held, in the case of an application on behalf of the inmates of the national homes for disabled volunteer soldiers and sailors, for a ruling as to whether the granting to them of half rate fares by railroads would be "unjust discrimination" within the meaning of section 2 of the Act.

In response to the request of General J. C. Black, Commissioner of Pensions, presented on May 18, on behalf of the inmates of the national homes for disabled volunteer soldiers for half fare rates, when traveling from one home to another, the Commission, per Schoonmaker, Commissioner, replied as follows:

The meritorious character of this application, and the patriotic and humane reasons urged in support of it, are fully appreciated and admitted; but the Commission is not referred to any provision of the Act that authorizes it to make an order or express an opinion upon an *ex parte* application of this nature.

In the absence of such authority, an order or an opinion would have no validity or weight whatever. If the fair meaning of the second section, that the giving of half rates to members of the national homes for disabled volunteer soldiers and sailors, is the allowance of special rate, etc., for a like and contemporaneous service, for certain persons, not common to all, and under substantially similar circumstances and conditions, then such allowance would be unjust discrimination, otherwise not.

The trunk lines according to the petition, have taken the responsibility of assuming that the allowance of the half rates desired does not constitute unjust discrimination. Every carrier has the same right to assume its own construction of this provision.

The Commission cannot prematurely impose any construction on a carrier, however much some particular construction may be desired. Construction is a judicial act, involved in the decision of some controverted question. The jurisdiction of the Commission in such cases is limited to the discussion of complaints for alleged violation of the law, upon a hearing of the parties interested, and its opinion of the intent of the statute can then be announced. Any order or opinion in advance of a complaint or hearing would be misleading and unfair to those who might be affected by it, and would be unauthorized.

The Commission regrets that it has no power to comply with the request of the petition.

A. Generally they are entirely controlled by the steamship lines.

Q. Do the steamship lines maintain the rates?

A. No sir; I have never known them to maintain a tariff for any period of time.

Q. Does our position enable you to know when rates are maintained and when rates are being cut?

A. Yes sir.

Q. And generally the rates by those steamers are not thoroughly maintained?

A. No sir.

Q. Will you state now to the Commission on what basis the rates are made coming back from Mobile and New Orleans into the country, first to interior points, say on the line of the Mobile and Montgomery road, such as Greenville, Alabama, for instance?

A. They are made by adding the rate to the Mobile rate, except where competition by river would prevent.

Q. That is, you first take the through rate from New York to Mobile?

A. Yes sir.

Q. And as you go back from the water's edge you add what?

A. We add the railroad rate from there on to the purely railroad points.

Q. And then the rates become higher. For instance, if Mobile was sixty-five cents, fifty miles this side of Mobile would be something higher?

A. Yes sir.

Q. What are the first competitive points approached in coming back from Mobile?

A. The first points are Montgomery and Selma.

Q. How are the rates there made and maintained?

A. They are water rates made by adding the steamship rate to the rail rate. The rail line makes only a sufficiently higher rate to compensate for insurance and the difference in time.

Q. Can you illustrate by figures what are the ordinary prevailing rates?

A. The lowest rate we had to Montgomery and Selma last week, quoted by the steamship agents, was seventy cents on first class goods.

Q. That is from New York?

A. From New York, by way of Mobile.

Q. Are the railroads able to maintain any higher rates?

A. Only sufficiently higher to compensate for the cost of insurance and loss of time.

Q. About what rates would they make for first class, as an average?

A. The railroads cannot under that basis maintain a rate higher than from ninety cents to a dollar, if that.

Q. Coming on in this direction how are the rates made to competitive points in Georgia, such as Atlanta, Macon and Columbus?

A. The rates to Augusta, Macon, Atlanta and Columbus are made from exactly the same basis; that is, we take the steamship lines running from New York to Charleston, Savannah or Brunswick, and we assimilate by classification as nearly as possible to our classification, in order to name a through rate upon the article to be transported. That then is regarded as their local. An approximate classification

is made by measurement. That is the history of local classification. On through classification we have an amount which I say we arrive at by assimilating. To that we add the rates authorized by the Georgia Commission from Savannah to Augusta, and that is the total which we have had to enforce for some years. Then for Macon we add the rate the Georgia Commission authorize to be used for Macon and Brunswick, or Macon and Savannah, and that makes the Macon total as we have it now in force. To Atlanta the same principle is used.

Q. In short, the first thing in the rate is the through rate from New York to the coast; Charleston or Savannah?

A. Yes sir; that is the first element.

Q. That rate is a purely water rate?

A. It is a purely water rate.

Q. Made by the Ocean Transportation Companies?

A. Yes sir.

Q. To that, then, is added in the case of Georgia the rates of the Georgia Railroad Commission?

A. To that is added the rates of the Georgia Railroad Commission to those points.

Q. The rates being made, will you state for illustration what are the prevailing first class rates to the principal interior points in Georgia?

A. Take Atlanta. We are charging from New York to Atlanta \$1.14. The steamship proportion, under the tariff which they have been using, would produce 45 cents from New York to Savannah. The rate authorized by the Georgia Commission from Savannah or Brunswick to Atlanta is 69 cents—a total of \$1.14. To Macon it is 45 cents for the steamships. Assuming their local to be 64 cents, the total is \$1.09, the present rate. To Augusta the steamship rate is 45, and I think the local rate is 51; total, 96. Those are made on the exact combination.

Q. Are those rates higher or lower than they were before the Commission was appointed in Georgia?

A. Those rates, as well as I can remember, are about the same as we had in force. The steamship rates have been reduced in that time, and they are probably lower. I think the steamship service has been very much improved in the last ten or twelve years, and their rates have been very considerably reduced.

Q. Those rates were fixed before there was a Commission. They were fixed by competition at these points in the first instance?

A. Yes sir.

Q. And since then by the Commission?

A. Yes sir.

Q. Referring to the steamer lines that run to New Orleans and Mobile, as well as those to the other points: they are entirely water lines not run in connection with any railroad?

A. They are purely water lines. I do not know of any ownership of railroads or connection with railroads, except that they naturally—the New Orleans lines give bills of lading through to interior points in connection with railroads, and the Mobile line the same. There is no connection between them that I know of, except a mere traffic arrangement.

Q. You have explained the formation of rates to the competitive points in Georgia. Now explain how rates are formed to the non-competitive points. Take the local stations intermediate between the different cities.

A. They are formed upon the same principle, with the exception that there are lower rates authorized by the Commission of Georgia to points like Macon, Atlanta and Augusta, than there are to stations intermediate, and, therefore, the rates to intermediate stations are higher than the rates to Atlanta, Macon and Augusta.

Q. That is by direction, and not by the tariff fixed by the Georgia Railroad Commission?

A. Yes sir; occasionally there may be some point upon a railroad where there is competition between two points for a certain trade between; and they will group those points by authority of the Commission.

Q. How long have you been familiar with the method of making rates and with the freight business of this territory?

A. I began the freight business in this country, I believe, in June, 1873.

Q. Has the principle of competition and working lower rates to competing points been the prevailing rule during all that time?

A. It has ever since I have known the service, sir.

Q. When a point like Atlanta, for instance, is made a competing point, do the merchants and dealers at stations near Atlanta, who do not directly share in that competition, derive any of the benefit of the low competitive rates given to Atlanta?

A. Yes sir; they get actually the same benefit. If the rate was reduced today from \$1.14 to \$1, all points based upon Atlanta would be reduced 14 cents also; that is, all noncompetitive points, as we call them.

Q. Can you illustrate by figures, and make it a little clearer, how a low rate given to Atlanta at any time, if reduced, would affect intermediate points; or if Atlanta should be raised, how it would affect the local points near Atlanta?

A. They would get the same reduction exactly; all points based upon Atlanta.

Q. Please explain a little more fully.

A. Suppose we take the rate from New York to Jonesboro.

Q. Where is Jonesboro?

A. It is an intermediate station twenty miles east of Atlanta; between New York and Atlanta, over the Savannah line. That point today has a rate based upon the rates by adding the Georgia Commission's tariff to the steamship's local. A reduction to Atlanta would make, by adding to the Atlanta rate, the rate to Jonesboro; and so they would get the same reduction Atlanta would have.

Q. If the rates to Atlanta were raised, would it act upon that point?

A. Not necessarily against Jonesboro. If Atlanta were raised it would not reduce Jonesboro. It need not necessarily advance Jonesboro, because the present rate is based upon the rate to Savannah, plus the rate from there.

Q. Does your office receive statistics of the amount of business handled by the different lines?

A. Yes sir; at all competitive points; and

we are now receiving statistics of the business of all points where there are two or more lines together.

Q. Can you form any idea of the comparative volume of business that passes over the lines of this association? Take, for instance, the competitive points, like Mobile and New Orleans, that we were first speaking of. Can you give any idea of the comparative volume of that competitive business which is done at the low rates in competition with the steamers, as compared with the volume of business that is done to intermediate points?

A. We could only get that from the statistics we have. I think I would be safe in saying that the competitive business would not exceed twenty-five or thirty per cent of the total business.

Q. The whole competitive business?

A. Yes sir. I doubt if such points as are purely competitive, as, for instance, Mobile and New Orleans, would be more than five or ten per cent. It is almost impossible, of course, to estimate correctly.

Q. Generally, however, the business of the roads that serve this section of country affected by the competition on what are called the lower rates for the long haul, is about what percentage of the total business?

A. It would be almost impossible to state without having the figures. It would be almost guess-work.

Q. You have those figures in your office, or figures from which an estimate could be made?

A. Yes sir; figures from which it could be made.

Q. Can you state what you would expect from your knowledge of the figures, in making up the accounts and reports that you send out monthly to the different roads; a general idea of what it would be?

The Witness: From eastern points, or taking the whole section?

Mr. Alexander: Compare eastern points with other eastern business.

A. I do not think it would affect over twenty-five per cent of the whole business; not more than that, although that is, of course, merely estimating. We have not the full statistics sufficient to get at it thoroughly.

By Mr. Stahlman:

Q. You have the statistics of the competitive points, but not all the others?

A. Not all the others; only certain points.

By the Chairman:

Q. What do you mean by the use of the term "competitive points?"

A. The competitive points which we have are determined first by the rates made by water lines to points that have purely water competition, and those rates made by the water lines to points, added to a short rail haul, making water and rail competitive points. Then we have some points which, owing to their location and the competition with other points, have been made competitive points.

Q. So that it may be a point where there is water competition, or the competition may be exclusively by rail?

A. Yes sir; it might be a point where the competition is exclusively by rail.

Q. You speak of rates being based upon a point. W^h

A. I mean, for instance, take a station on any line of road. We give that station the lowest combination, taking the nearest competitive point and giving them an arbitrary from that competitive point or the local roads proportioned from that competitive point to the station. The lowest combination so produced becomes their rate.

Q. For example, you have spoken of Atlanta as a competitive point?

A. Yes sir.

Q. Take a point south of Atlanta in the direction of Mobile, an intermediate station not a competitive point. How would the rate from New York to that point be made?

A. It would be made by adding to the Atlanta rate, or adding to the Montgomery rate for instance in coming up; always seeing that the local points themselves were protected in their competition with one another.

Commissioner Walker. I do not think that is at all clear.

Q. Explain that further.

A. Take a rate to a station—say suppose there is a line entirely between two points, Atlanta and Montgomery, and nothing between, no competition whatever. Those rates would be made by adding in the rate from New York to Atlanta, or the rate from New York to Montgomery to the rate from Montgomery or from Atlanta to the local points. The lowest total so produced would become the rate, always taking into consideration the fact of the stations competing one with another. There may be stations twenty miles apart, and those stations have got to be kept so that they will do their fair share each of the business between them.

Q. You say their fair share of the business. How do you always determine that?

A. We endeavor to make the rates equal to them; and if a rate made upon mileage produces a higher total on combination by Atlanta to a point forty miles from it than the rate on mileage produced from Montgomery, we would have to discard the mileage rate entirely, or discard the—

Q. Suppose the station were the first station south of Atlanta. How would you make the rate to it?

A. Take the Atlanta rate and add the rate of the road from Atlanta to that station.

Q. That is, on New York business to that station you would charge the rate to Atlanta and then from Atlanta back to that station?

A. No sir; not back to it. Where do you mean?

Q. Suppose it was in the direction of Mobile?

A. Then it would come through Atlanta from New York.

Q. Suppose it was business coming by water by way of Mobile to the first station south of Atlanta?

A. If the rate via Mobile added to the rate from Mobile to that station made a less rate than the rate from Atlanta to that station, we would take the lowest rate.

Q. And you would do the same for the next station further south?

A. We would do the same for the next station further south.

Q. It might be greater or less to the next station further south?

A. Yes sir; but if we found it produced less to the next station than to stations where there was competition, we would have to take the total made to the two stations for the rate.

Q. It is only because of your thus basing the rates upon Atlanta, as you say, that a change in the rates to Atlanta would effect the change in rates to these other stations?

A. Yes sir; that would affect them naturally if they were based upon Atlanta.

Q. I do not quite get what you intend us to understand by your remark that as between intermediate stations you endeavor to fix rates that would be just. You do not compare the rates as between these intermediate stations with the rates to the competitive points?

A. Yes sir; we do. We compare them.

Q. The rates to the competitive points affect them; but you do not compare them for any purpose of determining what is just between the competitive points and the non-competitive points, do you?

A. We think we do that in making the rates on that basis.

Q. But in any event the rates to the non-competitive points would be above the rates to the competitive points?

A. Yes sir.

Q. So that you do not compare them for the purpose of equalizing them at all?

A. No sir; if they are differently located of course you cannot.

Q. How do you endeavor to reach the point of justice as between these intermediate points?

A. In making up our local tariffs we endeavor to give such rates as the business of that community will stand and as the business of the country and of the road will justify.

Q. Is that done regardless of competitive forces?

A. No sir; we have to regard competitive forces also.

Q. You regard the competitive forces as they operate at the competitive points?

A. Yes sir.

Q. But as between these competitive points do you arrange the rates—as between these noncompetitive points with respect to the competitive forces?

A. Yes sir; I don't think there is any general freight agent who would make his tariff to a point upon his line of road so as to make competitive points take the business properly belonging to the local points, or discriminate against anybody there. He would endeavor to arrive at it so as to give each one the business which the community claimed and which they had enjoyed for years.

Q. You spoke of the competition by water and of the carriers by water determining what the rates should be. Is the competition as sharp between the carriers by water as it is between the carriers by rail?

A. Sometimes it is. For instance take the New Orleans lines, the purely water lines. Unless they have lately come together they have very strong competition between themselves.

Q. As between water and rail the carriers by water fix the rates?

A. Yes sir.

Q. Is the cutting of rates all on one side, or may it be as sharp on one side as on the other?

A. The water line has the making of the rate and the rail lines have got to take the business at that rate or go out of the business. It may be errors have been made as to information, but they certainly do not cut unnecessarily.

Q. But suppose there is a normal condition of things under which, as I understand you, the rates by rail would ordinarily be higher than by water, a certain per centage?

A. Yes sir.

Q. To cover an allowance for speed, insurance, etc.?

A. Yes sir.

Q. Suppose that normal state of things is broken in upon. Is the breaking in upon it by the cutting of rates always from one side rather than the other?

A. Probably not always; but our experience has been that the competition has been forced upon us by the water lines at those points.

Q. In order to get the business competed for as between water and rail, do not the carriers by rail sometimes cut down pretty low?

A. We have had some very low rates.

Q. And does not the cutting begin with them sometimes?

A. That would be a matter—

Q. I ask these questions because I do not know, and I want to bring out the fact.

A. We do not think it does, sir. Our experience has been that the endeavor has been to keep fair and reasonable and just rates between all points.

Q. The railroads generally think it an object to get this competitive business even if they are obliged to take it at very low rates?

A. So long as it leaves them anything whatever over, or even the cost of its actual carriage, they naturally want to get it.

Q. And when that is the case would it not be very natural that they should push the rates to a very low figure sometimes?

A. I do not think any man wants to do business without some return for it.

By **Commissioner Walker**:

Q. I wish you would produce the rates which you say have been fixed by the Georgia Commission from Savannah to Atlanta?

A. I will do so. (Producing paper.)

Q. This is the joint freight tariff No. 11, containing rates of freight from Charleston, Port Royal, Beaufort, Savannah and Brunswick, in effect March 1, 1886. What is there to show that these rates have been established by the Georgia Commission?

A. The fact that the rates are worked today and have been worked for years; and if there was any violation of the law, the Georgia Commission would not allow them to so work.

Q. Have you anything in writing signed by the Georgia Commission showing their approval of this sheet?

A. I judge that the officers of the roads using those sheets have.

Q. What road is it that runs from Atlanta south on this line?

A. The East Tennessee, Virginia & Georgia road runs from Atlanta to Brunswick, and the Central Railroad of Georgia runs from Atlanta to Georgia within the State of Georgia.

INTER S.

Commissioner Walker. Have you the approval of the Georgia Commissioners to this sheet, Mr. Alexander?

Mr. Alexander. I don't think we have to that particular sheet; but we have to the rates that we work, and we have it at all our principal stations.

Commissioner Walker. I wish you would produce it.

By the **Chairman**:

Q. Do you take into account, as constituting Atlanta a competitive point, anything but the railroads?

A. We take into account the competition by the water routes to Montgomery and to Augusta, in addition to the fact of there being competition on rail lines, and make the rate, as I said, upon the lowest combination; the lowest rate that can be made—the rate authorized by the Commission.

Q. You claim the business of Atlanta to be affected by water competition?

A. Yes sir; Augusta and Atlanta are competitive markets, and Montgomery and Atlanta are competitive markets. Both of those points are reached by water communication entirely Atlanta has of course no river.

Q. In that view would there be any competitive point in this territory that would not be affected by water competition?

A. I don't think we have any that is not directly or indirectly affected by water competition.

By **Commissioner Walker**:

Q. The sheet which you just handed me contains simply what are called competitive points, as I understand it?

A. Yes sir.

Q. You named Jonesboro as a point twenty miles down on this line?

A. Yes sir.

Q. Have you anything from the Georgia Commission fixing the rate to Jonesboro?

A. Yes sir.

Q. Where is it?

A. I have it in my office down stairs. It is the standard tariff published by them.

Q. Will you send for it?

A. Yes sir.

Q. If I understand you, on freight coming from Savannah to Jonesboro you take the rate to Atlanta and add the local rate from Atlanta back to Jonesboro?

A. No sir; not from Savannah. From Savannah the rate to Jonesboro is made by the Georgia Commission, and their standard tariff is of course used. But I say if Jonesboro was affected by the Atlanta rate, if that combination on the New York Steamship rate made a higher rate than the rate to Atlanta plus the local back, we would adopt the lowest total so produced.

Q. Then the rate to Jonesboro is a rate that has been fixed for some time by the Georgia Commission?

A. Yes sir.

Q. So that that does not vary with the rates to competing points. It is a permanent rate?

A. If the rate to Atlanta would make a less rate, adding the local back, than the rate fixed by the Georgia Commission, that would have to be the rate at that point.

Q. Then you do do what I said in my first

question. You make the rate from Savannah to Atlanta the base, and you add the local back to Jonesboro?

A. Not to Jonesboro. That is not close enough probably to make it; but that is the principle. The Georgia Commission here make their rates on that basis—if the short local added to the competitive rate made less than the long local. I don't think Jonesboro is such a case, however.

Q. Take the point to which you have referred, six miles south of here, on the road to Mobile—the first station; what is that?

A. East Point.

Q. Is that a competitive point?

A. No sir.

Q. How do you make the rate from New York City to East Point?

A. That would probably be made—

Q. How do you make it; not how it would probably be made?

A. I do not make that.

Q. Who makes that rate?

A. The Central Railroad. That would be made with the rate to Atlanta added. The lowest total so produced would be the rate to East Point.

Q. You do not make that at all clear. I am inquiring about the rate from New York to East Point. Do you take the standard rate from New York to Atlanta and add the local rate to East Point?

A. We take the rate from New York to Savannah by steamship and add to that the rate from Savannah to East Point by the Georgia Commission tariff to see what the tariff is. Then we take the rate from New York to Atlanta and add the local of the Georgia Commission from Atlanta to East Point, and see what that total is. Whichever of those totals is the lowest would be the rate from New York to East Point.

Q. And that rate would be adopted by the Piedmont Line, for instance?

A. If the Piedmont Line worked to these points; yes sir.

Q. Do they not?

A. I don't know that they do. I do not think they do.

Q. Where do the Piedmont Lines make a tariff to the south?

A. There are no points south of Atlanta that they make a tariff to unless it is the East Tennessee road and the Georgia Pacific road.

Q. Where does the Georgia Pacific run?

A. From Atlanta to Columbus, Mississippi.

Q. Is that the Birmingham line?

A. Yes sir.

Q. What is the first station on that road?

A. Chattahoochee, I believe.

Q. How far is that?

A. About six miles.

Q. What is the rate from New York?

A. Take the Atlanta rate and add the local from Atlanta to Chattahoochee.

Q. How is that sum divided among the different roads?

A. The roads up to Atlanta would divide the Atlanta rate upon whatever basis they had agreed. In that case it would be a pro rate. The rate from Atlanta to Chattahoochee would be the regular local rate of the road.

Q. So that the railroads which reach the competing points divide on that basis?

A. Yes sir.

Q. And the other road gets the local rate?

A. Yes sir.

Q. Is that principle generally followed?

A. That principle is generally followed except where they have to vary a rate to a local point, and in those cases there are occasionally different arrangements made arbitrarily. Those cases are very rare.

By Commissioner Bragg:

Q. How do you make the rate from New York to Norcross?

A. I couldn't say positively; in fact I have never made any of those rates; but I judge the rate from New York to Norcross would be produced by the rate to Atlanta plus the local back.

Q. How would you make the rate from New York to Gainesville, Florida?

A. That is made on the rate to Augusta. Gainesville has been given the same rate as Atlanta.

Q. As a competitive point?

A. Yes sir.

Q. As I understand the way you make your rates, you charge the through rate to the nearest competitive point, and then charge the local from that point. That is the usual way?

A. Yes sir.

Q. Do you ever make any such charges as are called arbitraries?

A. I say that in some cases there are arbitraries; that those arbitraries are generally the result where the application of the actual local would produce different rates to different competing stations on that line. Arbitraries are made for the purpose of grouping stations as a general rule under one rate.

Q. Give us an instance of where you make an arbitrary.

A. For instance, on the Central Railroad of Georgia—I do not know the actual practice today, but for some years it was the practice to group the stations on the southwestern division, take the rate to Macon and add that fixed arbitrary on the through business to those points; but the business from Macon to each of those points might be a different rate from the rate to Macon proper.

Q. How does that arbitrary usually differ from the local rate? It is sometimes more and sometimes less, generally less, is it not?

A. It is generally less. Generally it is certainly as low as the average.

Q. Usually a little less?

A. Yes sir.

Q. Do you give special rates to any particular interests?

A. We give special rates to the manufacturers of the south; yes sir.

Q. You give special rates to the mining interests, too, do you not?

A. Yes sir; and we are now applying those special rates not only to the manufacturers but to the manufactured articles themselves, no matter by whom shipped.

Q. You are not a lawyer?

A. No sir.

Q. But I can ask you this question: I know that in Alabama the statute provides that spe-

cial rates may be given for the purpose of developing manufactures, special industries, mining, etc. Is there not a similar statute here?

A. The Georgia law provides the same thing exactly, sir. A road may make a special rate for manufacturers as against an ordinary merchant.

Q. That you do by classification?

A. No sir; you generally do it by giving the special rate. Formerly in our through business in regard to cotton factory products we did it by classification; but it is generally done by just giving those rates. Such rates in Georgia have to be filed with the Commission, of course.

Q. How do you find that the transportation of iron and coal in a State like Alabama compares with the transportation of the cotton crop in the business and revenue it affords to railroads?

A. I would not be able to answer as to the relative value.

Q. Can you not state approximately?

A. I have only lately had anything to do with the iron interests. We have to make our rates upon the iron products to meet the competition of other interests. We have what we consider very low rates upon iron, and according to the present outlook we will have to have still lower.

Q. I am not talking about the rates, whether high or low; but how the amount of revenue that you get from that business compares with the transportation of cotton or any other crop down there in the aggregate?

A. I would not be able to answer, from the fact that I have not got the statistics of the iron. We have them in the office, but I have not had anything to do with that branch.

Commissioner Bragg. I did not expect you to answer to an exact cent or dollar, but just approximately.

The Witness. I can ascertain.

The Chairman. I wish you would look into it and give us the statistics after dinner.

Mr. Stahlman. I think we will be able, if not here, certainly before the sessions of the Commission close in the South, to fully bring out the facts.

Commissioner Bragg. I have no doubt you will; but I thought perhaps this gentleman, being the Secretary of the Southern Railway & Steamship Association and accustomed to figures, could give it approximately. I have some idea myself on the subject.

The Witness. Only very lately so far as my duties are concerned, within the last month, I have taken in the iron interests, and therefore I have not looked over those statistics at all.

By the Chairman:

Q. You spoke of special rates to manufacturers. Are those under the law left to the discretion of the railroad companies?

A. Yes sir; I think they are left to their discretion. All such rates are filed with the Commission, of course.

Q. Are they made equally to all classes of manufacturers, or do they favor particular manufacturers?

A. We endeavor to make them equal between competing manufacturers. For instance, we endeavor to make the rates on cot-

ton factory products from Atlanta, Macon and Augusta, each, so that neither one will be at a disadvantage in reaching the various markets.

Commissioner Bragg. The Alabama Law provides that these special rates made by the railroad companies shall be filed with the Commission. Have they the same law here?

The Witness. The same law; yes sir.

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A. Yes sir; the law provides that the companies may give special rates—

Q. But is it customary to give the same rates to all kinds of manufacturers?

A. Yes sir; we give special rates here to a manufacturer of tubs the same as to a manufacturer of cotton goods.

Q. Do I understand you that you have a general rule that would apply and make the rates the same?

A. No sir; there is no general rule. The law allows it.

Q. The railroad companies determine what special rates they shall give?

A. Yes sir.

Q. And you say you intend to make them equal under similar circumstances; you mean to make them impartially?

A. Yes sir.

Q. But as between a manufacturer located at a competitive point and one located at a point not competitive, would not the effect of the special rate be to increase the disparity?

A. No sir. I have not got here any rates upon manufacturers at local points, but the rates are generally made so as to let those people come in in the same way. They are probably higher to some extent, but no higher than the relative rates charged on other goods.

Q. Still the rates on other goods would be preserved in respect to these special rates?

A. Yes sir; the local rates of the roads. I have had nothing whatever to do with the local rates, only the through business; and therefore there are some points I cannot answer except from general information.

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Q. You stated on cross examination that the railroads did not cut rates to river competitive points, but that there was a great deal of cutting. Has it not been the rule and practice of the railroads to make every effort possible to agree with the water lines and the rail and water lines on a fair adjustment of rates?

A. Yes sir; I, myself, have been in charge frequently of the endeavor to get an agreement with water lines for that very purpose, and so far without any success—or I have done very little.

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A. Just exactly what I stated. They are filed with the Commission and are open rates given to all manufacturers in the same line.

Q. And no one is favored?

A. No one is favored as between persons or places.

Q. Is it not true that the rates on all the factory products moved on short haul are approved by the Commission of Georgia?

A. Yes sir; all rates made in the State are subject to the approval of the Commission of Georgia. There are no rates now in force not approved by them.

Q. Do you know of the existence of any rate to or from local points in this section that you would consider oppressive, unjust or unreasonable as compared with the rate to competing points?

A. No sir; I have heard of none. I have lived at a local point below Atlanta for years, and I never heard the people complain of any unjust discrimination or of being oppressed at all. I did business there for years.

By **Mr. Alexander:**

Q. You spoke of the difficulty of getting water lines to maintain the rates. I want to ask you if you are familiar with the character of the business done by the water lines generally, the steamers from the southern coast to the north. Are they loaded heavily going north, and are they empty coming south, or is the reverse the case?

A. At certain seasons they are loaded more heavily going north. During the cotton season, for instance, they would be loaded very much heavier. The business has been distributed more evenly through the year than formerly in commercial articles.

Q. Besides cotton, are naval stores shipped from the south?

A. Yes sir.

Q. Is there anything else in the way of heavy freight?

A. Yes sir; some iron is being shipped by steamer.

Q. Is there any lumber?

A. Yes sir; considerable lumber.

Q. Is there any rice?

A. Yes sir.

Q. So that generally all the heavy products go north?

A. Very largely.

Q. What is the general character? Are the goods that go south heavy or light goods generally?

A. They are more largely dry goods, boots, shoes, clothing and what we would call the higher class of freights, lighter goods.

Q. In which direction then do the steamers want freight most?

A. Mostly coming south.

Q. In which direction are they least apt to maintain rates?

A. On the business coming south, where they want the freights most.

Q. Do they not absolutely require some freight for ballast?

A. Yes sir; they have got to have it, if they carry it for nothing. They have got to have a certain amount.

Q. A tariff has just been laid on the table of rates made from Charleston and Savannah to some other points. By whom were those regulations made?

A. By the Georgia State Commission.

Q. Please read the sixth regulation concerning freight rates.

A. (Reading.) The freight rates prescribed by the Commission are maximum rates, which

shall not be transcended by the railroads. They may carry, however, at less than the prescribed rates, provided that if they carry for less for one person, they shall for the like service carry for the same lessened rate for all persons, except as mentioned hereafter; and if they adopt less freight rates from one station, they shall make a reduction of the same per cent at all stations along the line of road, so as to make no unjust discrimination as against any person or locality.

But when, from any point in this State there are competing lines, one or more not subject to the jurisdiction of the Commission, then any line or lines which are so subject, may, at such competing point, make rates below the standard tariff, to meet such competition, without making a corresponding reduction along the line of the road.

By the **Chairman:**

Q. What is the date of that order?

A. It is practically the order they have had in force since their organization. This is a reprint of their tariff dated March 1, 1887. It is practically the regulation, and I do not know that there is any change whatever—I am satisfied there is no change whatever in treating that, since they were first organized. The first tariff contained that same regulation.

Q. In reply to a question you spoke of not considering these local rates, at any time that you had known of them to be unjust as between a local point and a competitive point. What I want to bring out now from you is your reason for that statement. Suppose, for example, to the point next from Atlanta in the direction of the sea board the rate for a car load was higher than the rate to Atlanta for a car load of the same material. Why would you say there was no injustice in that?

A. There are a number of elements entering into that. The cost of the service at the station is much less, and the volume of business is different. The cost of the service would be a very large element in determining that.

Q. Is that all you care to say to say about it?

A. That would be the largest element. They get the benefit of their location as fairly as it is possible to arrange it.

Q. Suppose as a matter of fact that station, by reason of the volume of its business, was one where the expense was proportionately less than to the competitive points. Would it be given the advantage of the diminished rate?

A. I think in such a case it would be given the advantage.

Q. Does not that frequently happen to be the case?

A. Not in this country, sir.

Q. But when that is found to be the case the rates would not be fixed in the manner you have described?

A. That would be a matter for each road to settle; but I think they would give that point, if it came into competition with any other—

Q. I am not speaking of that as a competitive point. Suppose it is not a competitive point, but still the volume of business is such that the cost of transacting the business is less than it would be at the competitive point in proportion to its volume.

A. It would be given that rate; that is, provided it did not result to the injury of other

points around it; did not draw from other points, and detract from them.

W. F. Shellman appeared before the Commission and having been duly sworn was examined as follows:

By **Mr. Alexander**:

Q. Please state your present office and duties?

A. I am the traffic manager of the Central Railroad of Georgia. My duty is to supervise the rates of freight and passengers.

Q. You are familiar with its business?

A. Yes sir.

Q. Are statistics sent to your office of the amount of business over different lines and in different directions?

A. Yes sir.

Q. Are you familiar with the rates of connecting and competing roads?

A. To a certain extent; yes sir.

Q. How are your rates from New York to Mobile and New Orleans made?

A. They are made to meet the rates of the direct steamers to those points.

Q. Are you familiar with the general drift of business done by steamers between the north and the south?

A. To some extent.

Q. In which direction do those steamers have the most business, north bound or south bound?

A. I could not state that definitely. Of course in the winter during our cotton season the heaviest loads go north; but in the spring and early fall the steamers have better loads coming south.

Q. What is the character of the goods that they bring south?

A. Goods that are manufactured in the east; dry goods of every description.

Q. Can you load a steamer up to her draft with these goods possibly?

A. I hardly think so.

Q. What is the character of the goods that they take north besides cotton in the winter, and is the cotton compressed or plantation baled?

A. It is compressed in the busy season usually, but at other times the steamers carry some uncompressed to get rid of the expense of compressing it. The other principal articles carried north are lumber, pig iron, and naval stores, turpentine and rosin.

Q. Can you load vessels to their capacity with those goods?

A. You can, on account of the density of the goods. You cannot load a ship with what we call dead weight. You cannot load it fully up to its capacity. A steamer, as I understand, can only carry a certain amount of what they call dead weight. For instance, steamers that carry eighteen or nineteen hundred tons of freight would not take on more than three or four hundred tons of pig iron under any circumstances.

Q. But is there not always at the south enough of heavy material such as lumber, naval stores and pig iron to put in up to the capacity of the vessel or to give her ballast?

A. To give her ballast, but not to load her to her capacity always.

Q. Is there any heavy freight to give her ballast coming south from the north?

INTER S.

A. I can think of nothing except the company's railroad iron. Formerly before the naval stores trade grew to the extent it is now, and before we had any pig iron, we had very frequently to carry those rails on the return trip for ballast.

Q. Please state whether, in your opinion or from your knowledge, the steamers can take any sort of rate in competition better with north bound freight, or with south bound freight.

A. I do not know. If a steamer is not full they could of course take as low a rate in one direction as another. Any additional business could be taken at a lower rate. If she is not full she could take in either direction, south or north.

By **Commissioner Morrison**:

Q. Is it harder to get heavy freight south?

A. Yes sir; the heavier character of business.

Q. And so the inducement to take them at a low price is greater?

A. Yes sir.

By **Mr. Alexander**:

Q. Will you state how the local rates of the road that you represent are made?

A. We use the rates authorized by the State Commission.

Q. Do you in any case make them lower than those authorized by the Commission?

A. No sir; not local rates, strictly speaking, except in the case of such manufactured articles as the law permits us to make whatever rate we think is reasonable.

Q. Are you in the habit of making special rates for manufacturing enterprises?

A. Yes sir.

Q. Are they given to a particular company or to all that class of manufacturers generally?

A. We never make any rates but what we publish at our stations. We never make a rate in favor of any particular party. When we make a rate between any points for one party, it is of course open to every shipper of the same character of business.

By **Commissioner Walker**:

Q. As I understand you, the rates to points on your road are invariably fixed by the State Commission, and they are made up on a mileage basis, are they not?

A. Not strictly sir, I believe; that is, the Commission do not increase their rates pro rata according to distance.

Q. It is so much for a certain number of miles?

A. I do not know what their basis is. They have just prescribed rates. What basis they have I am unable to say.

Q. Do they prescribe rates for you at competing points?

A. No sir.

Q. All they do in reference to competing points is to let you alone?

A. Well, all rates we make that are below theirs, and all rates we make, whether below or not, are filed with the Commission; and it is presumed, having supervision of them, that they indorse them, of course.

Q. That is presumed from the fact that they do not say anything about it?

A. Yes sir.

Q. They do give you a maximum on the local business, and otherwise you fix your own rates?

A. We fix our own rates where there are any lines that are not under the jurisdiction of the Commission; any competitive lines or competitive markets.

By the **Chairman**:

Q. What road do you represent?

A. The Central Railroad of Georgia.

Q. What are your connections for New York business, and at what points do you receive it, either by water or by rail?

A. Our lines extend from New York, Philadelphia and Boston, by water to Augusta.

Q. You say your lines. What lines?

A. The Central Railroad lines; the lines they are interested in.

Q. Do you mean that they are interested in steamship lines?

A. We are interested in the Ocean Steamship Company; yes sir.

Q. Coming to what ports?

A. Between Boston, New York, Philadelphia and Savannah. The rail lines extend to Augusta, Spartanburg, South Carolina, Greenville, Anderson, Atlanta, Montgomery, Albany, Macon and all intermediate points.

Q. You have no all rail lines to New York or any northern ports?

A. No sir; there are no all rail lines over which we make rates into that territory. We have connections, of course.

By **Commissioner Bragg**:

Q. Is there any regular line of steamers running between New York and Savannah, except the steamers of the Southern Railway & Steamship Association?

A. It is the Ocean Steamship Company which is a member of that association. There is no other between New York and that point.

Q. That steamship line from Savannah to New York is part of the system of the Central Railroad, is it not?

A. It is a separate organization. It is the Ocean Steamship Company, chartered as such.

Q. But it is run in connection with the Central Railroad?

A. Yes sir.

Q. Is there any line of steamers running from New York to Port Royal?

A. Yes sir.

Q. A regular line?

A. A regular line.

Q. Is there a regular line of steamers running from Charleston to New York?

A. Yes sir.

Q. Is there a regular line of steamers running from Brunswick to New York?

A. Yes sir.

By the **Chairman**:

Q. Are those lines members of this association?

A. Yes sir. The Mallory Line, which runs to Port Royal, and thence to Brunswick and Fernandino, I understand, are not now members of the association. They have been.

By **Commissioner Bragg**:

Q. Are there other ships that bring freight from New York and Boston to Savannah, besides the steamships of the Southern Railway Steamship Association?

A. No sir; no others that do any regular business.

By **Mr. Stahlman**:

Q. Is it not true that on low grades of freight, such as grain, flour, provisions, etc., the steamships have strong competition between Baltimore, Charleston, Savannah and New York with the schooners; in other words, unless the rates are fixed very low by the steamers, that the schooners come in and take the business?

A. Yes sir; that is the fact. Furthermore, the schooners come in empty for the lumber business, unless they can get something. They come in for return freight and they can afford to carry very low.

Q. You say that the schooners frequently come in empty for the purpose of taking out cargoes of lumber?

A. Yes sir.

Q. And they are willing to bring the low grades of freight in at a nominal rate of transportation, in order to get something for ballast?

A. Yes sir; they have got to have a certain amount of ballast. I believe ships have been known to buy ballast. I have heard so.

Q. Is it not true that your steamers, during a certain season of the year, now, for example, are coming from the northern ports to the Southern ports very poorly laden; in other words, without a sufficient amount of traffic to answer even for ballast?

A. Yes sir; we have to calculate in the company's supply of rails that they buy and scatter them along through the season so as to give the ships a certain amount of ballast. They have to provide for the ballast in that way to some extent.

Q. I want to ask if you as traffic manager of the Central Railroad system, including the steamship lines, have not endeavored to secure a fair adjustment of rates to New Orleans and Mobile and Pensacola on business from the east, particularly in which you are most interested; and whether or not the steamship lines running into the ports of Mobile and New Orleans have endeavored to co-operate with you?

A. We have had agreements with the steamship lines at times running to New Orleans; but even at the same rate of freight we transported but a very small percentage of business, and we are confident it was on account of their nonconformity with the rates. We are satisfied of that.

Q. Were you apprised of the fact that at or about the 5th of April the steamship lines running between New York and New Orleans undertook to advance the rates materially, assuming that the railroads would withdraw from competition for that traffic?

A. I do not know that as a fact. I have had it proposed by the steamship lines to New Orleans to advance the rates recently. Whether it was about the 5th of April or not I do not know. They made a proposition to advance the rate to New Orleans. I think it was subsequently to the 5th of April.

Mr. Stahlman. We will undertake to show that hereafter.

The Witness. I have no proposition of about that date.

T. M. Emerson appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. H. Walters**:

Q. What position do you occupy?

A. I am general freight and passenger agent of the Atlantic Coast Line.

Q. Are you familiar with the rates that are made over that line?

A. Yes sir.

Q. How are the Richmond rates made to and from eastern cities?

A. The rates to and from the east for Richmond are made by direct steamer lines running to certain of the eastern cities, for instance New York and Philadelphia, by rail and water lines to Baltimore, and also by the short all rail lines running directly from Richmond to the eastern cities.

Q. How are the Richmond rates from western cities made?

A. They are made by the shorter rail lines, and the basis is usually the rate of the Baltimore Trunk Lines to and from the various western and northwestern cities.

Q. The rates to and from Petersburg are made relatively in the same way?

A. The rates to and from Petersburg are made practically the same as Richmond. Their situation is similar in every respect, both as regards the articles they consume and produce, and as regards the mode of transportation and the different facilities they have for reaching the different trade centers.

Q. What is the method adopted for making rates to Tarboro, North Carolina?

A. They are governed by the rates of the water lines running on the Tar River in connection with the water lines running through the sounds of North Carolina and connecting at Norfolk with the ocean steamship lines. The rates are fixed by these lines, and the rail lines by Wilmington adopt these rates. The territory between the two points, Tarboro and Wilmington being similar to the Tarboro situation, the rates are in no case higher for the shorter than the longer distance; but that is not the case on the lines working out towards Weldon. They are not a factor in making the rates that exist at Tarboro.

Q. The rates at Fayetteville, North Carolina, competitive rates, are made how?

A. They are controlled and made by the steamboat lines on the Cape Fear River at the head of navigation, in connection with the ocean transportation lines from Wilmington to New York, and via New York to the various points that are reached. The combination of these water line rates fixes the maximum total which can be observed at Fayetteville. Neither of the rail lines are direct factors in making the rates.

Q. What is the method adopted at Wilmington, North Carolina, and what governs the rates there?

A. The rates there are governed by the steamer lines from New York to Wilmington and the rail lines are made approximately the same, allowing a difference of insurance and slowness of transportation. Other eastern cities are governed by the rate that is made between New York and Wilmington.

Q. And the western rates?

INTER 8.

A. The western rates are governed in the same way, by the trunk linerate to New York plus the rate from New York to Wilmington by steamer; and that has been met by the rail line via Richmond into Wilmington.

Q. The line into Richmond is considered as a trunk line?

A. Yes sir; as I said before, they observe the trunk line Baltimore rates to Richmond as a general rule.

Q. What is the method adopted in making the competitive rates to and from Columbia?

A. They are made by a combination of steamer rates from the east to Charleston plus the rate authorized and approved by the South Carolina Commission between Charleston and Columbia, making a total of the New York and other eastern city rates to Columbia.

By the **Chairman**:

Q. You speak of the rates fixed by the State Commission of North Carolina.

A. No sir; I am speaking of the rates approved by the Commission of South Carolina. They do not now fix the rates. When they did fix them they observed the same rule. The rates are now fixed generally by the ocean carriers and by the railroad, and can only be changed by joint consent. They fix a rate from Charleston to Columbia which is less than the intermediate rate; and the combination of that rate with the rate the steamers work from New York and other eastern cities to Charleston fixes the Columbia rate.

Q. And that is less than the rate to the intermediate points?

A. It is less than the rate to the intermediate points on all lines which go into Columbia; certainly so by our lines.

By **Mr. Walters**:

Q. The rates at Charleston are competitive rates?

A. Yes sir; and they are likewise fixed by the steamer lines plying directly from Charleston to eastern cities. The rail lines are no factors there in making the rates; at least the rail lines I represent. It likewise applies to the western business to a considerable extent; but we do not do the western business in there, and so I can't answer that matter in detail.

By **Commissioner Bragg**:

Q. How many steamship lines run from New York to Richmond?

A. There is one steamship line, the Old Dominion Line. They have, I believe, two ships a week, or possibly three.

Q. Is that line run in connection with the Richmond & Danville Railroad?

A. They run in connection with the Richmond and Danville Railroad at West Point. It is a different line, I believe. They have numerous lines. Some of their ships run by way of West Point, but I am not certain whether they connect with the Richmond & Danville or not. I am inclined to think they do not.

Q. Has the Old Dominion Line no connection at all with the Richmond & Danville Railroad in its ownership and management?

A. As I said before, it has a connecting line at West Point. I don't think it connects at Richmond with them.

Q. You say it is the only steamship line to Richmond from New York?

A. I know of no other.

Q. Is there any steamship line from Richmond to Baltimore?

A. There is not now. There is a steamship line from West Point in connection with the York River Road.

Q. What steamship line is that?

A. The Richmond, York River and Chesapeake Bay Steamboat Company, I believe it is called.

Q. And that runs in connection with the Richmond & York River Railroad?

A. I so understand it.

Q. Is there any steamship line from Richmond to Boston?

A. There is not. There is a connection by the Newport News & Mississippi Valley Road at Newport News with the steamer line to Boston.

Q. Does the Mississippi Valley and Newport News Line run in connection with the steamship line from Newport News?

A. They run in connection with the steamship line for Boston and Providence business.

Q. At Norfolk is there not a steamship line that runs in connection with the Norfolk & Western Railroad?

A. Yes sir.

Q. What line is that?

A. To what point?

Q. From Norfolk to New York.

A. The Old Dominion I believe. I am not familiar enough with these lines to answer definitely. I have no connection with them. I simply know they are there.

Q. Do you know about the steamship line at Wilmington?

A. Yes sir.

Q. What line is that?

A. It is known as the New York & Wilmington Steamship Company.

Q. Does that run in connection with any railroad there?

A. Yes sir; it runs to a certain extent in connection with the Wilmington, Columbia & Augusta, and Wilmington & Weldon Railroads; that is, it brings business for their local stations.

Q. Do you know what steamship lines run from New York to Charleston?

A. There are several, what is known as the Clyde Line, I believe, and the Quintard Line. I think those are all.

Q. Do they run in connection with any railroad?

A. I believe they run in connection with the lines at Charleston, and in a similar manner with the steamship connections at Wilmington—to the lines that are carrying business from and to them.

Q. Do you know anything about the Port Royal Steamship Line?

A. I understand there is a line there, although I know nothing about it from personal knowledge.

Q. You say Fayetteville is the head of navigation on the Cape Fear River?

A. Yes sir.

Q. How long during the year do steamships run from Wilmington up to Fayetteville?

A. They run off and on all seasons of the year. They depend somewhat on the frequency of the rain, but I believe there is no special season of the year when it can be considered

as certain that they cannot get there. They have to depend on the weather.

Q. Are they small boats or large boats?

A. They are small boats, sir; that is, boats of very light draught, but boats that carry a great deal of freight.

Q. Is there any steamboat that goes up any river from Charleston to Columbia?

A. No sir.

Q. Is the Tar River navigable to Tarboro all the year?

A. Not all the year. It is something like the Cape Fear River in that respect. For the last three years it has been navigable nearly the entire year. At other seasons it is not.

Q. The steamers that run up the Tar River are small, are they not?

A. They are light draught boats, but large so far as carrying capacity is concerned.

James R. Ogden appeared before the Commission and having been duly sworn was examined as follows:

By **Mr. Stahlman**:

Q. What is your occupation, and where do you reside?

A. Vice Commissioner of the Southern Railway & Steamship Association; Atlanta, Georgia.

Q. You are familiar with the business of this section of the country?

A. I am somewhat familiar with it.

Q. How long have you been connected with the railroad systems of the south?

A. With the East Tennessee, Virginia & Georgia road since 1865, until last February. Since then, for one year as Commissioner of the Associated Roads, and since April 1 as I before stated.

Q. Are you familiar with the reasons which actuate the railroads in charging a less rate of transportation on western produce, or charging a less rate on the products of the south going west or north between the Cities of Louisville, Charleston, Savannah, Brunswick and Wilmington than between other points?

A. I think I am.

Q. Will you please state to the Commission what is the basis upon which rates are adjusted, from Louisville to Charleston, for instance?

A. I will state that what affects one point in the west affects all alike, as you can see. The rates from Louisville to Charleston are made as high as we think the water competition will permit. We base that on the relative movement of business between the rail and water lines via the coast and the interior rail lines. From the best estimate that we can obtain, the rail lines through Louisville, Cincinnati and other river points, have not done more than forty per cent of the business to the coast so far as we are able to get the statistics, and we have very full statistics. We have also special evidence and positive proof of rates on provisions being made from western points—I will take Hillsdale, Michigan, for instance, on which about a hundred thousand pounds of flour have been moved in the last week at a rate of twenty-three cents to New York, added to a rate of seven cents from New York to Savannah, a total of thirty cents per hundred pounds, as against the all rail rate from the same point through Louisville or Cincinnati of fourteen

cents per hundred pounds higher, which is the lowest rate we can make. In fact, during the month of April our information is that at least seventy per cent of the business going to the coast cities has gone via the eastern ports, particularly via Newport News and Baltimore.

Q. Will you please state to the Commission what is the basis of fixing rates to points in the interior near the Southern Atlantic Coast, say Macon, Augusta, Columbia and such points?

A. The western business is principally a provision business. You can enumerate in about five articles almost all the articles shipped from the west. On those articles to Augusta the rates are made—on bacon six cents higher than Charleston, on grain and flour four cents per hundred pounds higher than Charleston. Those are the principal articles that are shipped.

By the **Chairman**. Higher than would be made by rail to Charleston?

A. Yes sir.

By **Mr. Stahlman**. And the reasons for that are that the water lines competing with the rail lines at the coast would charge about that rate?

A. That is it exactly. The rate to Atlanta is thus made arbitrarily two cents less than Augusta for the purpose of enabling Atlanta people to distribute in competition with Augusta. The rate to Macon is made the same as Augusta for the same reason. I have the basis of a large number of points that I can file with you to show how they are all made.

Q. You say some of these rates are forced upon the rail lines by the competition of the New York and Baltimore steamers and schooners; and you say that the rates to Atlanta are arbitrarily made for the purpose of enabling Atlanta to compete with the other markets. Do you know of any rates from the west to this interior country, made for the purpose of giving one locality similarly situated, one commercial center, any advantage over another?

A. I do not. I believe the rates are as properly and fairly adjusted as it was possible to do under the circumstances. A great number of points are made the same as Atlanta for the reason that they are competing with Atlanta or competing with each other. I have promised Mr. Walker to file with him an explanation of the basis of all those points.

Q. If the rail lines should be obliged to reduce their rates of transportation to interior points corresponding with the rates to the coast, what in your opinion would be the effect upon the railroad transportation companies which undertook to participate in the competitive business to the coast?

A. It would have a serious effect on the revenue of the roads to abandon the coast business.

Q. If they should elect to continue in the coast business, and yet be compelled to reduce the rates to intermediate points for shorter distances to the basis of coast point rates, is it, or is it not your opinion that the railroads would become bankrupt under such an adjustment?

A. I think it is. I have made out and just had completed a full statement of the entire business with all the coast cities from all western points. It amounts in revenue to the in-

terior lines south of the Ohio River to very nearly a million dollars a year—the business going to the coast cities—and that would be a very serious loss.

Q. I do not think you get the point. The point I make is this: if the railroads for any reason should see fit to continue to compete for that million dollars worth of business at a comparatively low rate, and should be forced to reduce their rates to and from intermediate points to the total rates thus fixed, would not the effect be disastrous to all of the railroads that participated in such business?

A. It would be very disastrous indeed. There is no question about that. It would be an immense loss.

Q. As Vice-Commissioner, do you know of any particular complaints from parties located in this section of country at points that are not terminal nor competing points, and not given the benefit of rates to such points?

A. I cannot think now of a single instance of complaint. If there are any such complaints they have not been made to me; but, on the contrary, I have been told by parties paying more revenue to the roads at local stations than any other parties paid, that they were perfectly satisfied with the local rates paid as adjusted by the Railroad Commission of Georgia. I think there is a very general feeling of satisfaction with those rates on the part of the shippers; more so than by the roads.

Q. In other words, it is your conclusion that the people of this section are satisfied with the present adjustment of rates, whether located at terminal points or at local points; and, if at local points, such points receiving, as they do now under the present adjustment, the benefit of the competitive rates to competitive points?

A. I do think there is a more general satisfaction with the adjustment of rates at both competitive and non-competitive points in this territory, than in any other section of the country.

Q. Is it not true that a large proportion of the products of this country are moved on long haul rates; for instance, rosin, turpentine, cotton, iron, coal, etc.?

A. I think the majority of the business brought into the south as well as taken out of the southern territory is on long haul. I will say, as you allude to rosin and turpentine on the coast, that the steamship lines have made rates so low for naval stores that the rail lines don't attempt to touch that business. They let it go by water, except to a very small extent.

Q. You are familiar with the situation so far as it applies to the rates of transportation on traffic to and from the western cities of Louisville, Cincinnati and St. Louis with New Orleans, Mobile, Pensacola, Vicksburg and Memphis. What is the controlling factor in the adjustment of rates between those cities?

A. The controlling factor in the adjustment of rates between St. Louis and other river points and New Orleans is, of course, the Ohio and Mississippi Rivers. The basis to Mobile is the same as to New Orleans, or probably the same as the open rate to New Orleans. The rates have been more frequently cut to

New Orleans than to Mobile, perhaps, so that Mobile has probably been always a little higher than New Orleans. But to enable Mobile to compete with New Orleans in the interior, the rule is pretty general to make it about as near the New Orleans rate as can be ascertained.

Q. Will you explain to the Commission why the rates at times might be made a little higher to Mobile than to New Orleans?

A. Simply because it is not always possible to follow the changes on the Mississippi River. The rail lines are more regular in their charges than the Mississippi River.

Q. Is there not another element? There are regular steamers plying between the western cities on the Ohio and Mississippi Rivers and New Orleans?

A. That is what I mean by water competition.

Q. And Mobile, while it has indirect benefit, yet has no direct water competition?

A. Yes sir. In order to enable Mobile to compete in distributing to the interior, we have to give it the same rates as New Orleans, and give it the advantage of New Orleans competition.

Q. In other words, the benefit?

A. Yes sir; the benefit of New Orleans competition.

Q. What affect the rates from the west to Montgomery?

A. The rates from the west to Montgomery are made by taking the rate to Mobile and adding, as near as we can ascertain, the rates of the steamboats on the Alabama River from Mobile to Montgomery.

Q. In other words, you mean to say that Montgomery has water competition and that fixes the rate of transportation?

A. It has very active water competition.

Q. Is not that true of Selma?

A. The same line runs to Selma on the same river, and it is just as active at Selma as at Montgomery. There are two steamboat lines on that river fighting each other very much, which reduces that rate. The rate on grain and provisions is not over five cents a hundred today from Mobile to Montgomery, while the rail rates are higher than that.

Q. Is it not true that the river competition on the Ohio and Mississippi Rivers from the west has the same effect upon the business to and from Vicksburg, that it has on business to and from New Orleans?

A. It is, evidently.

Q. Is it not also true that it affects the rates to the interior of Mississippi via Vicksburg, that is to say, for instance, to Jackson and Meridian?

A. It does. The rates to Meridian and Jackson are made by adding the short rail rate to the long water rate. Their proximity to the Mississippi River absolutely controls those rates.

Q. And what applies to Vicksburg also applies to the business between the Mississippi and Ohio River points and Memphis?

A. The same, of course, applies to all river points.

By the **Chairman**:

Q. What determines the rate from the west to Atlanta?

A. As I explained before, the rates to At-

lanta are made two cents less than to Augusta, to enable Atlanta to compete. It is a little shorter distance.

Q. Then it is not competitive forces exclusively that determine the rate?

A. It is competition between the markets of Atlanta and Augusta.

Q. It is your judgment of what would be right as between the two places?

A. It is something that has been established after years of fighting and compromising. Neither parties were satisfied, but both parties are satisfied it is the best that could be done.

By **Commissioner Morrison**:

Q. Where are the markets?

A. In territory contiguous to both points. The Georgia railroad extends between Atlanta and Augusta. They both want to supply and distribute business to that territory; and a very great difference in rate between one place and the other would give the city having the low rate the best chance to get the whole business.

Q. When you come the other way, how is it?

A. When you come from the east?

Q. Yes; by way of Savannah.

A. As was explained by Mr. Sindall, there is a little—he didn't explain the difference, but he explained the basis. We take our steamship rates from the east.

Q. I am talking about results. Which is the higher?

A. It is higher from the east, and the reason it is higher from the east—

Q. Which has the higher rate from the east, Atlanta or Augusta?

A. Atlanta has the higher rate from the east. It can stand, probably, a little higher rate from the east more than it could from the west, for the reason that the eastern business is merchandise and dry goods on which the rate does not affect the articles distributed, while from the west, on grain and provisions, a very small difference will determine the point from which it will be distributed.

By **Commissioner Walker**:

Q. You have a rate established to Atlanta on business from Chicago and Michigan through Louisville. Through what places does that business pass twenty or thirty miles north of here?

A. Marietta is an important point twenty miles north of Atlanta.

Q. At that point the rate is higher than it is to Atlanta, is it?

A. The rate is slightly higher to Marietta than it is to Atlanta. I will give you the exact figures. The rate from Atlanta to Louisville (and the rates north of the river are all based on Louisville and Cincinnati) is \$1.07 for first class. To Marietta it is \$1.26. That is made by adding the Georgia Commission local to the Atlanta rate in that special case.

Q. What Georgia Commission local?

A. The full Georgia Commission local rate.

Q. From where to where?

A. From Atlanta to Marietta.

Q. Just as though they had brought the freight down and carried it back?

A. Yes, sir.

Q. Is that principle adopted at the various stations in that vicinity?

A. It is uniformly pursued at all the stations between Chattanooga and Atlanta. The rate is made by the lowest combination added either to Chattanooga or Atlanta.

By the **Chairman**:

Q. If I understand you, the highest rate in between those points would be somewhere near the center?

A. Not necessarily. The basis of the rate from the west to Chattanooga is the same rate per mile as Atlanta, to enable Chattanooga to distribute, so that nearly everything on the Western Atlantic Railroad between Atlanta and Chattanooga is based on Chattanooga. I can tell you exactly how far it comes down.

Q. Suppose you name the point?

A. It comes very close to Atlanta, almost to Atlanta.

Q. Is that the furthest point north?

A. It is this way: Bolton is made on Atlanta, and every other station is made on Chattanooga—that is on some classes. I find in looking through that some classes are made on one point and some on another. There is not any one point that has the highest intermediate rate.

By **Commissioner Walker**:

Q. What is the rate to Bolton on that same class that you gave us?

A. The rate to Bolton is \$1.21.

Q. So that Marietta is a little higher than Bolton?

A. Marietta is a little higher than Bolton.

Q. But it is further north?

A. It is further north.

Q. Is there any reason connected with the movement of the freight whereby, if you have a car load of flour coming from Michigan to Marietta, you should charge more for it than you should to Bolton?

A. I think that introduces a pretty large question. It introduces the question whether local rates should be lower than through rates. In my opinion there are excellent reasons why they should not.

Q. We want to know the reasons?

A. I think there are other gentlemen here who can give them a great deal better than myself.

Mr. Stahlman. I do not think you have understood the question.

The Chairman. I think he has understood the question very well. I do not think anyone could make it more intelligible.

The Witness. I do not know how to answer it in a few words. I think there are a good many people who can.

Q. I should like to know what reasons there are for making the rate from Detroit to Marietta higher than the rate from Detroit to Bolton.

A. Our southern territory is mostly an agricultural territory. When the roads were built they had a fixed business on which they had to depend for their fixed expenses. They were dependent, most of these roads, for a long time, on that purely local business. They had no through business at the start. By and by, when other roads were built and competitive points were established, they were compelled by the force of competition to accept low rates between those points which had competition. If they had adopted the plan of

reducing their local rates to the same figure, it would have produced absolute bankruptcy. Their pay rolls would not have been paid. It was purely necessity that made them. We will take the Alabama Central Road, a road with which Captain Bragg is very familiar, no doubt. That road has a purely local business; nothing, or almost nothing but cotton. It has a certain number of bales of cotton a year to carry, dependent on the seasons, and with more or less every year. It has to depend on the revenue it gets on that cotton for its expenses. It has to provide for its revenue in proportion to that. They do almost no through business. They are not located where they can do it. They do very little through business. It would be simple bankruptcy if they adopted this plan in making their rates.

There is another good reason that I think I have never heard given. As the roads are enabled to increase their through business, although they may do it at a very small profit, they have to increase the expenses of running the road, and the local territory on the line of the road gets the advantage of the money spent in operating this increase of through business which is brought to the road. I can give the Commission instances where roads in the south that are actively engaged in through business and have also a good local territory, spent more money upon the line of their road than every dollar collected—more than that road received—every dollar it received from the people of every local station on that road. I think that is a good reason why the local rates should bear a larger proportion of the—should be larger than through ones. There are a great many points, but I have not been in the transportation department at all, and do not feel competent to speak. There are a great many gentlemen here who are well posted.

Q. So far as the cost of transportation is concerned, do you know why a car load of flour should be charged more if left at Marietta than at Bolton?

A. I take it the business does not go to Bolton so much in carloads. You would stop a train to put a barrel off; and it would probably cost you more to stop your train at that point for the small amount of business you do than you would get on the entire freight shipped.

Q. That is a reason why the charge should be higher at Bolton than at Marietta; but on the contrary, it is just the other way.

A. That is controlled by the competition at Atlanta. A party could ship to Atlanta and ship back; but that would not be a good reason for reducing every other local station on the road which was not similarly situated.

Q. That is actually the fact, is it? It is the low rate at Atlanta that fixes it.

A. That is it. It is the low rate at Atlanta that controls Bolton. You will find that would be generally true if we were compelled by a strict construction of the fourth section to advance our rates to these competitive points—the result would simply be an advance to every local point.

Q. Why do you say a strict construction of the section would require you to advance your rates to Atlanta? Why could you not make

your Bolton and Marietta rates the Atlanta rates?

A. It would reduce the revenues of the roads more than they could stand.

Q. Why could you not take an intermediate course, raise the Atlanta rate a little, and lower the rates at intermediate points?

A. That is exactly how we have figured. I have some figures based on such a calculation to show pretty well how it would come out. There is another point there. By advancing Atlanta and reducing local points you destroy the cities. The railroads have not felt like taking the responsibility of destroying these cities in which a great deal of money has been invested. We prefer to leave that to the law, or to the Commission.

By the **Chairman**:

Q. Have not the cities been largely built up by the preference in rates they have received?

A. Yes sir; I have no doubt of that; but still we think the rates are both just and reasonable.

By **Commissioner Walker**:

Q. You have just made up a tariff whereby you have raised the rate to Atlanta slightly, and reduced the local rates above Atlanta to the same figure, as I understand you?

A. We made out two tariffs, one to put into effect provided we did not get the suspension, and another to put into effect provided we had to construe the law strictly.

Q. What is the difference between those two ideas, in your view, according to those tariffs?

A. I have not got the local points figured out and couldn't tell. I have only got the competitive points. For instance, we proposed to put into effect a rate from Louisville to Cincinnati of \$1.26.

Q. That is taking the highest intermediate rate, is it not?

A. Yes sir.

Q. Why do you not go to work and get out a tariff raising the competitive points a little and then reducing the local points to the same lines?

A. You would have to commence at the coast. You cannot commence at Atlanta. You would have to commence at a point where you have water competition. It would be simply impossible for the roads to do it. They have got to get revenue. It would be impossible to commence at the remote points where you come in competition with water transportation and grade it all the way. You would have to abandon that part of the territory entirely. We could not take a twenty-five cent rate from Cincinnati to Charleston and grade it back. It would be ruin to the roads. You might take an Atlanta rate and you would not lose much, because it is comparatively high.

By **Commissioner Morrison**:

Q. You proceed on the idea that you would lose in quantity?

A. You would. The profit on the coast business is so small comparatively that the roads would be compelled to give that up and take business on which they made a profit.

By **Commissioner Walker**:

Q. You would have to start with the high-

est rate at some point this side of the coast?

A. Yes sir.

Q. Some point like Augusta, or perhaps as far inland as Atlanta?

A. Yes sir.

Q. Have you attempted to see where that point would be?

A. I have not.

Q. You have not made any attempt to fix a rate on that basis?

A. I have not.

By **Mr. Alexander**:

Q. Suppose now you were going to make your tariff in that way. You cannot reduce everything down as low as the coast, but would go back and take Augusta and then proceed from that. Would not that make a great disparity between markets on the coast and the line from which you started to level?

A. It would. It would absolutely throw the business to the coast. It would build up the cities located on the water and destroy the cities not located on the water. It would have that effect.

Q. So if you adopt that principle in full it will carry you down to the water competition of the coast, which would be ruin to your road; and if you only adopt it in part, you distribute the equilibrium between the coast market and the interior markets.

Commissioner Morrison. You have that inequality everywhere now. Then you would have it in one territory.

Mr. Alexander. It is not inequality. It is grading. Then there would be a sharp drop.

By **Commissioner Walker**:

Q. Why cannot this be done—very likely it can, but I want to know the reason, if any exists. The rate to Atlanta will be established at a slight advance from the present rate, giving all points back as far as Chattanooga the same rate; the rate to Augusta established in the same way, giving all points between Atlanta and Augusta the same rate; and the rate to Charleston established in the same way. Of course you may at the far point on the sea coast possibly be obliged to take an ocean rate which is lower than the Atlanta or Augusta rate; but why cannot all the intermediate points be worked from those basing points without having this great disparity as against the local stations?

A. We do not think there is a very great disparity against the local stations. If you will examine the rates, I do not think you will find it. They pay a little higher rate, but we have either got—

Q. Leave out the "great" and then answer the question.

A. There is a disparity; yes sir.

By **Commissioner Morrison**:

Q. You have already stated that in fixing the rate at Atlanta and Augusta you take into consideration something else besides the competition and the cost of carrying; that is, equalization of business. What becomes of the people between the two cities? There would be no distributing between Atlanta and Augusta?

A. None has been recognized; no sir.

By **Commissioner Walker**:

Q. Is there any practical impossibility in making rates in the way I have stated?

A. I do not think it is possible to make those rates in the way you have suggested, without the roads losing a very large amount of revenue. I think it would be a very serious injury to them. It is possible that the roads might be able to do it; but if they could do it, it would be a serious injury to communities, and they have not felt like taking the responsibility of it.

Q. They have never tried to make any such averaging of charges as I have suggested, have they?

A. They may have tried to make it for themselves. It would be better to get that information from each line. They may have worked on that. As an association we have not done anything of that sort.

Q. When you gave out to the public what the effect of the Interstate Commerce Law was to be, you simply did it by raising the rates to the distributing points to the highest intermediate local?

A. In some cases it might have been the highest intermediate local. It was probably not in all. It would not be in all cases.

By **Mr. Stahlman**:

Q. Do I understand you to say that the tariff was made assuming that the law required an advance of rates to terminal points, and that such a tariff was issued before the relief was asked for?

A. I say that we figured on the two rates.

Commissioner Walker. It was made public. It was not issued for operation; but it was given to the press.

The Witness. I do not think it was given to the press. I do not think it was. I never saw it out of the records of our office.

Q. Is it not true that the rail rates from the west do not at all times control the rates to Atlanta? Is it not true that when the rates from Chicago to Baltimore are very low, which has been the case frequently—

A. I have known instances in which the combination on Richmond has disturbed it, but I don't know of any on Baltimore. My impression is that there has not been any on Baltimore, though others may know better. I know the combination on Richmond has sometimes affected it.

Q. Are not the rates as adjusted at present due largely to competition over which the rail lines have no control in the interior as between markets; that is, the grain from one section reaching this territory would have an effect upon the rates of transportation from another section?

A. Yes sir; they are controlled to a very large extent by water. For instance, the rail lines do not control to-day the rate on provisions from the west to Montgomery. Montgomery competes with Atlanta. Therefore if the lines interested in Atlanta business want to do any business they have got to make such rates as will compete with Montgomery, which is controlled by water; so that that extent Atlanta would be controlled by water.

Q. As between terminal and local points is it not true, and is it not an element in the adjustment of the rates as between those points, that the business of reaching the terminal

points pays the transportation companies two rates, one coming in and another going out, and that that is not the case at local points?

A. Yes sir; of course the business that is distributed is handled twice by the same line always, but it is often handled by the same line.

Q. Have you heard any complaints from Bolton or Marietta?

A. I have not.

Q. Or any other point on the Western Atlantic road?

A. I have not heard any complaints. I have neither heard privately nor officially. I have only been in this territory a month, but we have got nothing of the kind officially or privately.

Q. You have been connected with the business from the west to this section of the country for some time?

A. Oh yes, sir; for a great many years.

Q. You are a member of the Rate Committee?

A. Yes sir. During that time we have probably had complaints, but I have not heard of any complaints for the last two or three years. I believe the people at local points are generally satisfied. The rates are established by the Commissions of Georgia, Alabama and South Carolina, and are exceedingly low.

By **Commissioner Walker**:

Q. These Commissions do not establish the rate from Louisville?

A. Those Commissions establish the local rate on which that rate is based. They certainly affect it.

Q. They do not establish the interstate commerce rate on flour from the great west?

A. No; but the Georgia Commission rate is charged on interstate business.

Q. After you once get it into the State, you add the Georgia Commission rate to the local point?

A. Yes sir.

By **Commissioner Bragg**:

Q. You say the rate on western freights to Chattanooga is the same as it is to Atlanta?

A. The same rate per mile as to Atlanta.

Q. How does it differ then from the Atlanta rate?

A. It is 138 miles less distance.

Q. Therefore it is that much less?

A. Therefore it is that much less.

Q. How much does it amount to?

A. The difference on first class between Louisville and Cincinnati to Chattanooga and Atlanta is seventy-six cents to Chattanooga and \$1.07 to Atlanta.

Q. What determines the rate to Chattanooga?

A. It is simply made by agreement to enable Chattanooga to do distributing business; simply by agreement of the lines.

Q. The lines terminating at Chattanooga?

A. Yes sir; an old basis that has been established for years.

Q. Water competition has nothing to do with the rate at Chattanooga?

A. Water competition has nothing to do with the rate at Chattanooga, except so far as Atlanta might be affected by water competition.

Q. The Tennessee River does not cut any figure in it?

A. The Tennessee does not cut any figure in it at present. It probably will in a short time.

Q. What is the rate on western freight to Decatur, Alabama?

A. I have not the rate. You will have to ask Mr. Culp about that. It is a point to which we have never made any rates in our association. It is simply made by agreement between the Memphis & Charleston, and Louisville & Nashville roads.

Q. What is the rate to Birmingham, Alabama on western goods?

A. The basis is the same rate as Montgomery.

Q. What determines that?

A. Competition with Montgomery in distributing.

Q. Is that the only reason?

A. I do not know of any other reason.

Q. What is the rate at Rome, Georgia, on western freights?

A. The rate to Rome, Georgia, is the Georgia Commission rate added to the Chattanooga rate, provided it does not make a higher rate than Atlanta. In no case is Rome higher than Atlanta from the west.

Q. What is the rate to Meridian, Mississippi?

A. I have not the figures of the rate to Meridian. It is variable to that point and controlled by the rate to Vicksburg, which is out of our control, and the rate from Vicksburg. You can get that information better from the representative of the Cincinnati Southern, New Orleans & Northeastern, and Vicksburg & Meridian roads.

Q. How does the rate at Chattanooga and the rate at Memphis correspond on western freights?

A. Our lines practically make no rate to Memphis. The business comes to Memphis generally now, either down the Mississippi River, or from Kansas City in the other direction.

Q. What are your rates at Knoxville compared to Chattanooga?

A. From the west the same as Chattanooga. It is practically the same distance from the west.

Q. The competition then has nothing to do with the making of rates at Knoxville any more than Chattanooga?

A. The reason is precisely the same. It is a distributing point and the competition is for markets.

Solomon Haas appeared before the Commission, and having been duly affirmed, was examined as follows

By **Mr. Stahlman**:

Q. With what lines of railroad are you connected and in what capacity?

A. I am the traffic manager of the Associated Railways of Virginia and the Carolinas, the Piedmont Air Line, the Atlantic Coast Line and the Seaboard Air Line.

Q. Please state to the Commission the basis of fixing rates from the east and from the west to southern coast points; what controls the rates?

A. The trunk lines and the water lines from

the eastern coast control the rates to the southern Atlantic ports.

Q. Both from the east and west?

A. Certainly. The trunk lines do not have anything to do with the eastern rates to the ports.

Q. Is it not true that the rates from the west to Macon, Augusta and other interior points adjacent to the coast are controlled by the rates of the trunk lines and steamships to the coast?

A. Not always. When the trunk lines are at war the rates are very low to Baltimore and the Chesapeake & Ohio use the same rate to Richmond as to Baltimore. The rate to Richmond fixes the Macon rate sometimes. That is very rarely the case. Generally it is controlled by the rates to the ports.

Q. The rates to Augusta and Macon are so controlled?

A. Yes sir; generally.

Q. What is your idea as to the existing rates from the west to Macon, Augusta and Atlanta? What is your view as to the necessity of these rates?

A. I hardly know that I could answer that question intelligently.

Q. What are your reasons, if you favor a lower rate from the west to Augusta than to an intermediate point between Augusta and Atlanta?

A. That would depend on how you were going to treat Macon and Atlanta. You can't get the Macon rate any higher than you have it now, I imagine. To put Atlanta upon a fair basis with Macon and allow Atlanta to distribute business as against Macon, you would necessarily have to have intermediate points higher. You would either have to do that, in all probability, or go out of the Macon business, and let the intermediate rates stand where they are, or put them up.

Q. Are you a member of the Rate Committee of the Southern Railway & Steamship Association?

A. I am.

Q. And you have participated in the making of the rates of transportation for several years, have you not?

A. Yes sir; but we have not made any rates to the local stations; only to the terminal stations.

Q. As a member of that committee, do you know of any complaints coming up from local stations asking a different adjustment from western points?

A. No sir; I think not. The only questions of differences we have had have been between such places as Atlanta, Macon, Augusta, Athens, Dalton and other competitive points.

Q. The complaints have been from the competitive points and not from the local points.

A. Yes sir. There may have been local complaints. I do not know. They have not, I think, reached the rate committee.

Q. You participate in the traffic to Birmingham, do you not?

A. From the east; yes sir.

Q. What effect would it have on the business of your company if you were to level down all your rates on the basis of the present rates to Birmingham and Montgomery?

A. I don't think we would be able to operate very long if we did that.

Q. Do you think it is possible for you to secure an advance of rates from east of Birmingham, or would the rates via Mobile and the Gulf or through New Orleans keep the figures down?

A. It might be possible to squeeze the rates up a little and lose a little more business. We would not get any more money by putting the rates up. We would throw that much more on the water lines and the short rail lines. I doubt if we would accomplish anything by advancing the rates.

Q. Are you entirely familiar with the nature of competition existing at Mobile and Montgomery and the business to and from the east?

A. I think so, at Montgomery via Mobile.

Q. Do you think the rates to Montgomery could be advanced?

A. No sir; I think not.

Q. Or to Selma?

A. No sir.

Q. It is your judgment that the rates as between Montgomery and Atlanta should be made practically the same, so as to give each point an equal showing for the distribution of business. Is not that about the idea as between markets almost similarly situated?

A. I think that is all the people would be willing to submit to. That has been our experience in the rate committee. It would not do for me at this late day to say any other rule could be followed. That has been a subject we have been wrestling with for ten or fifteen years, and we have very rarely, if ever, tried to depart from it. We have talked about it several times, and it has always appeared to be more or less of a trouble as between these points themselves.

Q. I understand you to say that the troubles that come before the rate committee are in the nature of complaints from the competing markets, one as against the other?

A. Yes sir.

Q. And that there has been no complaint from intermediate points?

A. I do not remember any. It is possible that they might not have gone to the rate committee. They may have gone to their local roads. I do not remember that any have ever come to us.

By **Mr. George M. Rose:**

Q. How are your rates made to Fayetteville, North Carolina; upon what basis?

A. They are made as high as we think they can be made in competition with the water lines to Wilmington, plus the rates from Wilmington up the Cape Fear River.

Q. How are your rates made to Bennettsville, South Carolina?

A. They are made with a view to similar competition from Charleston; by the same process.

Q. Over what river; the Pee Dee River?

A. Yes sir.

Q. How are your rates made to Sanford?

A. The same as to Charlotte now.

Q. But the rates that you issue for the associated lines of railroad are good over the Cape Fear and Yadkin Valley Railroad by either line. For instance, a rate to Fayetteville is good over any line that goes into Fayetteville?

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A. Yes sir; we have three lines and the rate is good over any of the three lines.

By **Commissioner Bragg:**

Q. How long is the Pee Dee River navigable up to Bennettsville?

A. Sometimes it is navigable only a month or two during the winter; but for the last two winters it has been navigable all the season, according to my recollection.

Q. Is it navigable in the summer and fall too?

A. There is no business at that time. I think it is not navigable.

Q. What determines the rate to Charlotte, North Carolina?

A. The Charlotte rate is determined chiefly from eastern cities by the water rate to Wilmington plus the rate from Wilmington.

Q. How is the Greensboro rate determined?

A. By the Charlotte rate.

Q. Is it the same as the Charlotte rate?

A. It is a fraction lower than Charlotte. There is a graded rate.

Q. What competition is there that determines the Greensboro rate?

A. The Cape Fear & Yadkin Valley Road enters Greensboro. There is really no competition there. The lines are working rather harmoniously.

Q. What competition determines the rate at Spartanburg, South Carolina?

A. There has been competition there for two years, I think, by the opening of the Port Royal & Augusta Road into that country from Augusta.

Q. What determines the competition at Greenville?

A. The same thing; the Florence & Greenville Road.

J. M. Culp appeared before the Commission and having been duly sworn was examined as follows:

By **Mr. Stahlman:**

Q. What is your position and where do you reside?

A. I am the general freight agent of the Louisville & Nashville Railroad, and I reside at Louisville, Kentucky.

Q. You are familiar with the rates of transportation of the Louisville & Nashville Road and connecting lines?

A. Somewhat, sir.

Q. You are also quite familiar with the competition from the west to the south?

A. Yes sir.

Q. Will you please state to the Commission what controls the rates to the southern coast points from the western cities, Chicago, St. Louis, Louisville, Cincinnati, etc.?

A. Ocean competition in connection with the east and west rail lines; trunk lines.

Q. Have not repeated efforts been made to arrive at an adjustment and maintenance of rates between the west and southern coast points with the steamship companies and others who were interested in the traffic?

A. Yes sir; frequent attempts have been made and occasionally those attempts have resulted in apparent success; but the competition and the rates made by the water lines have been lower than the agreed rates, and the result has been failure.

Q. Are the rates to Macon, Augusta and other points adjacent to the coast in the interior of Georgia and South Carolina, affected by the rates to the coast?

A. Yes sir.

Q. Are the rates to Atlanta affected at times by the trunk line rates?

A. Yes sir.

Q. Either via Richmond or Charleston or Savannah?

A. Yes sir; they are via Richmond, and directly via the coast.

Q. Has it not been the custom as far as it was not only practicable but possible, for transportation companies working for the business between the west and the south, to endeavor to observe a mileage basis between points similarly situated?

A. Yes sir. I know of no points similarly situated—no competitive points where the rates are higher. I do not call to mind any now.

Q. There are no reasons, in your judgment, why the railroads should make a less rate to one point, or why they are making less rates to one point than another, except as forced to do so by competition?

A. Competition is the sole reason that forces them to do it; the sole cause.

Q. Either between transportation lines or between markets?

A. Either between transportation lines or between markets.

Q. As a practical railroad man would you not consider it a part of your duty to undertake to protect the business on the line of your road and the cities on the line of your road, whether terminal or local, against the competition of markets or cities located on other lines of roads or rivers? That is, would you not make the adjustment such, or endeavor to do so, as to give the cities and towns located on the line of your road a fair and just and equal chance with the competing markets located on other lines?

A. That has always been the rule.

Q. Is not a large percentage of the competition due to the fact, at a number of intermediate points in this section of the country, that the rule of competition—

A. Do you have reference now to points in this territory, or to points on the Louisville & Nashville Railroad?

Q. Take for example some of the points in the interior of Georgia, Athens, Gainesville, Columbus and other points undertaking to distribute and job their merchandise to the same territory. The rates have been so adjusted, have they not, as to give each point a fair chance to do business?

A. Yes, sir. Some of those points are directly affected by water competition, and it is not a question whether we will or will not. If we do not, we lose the business. Others have been given the rates which they have, because of competition of markets, to enable them to do business. As I said before, I do not know any rate that is less than the rates to local stations that has not been brought about by competition.

Q. If one point should be favored with water competition, and there was a line of railroad existing to another point, you would so

adjust its rates to that point as to enable it, if it could in reason, to undertake to compete with that point for business, being interested in building up its own, rather than a distant city?

A. Yes sir.

Q. You have been connected with the rate committee of the Southern Railway and Steamship Association for a number of years?

A. Yes sir; since 1880.

Q. Is it, or is it not true that the rates to the interior of Georgia, North Carolina, South Carolina, and Alabama, particularly Georgia, South Carolina and North Carolina and also Florida, have been very much disturbed by the great reduction and change in rates from the west to the eastern seaboard and thence by steamer around through the south Atlantic coast points?

A. Yes sir. So much so is that the case that the majority of the rates to North Carolina—I think I am safe in saying all of them—and the majority of the rates to South Carolina, are based on the rates to Richmond or other eastern points and the rates from those points.

Q. The rates to Atlanta, even, have been frequently disturbed.

A. The rates to Atlanta have been disturbed by the rates of the Chesapeake & Ohio Railroad to Richmond, plus the rate from that point.

Q. In your experience as a member of the Rate Committee, have you heard any complaints coming up from intermediate points, or has your experience on the line of road of which you are general freight agent been such as to give you any trouble on business to and from intermediate points?

A. Very little, sir. Occasionally, perhaps, there will be a complaint from some local point, but it is rare. There are not nearly so many from the local points as from the points of competition.

Q. So far as your observation goes, is there a good feeling between people living on the line of the Louisville & Nashville Road and the officers of the road?

A. Very good, sir, so far as I know.

Q. And they are reasonably well satisfied?

A. I am sure of it, sir.

Q. They do not expect the benefit of competition where competition does not exist?

A. No sir. I say no. I know that a great many do not. I know that all that I have talked with do not, and that has been a great many.

Q. Is it the custom of the Louisville & Nashville Railroad, or has it been within a series of years, to favor one shipper as against another, or one community as against another similarly situated?

A. No sir; it has not.

Q. Do you know whether it is the practice of the connections of the Louisville & Nashville Road to indulge in such discriminations?

A. So far as I know none of the connections of the road favor one shipper or one locality over another, the circumstances being similar and the conditions being similar.

Q. Is not true that a large portion of the products of the southern country go long distances to find consuming markets?

A. Yes sir; I might say nearly the entire

product goes long distances; pig iron, cotton, lumber, naval stores, rice, sugar, etc.

Q. Is it not found necessary at times in order to enable the producer to place his products of lumber, pig iron, rice or sugar in competition with such products from other sections to charge a less rate for the longer distance than for the shorter? Take for instance the rate on pig iron?

A. Yes sir; it is. Take pig iron from Birmingham, Alabama, to New York or Philadelphia or Baltimore. The rates have been made in competition with other iron. Rates of freight have been made from the Birmingham district to those points that were lower than the rates to intermediate points.

Q. Is not that also true of yellow pine lumber produced in Alabama or Georgia, which comes in competition with the pine or poplar lumber of the northwest or west?

A. Yes sir; the rates on pine lumber, from Alabama and Georgia to points on the lake are lower than they are to some intermediate points.

Q. Do you know whether the producers of the lumber and pig iron are satisfied with the basis of adjustment of rates from this section of country? I refer also to the producers of rosin, rice, and other products of the country.

A. So far as I know, they are satisfied, or were satisfied with the adjustment that was in effect on March 31. They are not satisfied, however, with the adjustment of rates between the iron district and points north of the Ohio River. The lines leading from the Ohio River north have adopted the long and short haul literally, and there has been a great deal of complaint on the part of the pig iron men at the rates which we are compelled to make, if we make at all, upon the rates furnished from the Ohio River under that clause.

Q. Do you mean to say that the lines north of the Ohio River have advanced their rates under the operations of the Act?

A. They have adjusted their rates under what they call the literal construction of the fourth clause—the long and short haul clause.

By *Commissioner Walker*:

Q. Explain how they have changed their rates from what they used to charge.

A. They have advanced their rates from the Ohio River to Chicago so that no rate between the Ohio River and a point south of Chicago shall be higher than the rate to Chicago. They have advanced the rate from Cincinnati to Pittsburgh so that the rate shall not be lower than the rate from Cincinnati to an intermediate point. They have advanced the rate from Cincinnati to Indianapolis, so that the rates shall not be lower than the rate from Cincinnati or Louisville to any intermediate point. They have advanced the rate from St. Louis and East St. Louis to Missouri River points, Kansas City for illustration, so that the rate from St. Louis and East St. Louis to Kansas City shall not be lower than the rate from St. Louis and East St. Louis to any intermediate point.

By *Mr. Stahlman*:

Q. Is not that true also of lumber?

A. It is true of lumber. I have not heard so much complaint from the lumber men, how-

ever, although I have had letters expressing the hope that the thing will be settled.

By *Commissioner Walker*:

Q. How much does that raise the rate on pig iron from Louisville to Chicago?

A. It raises it nominally twenty-five cents a ton, and I think actually fifty cents a ton.

Q. What is the difference?

A. Their tariff was \$1.75 before and iron has been billed at \$1.50, as I understand, from the Ohio River. That is the proportion of the rate coming from the south.

Q. Why can you not do that now?

A. They require these rates. I cannot say why it is not done.

Q. Do you know of any reason why that cannot be done now just the same as before?

A. The reason is I suppose that they feel that they can't do it. I don't know about that however. It is because the lines south would have to stand that twenty-five or fifty cents a ton out of its proportion, and there is no reason why it should do it. If before, a through rate was made to Chicago based on \$1.50 a ton from the river, and that proportion is now advanced to \$3 and the same through rate is continued, the fifty cents must be borne by the lines south of the river.

Q. What was the through rate before from Louisville to Chicago for pig iron?

A. It varied. For illustration, let us say it was \$3.50 a ton to the Ohio River, and let us say it was \$5 a ton from Birmingham to Chicago.

Q. You are getting away from what we were talking about. What was the rate from Louisville to Chicago shortly prior to this Law going into effect?

A. From the Ohio River \$1.75.

Q. You say they prorated with you on a through rate at \$1.50?

A. I do not say they prorated. I say their proportion was \$1.50. I do not say \$1.75 might not have been charged on some iron, but a great deal of iron was carried at \$1.50.

Q. They have raised the rate now to \$3?

A. Yes sir.

Q. Why can they not make a through rate for \$1.75?

A. Do you mean why can't they make a rate from Birmingham their proportion of which will be \$1.75?

Q. Yes.

A. I do not know, sir.

Q. Why can they not make a rate from Birmingham, their proportion of which will be \$1.50, just the same as it was before?

A. I do not know, sir; but if you will let me give you my opinion, it is not to make through rates divisible upon pro rata percentages with the lines which will not conform to the interpretation of the long and short haul clause of the eastern lines.

By the *Chairman*:

Q. Do you mean by that that they desire the law to be enforced strictly according to its terms?

A. It looks that way as to some of them.

By *Mr. Stahlman*:

Q. May not this be the the moving cause: The roads from the river to Chicago having endeavored to carry out this law under the leveling process which the law calls for with-

out any change, they find it necessary in order to hold their revenue to about what it was before, to advance their rates very much from terminal point to terminal point to correspond to the reductions whether on the same classes or some other classes, and the revenue that may be made between intermediate points?

A. That may be the reason.

Q. Is not the reference that you make to nominal rates this: That the published rate was \$1.75, and that the railroad, in order to get the business, before the enactment of this law, made a concession of twenty-five cents a ton to the shipper or to the receiver, which under the law that there must be an open rate is not admissible?

A. Yes sir.

By *Commissioner Walker*:

Q. Is that so, or was it simply a rate that every shipper had alike?

A. It was a rebate in some cases, I know.

Q. Was it special to certain shippers?

A. Perhaps any shipper who asked for it may have obtained it or it may have been given to all. It is an arrangement with which the lines south of the Ohio River had nothing to do. It was done by the lines north with the pig iron shippers, some of whom were located at Cincinnati and Louisville and other places north. Therefore I cannot say whether it was with all shippers or only a part.

Q. Then the change in the rate is simply taking away that rebate?

A. No sir; there is an advance of twenty-five cents a ton; from \$1.75 to \$2.

Q. A general advance?

A. Yes sir.

By *Mr. Stahlman*:

Q. Is not the lumber traffic, the pig iron traffic and the cotton traffic which moves for long distances about the entire product of this section of the country besides rice, sugar and the products of cotton?

A. Yes sir; lumber, pig iron and cotton comprise nearly the entire exports from this section.

Q. I want to ask you what effect you think the leveling process under this Bill, if it should be rigidly construed or enforced, would have on the consumption of all the business to be carried to and from local points? In other words, is it not true that this section of country consumes just so much western produce, and no matter what the rate may be, you cannot bring more than just so much down here, a sufficient quantity to feed the people and to feed the stock; and that there are no other means of disposing of any western produce.

A. I don't think there is any question about that. I think the leveling process would result perhaps in the property being shipped direct without any increase in the consumption of our exports at all.

Q. Do you catch the point?

A. I think so.

Q. Is there just so much business coming into this country that is not likely to be increased or diminished?

A. It would not be increased by a reduction in rates, or diminished.

Q. It might be diminished by raising the

rates so high that home production would be necessary, might it not?

A. That might be the case.

Q. But beyond that there cannot be any increase?

A. I think not. I don't think there can be any increase in the consumption.

Q. In that respect the business of the southern roads differs very materially from the business of the trunk lines of the west?

A. I think so. There is no time when almost anything a man has to sell or ship cannot be disposed of in the eastern seaboard towns, especially in New York, if he will take the right price for it. He can sell anything for export.

Q. There are times when you cannot sell anything here for any price, almost?

A. Except possibly it might be bought at a very low price, and held to take the place of what would otherwise be bought later on.

By *Commissioner Bragg*:

Q. You have been engaged in the railroad freight business a long time, have you not?

A. Between sixteen and seventeen years.

Q. You are a member of the Rate Committee of the Southern Railway & Steamship Association?

A. Yes sir.

Q. Do you know in a general way the business and traffic of the lines north of the Ohio River? You have a branch of your road running to Chicago, have you not?

A. No sir. We have a road running from Louisville to Cincinnati and one from Evansville to East St. Louis.

Q. Did you not formerly have a branch of your line running to Chicago, a leased line?

A. No sir.

Q. As a railroad man you know in a general way what their traffic and business is?

A. In a general way; yes sir.

Q. Will you give us from a railroad standpoint what you understand or know to be the reasons why they make their tariff as you have stated, and why the railroads south of the Ohio River cannot make it that way without a greater loss?

A. There are a number of reasons. One is that their traffic is much heavier per mile. Another is that the grades of many of the western roads north of the Ohio River are less than those of a good many of the southern roads. The main reason, however, is the larger volume of traffic.

Q. They have a much larger traffic from intermediate points. That is what you mean to say?

A. Yes sir. On some of those eastern roads it looks like you were riding through a city all the way along, almost.

By the *Chairman*:

Q. If I understand you, your company has not made an effort to conform your tariff of freight to the new law as yet?

A. Except that we prepared a line of rates based upon not more for the short haul than for the long haul, which was prepared for use provided we could get no suspension.

Q. You made no attempt to put that in force?

A. No sir.

Q. You alluded in your testimony to circumstances which might force you to charge less from the north to Atlanta for example, and also from the south, than to intermediate points. What do you understand to be the circumstances and conditions that would permit that? What do you take into account as constituting such circumstances?

A. The competition of the roads themselves at Atlanta and the competition of markets.

Q. These circumstances, in other words, which you have been in the habit of taking into account in fixing rates?

A. Yes sir.

C. D. Owens appeared before the Commission, and having been duly sworn was examined as follows

By **Mr. Chisholm**:

Q. Please state your position?

A. I am the traffic manager of the Charleston & Savannah Railroad, and the Savannah, Florida & Western Railroad.

Q. What are the connections of the Charleston & Savannah Railroad?

A. The Charleston & Savannah Railroad has first a rail connection with the Northeastern Railroad and its connections north. It has connections also via the Central Line of Steamships from that point. Its connection south is first at Yemassee with the Port Royal and Augusta Road, north to Augusta and south to Port Royal. At Savannah it connects with the Savannah, Florida & Western and the Georgia Central system.

Q. What are its competitors?

A. Its competitors are mainly lines of steamships running from eastern cities to Savannah and to Florida, the steamship line known as the Clyde Line running from New York to Charleston, making a stop there and from there on to Florida points direct, and the other lines formerly known as the Quintard, but now known as the New York and Charleston, from New York to Charleston, and from Charleston to Fernandina.

Q. Are there any points on the Charleston & Savannah Railroad where less is charged for a long than for a shorter distance?

A. Not on the line of its road proper.

Q. Are there any aggregate rates of that kind?

A. There are at points beyond Savannah in connection with the Savannah, Florida & Western system. There the amount in the aggregate would be less than we receive as between business originating at Charleston and terminating in Savannah.

Q. Why has that rate been so made?

A. Because the rate proper has been dominated by a water line over which it has no control.

Q. What are the connections of the Savannah, Florida & Western Railroad?

A. Going south the first is the East Tennessee, Virginia & Georgia Railroad at Jesup. Next it connects at Waycross with the Brunswick & Western, and one stem of the road runs from Waycross to Jacksonville. Going back to Waycross and following the line out it then runs to Live Oak and Gainesville, with a branch to Lake City. It also has a stem at

Dupont, running from there to Albany, Georgia. At Albany it connects with the Central and Southwestern systems, and also it has a further extension to the Chattahoochee River, where it connects with the Pensacola and Atlantic Road and with the Chattahoochee River, both of which they connect with and compete with for business at those points. They connect from the river with the boats of the Chattahoochee River, and they compete with those very boats. They also compete with the Pensacola and Atlantic system of the Louisville & Nashville Road for the business west of the Chattahoochee River.

Q. Have you seen the map that was attached to the petition of the Savannah, Florida & Western Railway?

A. I have.

Q. Does that map show that road?

A. That map shows the system correctly, as it exists.

Q. It shows all the terminal and junctional points?

A. Yes sir; it shows all the terminal and junctional points.

Q. Are there any points upon that road where less is charged for a greater than for a shorter distance?

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Q. Why?

A. Because that rate is dominated by a water route over which we have no control.

Q. What are those water routes?

A. The water routes are: first, the lines that run to Charleston and Fernandina, then a direct steamship line that runs from New York to Fernandina; next, a steamship line that runs from Savannah to Fernandina. They naturally make the rate. Jacksonville itself is the metropolis of Florida, and has water connections all the way. Not only does Jacksonville have this water connection, but Palatka, sixty odd miles above it, can take a schooner drawing from ten to twelve feet of water and even more, and take the cargo right up there and make a distributing center from Palatka into the interior of the State. These facts we have to recognize in the making of our rates.

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By **Mr. Chisholm**:

Q. Have you any points where you have charged less for a greater distance than for a

lesser, except those which have been forced upon you by water competition?

A. No sir; not that I am aware of.

Q. Do either of these systems belong to the Southern Railway and Steamship Association?

A. They are connections of the Association, but not members of the Association.

By **Mr. William B. Young** of Jacksonville:

Q. Does your road own the system of tracks from Jacksonville to Chattahoochee?

A. We have a line from Jacksonville to Chattahoochee.

Q. Do you charge a less rate from Jacksonville to Chattahoochee than you do to intermediate points?

A. We do.

Q. Is there any water competition between Jacksonville and Chattahoochee?

A. The short line makes a rate—we do that only on passage. I suppose that is a point you desire to make. On freight or on passage.

Q. On both?

A. On freight we charge just the same as other line makes it. We do no freight business from Jacksonville to Chattahoochee. As a matter of fact that entire business is done over the line of the Florida Railway & Navigation Company. That road having the short line makes the rate between those points, and we live up to it.

Q. Are your rates not less between Jacksonville and Chattahoochee than between Jacksonville and intermediate points on that line?

A. On the points of our own line in Georgia between them?

Q. Yes.

A. I really cannot answer that question because we have never done any business between Jacksonville and Chattahoochee in the way of freight. We give from Jacksonville to points out on our road, the Georgia Commission tariff. We apply that if possible. If any business originates in Jacksonville and goes to points on our road, we apply the Georgia Commission distance table.

Q. Are your rates from Savannah to Live Oak less than the rates from Savannah to Thomasville?

A. Yes sir.

Q. Is there any water competition at Live Oak?

A. Thomasville is 200 miles from Savannah, and Live Oak is 171 miles. Thomasville is altogether in the State of Georgia.

Q. Do you charge a less rate between Savannah and Live Oak than to any intermediate points between Savannah and Live Oak?

A. We charge from the beginning of the Florida line, Marion, through to all points in Florida as far as Gainesville, the same rate.

Q. Then the rates are the same at Marion as they are at Live Oak?

A. Yes sir.

Q. Do you carry any freight from Jacksonville to Live Oak, Gainesville and those points?

A. No sir. We carried a lot of rock. I think that was the first freight we ever had. It was carried on the line of our road.

Q. Have you a freight rate from Jacksonville?

A. We could make one if it was asked for. As a matter of fact we are not doing that business.

Q. Have you such a rate?

A. We have. If it was called for we would apply the Commissioner's tariff, or such rates as we found in effect on the Florida Railway & Navigation Company's Road.

By **Commissioner Schoonmaker**:

Q. If I understand you aright, you say you do not take into consideration in fixing your rates the question of water competition.

A. No; I do not say that. I say the principal factor in making our rates is water competition going on in connection with the short haul from there. That would naturally fix our rate. We could not well go above it. Water is the principal element in making the rate.

Q. Do you take no other competition into consideration?

A. We do.

Q. What competition?

A. Competition in connection with rail lines and in connection with water lines.

Q. Do you take into consideration the business competition that you have spoken of?

A. No sir; we generally let business seek its own level. We would not undertake for one instant to make a rate from one point on our road that would enable a man to overcome market differences.

Q. What is your reason?

A. Simply the law of supply and demand. The natural way for the grain business to come down there would be to come down from the west. We would not, for instance, at Savannah, make a rate that would enable a man to get that same business down to Savannah and then turn around and make a profit out of it and rebill it and reship it from there. We would not make such a rate as that. We would consider that was bad policy. If we simply put that man on an even footing with his competitors, that is as much as he would have a right to ask for.

Q. You would consider that discrimination, would you?

A. We would, sir.

By **Mr. Stahlman**:

Q. You say you would consider discrimination the making of a rate on any product from the west, from Savannah to a point in Florida, which would enable the Savannah man to bring the product from the west to Savannah and ship it into the interior of Florida in competition with the direct shipment?

A. The question is hypothetical in its character, and embraces a good deal. I will give my understanding of the question. It is this: That it would be wrong for us to enable a man to bring his freights from the northwest, passing over our line, and making the point of sale at the terminal point of our line, and then bringing it back over our road again to make a delivery. I call that discrimination. We have our rates into Savannah, of course, and they come up over the western lines. Considering the market rates, suppose I should go in and enable that man to make a profit in a given service. Take Chicago and Savannah. That man bought the grain in Chicago and brought it to Savannah. To enable that man to sell it and make a profit, I would have to give him a reduced rate of freight to take it out

on my road; and I would say that was a discrimination.

Q. If you did not give him any reduced rate?

A. That is entirely right.

Q. In other words, if the rates through Savannah were not less than the rates direct, you would not consider it a case of discrimination?

A. No sir. We would not discriminate to create business in Jacksonville as against Savannah, neither would we in Savannah as against Jacksonville. We make our rates from Jacksonville the same as we do from Savannah.

By *Commissioner Morrison*:

Q. And if one place has a natural advantage you even them up?

A. We try to do so.

Q. You would rather make the profit yourself than let the merchant make it?

A. I don't know how that is.

By *Mr. Chisholm*:

Q. The question I asked was whether there were any rates enforced on that road where a less amount was charged for a longer than for a shorter haul which were not affected by water?

A. Water or water and rail does affect it.

Q. It is affected at Jacksonville by water directly?

A. Yes sir.

Q. And at the other points by water and rail?

A. Yes sir.

By *Commissioner Walker*:

Q. Coming down towards Jacksonville there are no points on that line where you charge more than you do for Jacksonville?

A. Possibly at some small stations down there we may—a little bit of a station there.

Q. It is a trifling thing, if it is true?

A. Yes sir.

By *Mr. Stahlman*:

Q. How would it be if you had a hundred and fifty stations that you had to level?

A. Then it would bankrupt us.

By *Mr. Chisholm*:

Q. Do you not receive business at junctional points which is under this same principle?

A. Yes sir.

Q. And they take the rate upon that through business which has been fixed by the other lines from which they receive freight at the terminals?

A. Yes sir.

Q. And that freight comes sometimes from the far northwest and passes through several states?

A. Yes sir.

(At this point, 2 P. M., the Commission took a recess for two hours. At 4 P. M. the Commission reassembled, all the members being present.)

C. D. Owens resumed the stand.

The *Witness*. On the eve of adjournment *Commissioner Walker*, in the hurry of it, asked me some questions, and in my answer I think it possible he may have misconstrued what I said. I now desire to set it thoroughly right. I used the word "east." Technically among freight men "the east" means the cities composed of Boston, New York, Philadelphia and Baltimore. In freighting or classification we always allude to those cities as "the east." The Interstate Commerce Bill uses the words "the aggregate." There I desire to be understood.

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We do charge, say from New York through to Dupont, a station on the Savannah, Florida & Western Road, a larger amount than we do from New York to Jacksonville, Florida. That is from the east. Coming from the west our rates are made to the junctional and terminal points by the lines north of us, and we accept to those junctional points or termini our pro rate of the total; while to an intermediate point we would charge the rates allowed us under the Georgia State Commission, which would be an amount that would make the aggregate in excess of the total through to the coast point I have alluded to. I will illustrate, by stating that the basing rates are what we call the rates from Ohio River points; and the Ohio River points are supposed to be Evansville, Louisville, and Cincinnati. The total would be twenty-five cents on class D, which is the principal article we transport. To Savannah or Jacksonville we can only get our pro rate of that amount; but if it came to an intermediate point, a nearer haul than Savannah, we would then take our proportion as allowed us under our local tariff adjusted by the Commission of the State of Georgia. For that reason we put in our petition for relief under this clause, thinking it was proper to do so in compliance with the law.

By *Commissioner Walker*:

Q. Then you do carry freight from the west to Savannah, Jacksonville, and Gainesville?

A. Yes sir; and we do it under a pro rate with our connecting lines.

Q. What roads do you get it from?

A. At Albany we get it from the Central Railroad of Georgia and its connecting lines. At Jesup we get it from the East Tennessee, Virginia & Georgia Railroad and its connections. Our eastern rates are subject to the same conditions. We do charge more from the east to a local station on our own road within the State of Georgia, than we do for a point within the State of Florida. The reason why is that the water rate dominates it. It comes down to a point in Florida, and takes the short rail haul from there in. We have to meet those rates by the competition of part rail and part water.

T. S. Davant appeared before the Commission, and having been duly sworn was examined as follows:

By *Mr. Henry Fink*:

Q. What is your present position?

A. General freight agent of the East Tennessee, Virginia & Georgia Railroad.

Q. How long have you been connected with the transportation business?

A. Since 1874.

Q. Then you are pretty familiar with it?

A. Yes sir.

Q. Will you please state to the Commission how the rates of the East Tennessee, Virginia & Georgia Railroad are made from New York to Memphis; upon what basis and what controls the rates?

A. The rates from New York to Memphis are controlled by the water lines from New York to New Orleans, and the Mississippi River to Memphis.

Q. What is the lowest rate you have ever known on first class goods by that route from New York to Memphis?

A. I have known the rate charged to be as low as fifty cents per hundred pounds.

Q. Will you please state how the rates from New York to Nashville are made; upon what basis, and what controls the rates from New York to Nashville?

A. The rates from New York to Nashville are based in this way: the rates are first made from New York to Chicago. Then Evansville is made 108 per cent of the Chicago rates, and the Nashville rates are made by adding the steamboat rates to the through rates to Evansville.

Mr. Fink. I wish to state to the Commission that we are preparing proof in support of our petition, and that proof will set forth exactly the manner in which the different rates are made, the reasons therefor, and what the rates are to competitive points. All the proof will be supported by proper affidavits, and will be ready to submit to the Commission as covering our entire case before the 6th of May. Our case is precisely the same as that of the other members of the Southern Railway & Steamship Association.

By **Mr. Stahlman:**

Q. Is it not true that the rates from Memphis, as well as being based on the rate from New Orleans plus the rates by river from Memphis, are also based on northern river points plus the river rates down to Memphis?

A. Yes sir; I should have mentioned that. The through rates from the east to Memphis are controlled by the combination via New Orleans, or the combination via Cincinnati.

By **Commissioner Walker:**

Q. How do you figure from Knoxville to New York?

A. The rates from New York to Knoxville are scaled on Chattanooga.

Q. What do you mean by that?

A. There are certain differences less the—

Q. What differences?

A. On first class, fourteen cents.

By **Mr. Fink:**

Q. Fourteen cents less?

A. Fourteen cents less. It is controlled by competition. Chattanooga is a distributing point, and we consider that the rates are regulated by competition at both points.

By the **Chairman:**

Q. You spoke of a combination of rates by way of Cincinnati. A combination of what?

A. Take, for instance, the rate by the trunk lines, or by the Chesapeake & Ohio Road to Cincinnati, and then the rate by river.

Q. The rate by river from Cincinnati?

A. From Cincinnati to Memphis.

By **Mr. Stahlman:**

Q. It was suggested this morning that perhaps the rates to terminal points might be advanced, and the rates to local and intermediate points reduced correspondingly. Would it be possible, with the existing competition at New Orleans, Mobile, Selma, Montgomery, Memphis, Vicksburg, and Nashville to advance the rates?

A. It is my opinion that the through rates, as they now stand, are as high as they can be held, and that to advance them would certainly drive the East Tennessee, Virginia & Georgia Railroad out of those competitive points.

By the **Chairman:**

Q. Are those points you mentioned all directly affected by water transportation?

A. All except Knoxville, sir.

By **Commissioner Walker:**

Q. As I understand you, to get the rate to Nashville you take the water rate from Louisville, do you?

A. From Evansville, but the same combination is made on Louisville.

Q. What water rate?

A. The Cumberland River.

Q. Is there a regular line on that river with an established tariff?

A. Yes, sir.

Mr. Fink. We will offer the rates in evidence.

S. A. Pearce appeared before the Commission, and, having been duly sworn, was examined as follows:

By **Mr. Haas:**

Q. State to the Commission what business you are engaged in?

A. I am engaged in the quarrying of granite.

Q. At what point?

A. At Columbia, South Carolina, and in Abbeville County, S. C.

Q. What effect, if any, will the strict construction of the fourth section, known as the long and short haul clause, have on your business?

A. As regards my business, under the rates which I now have I am enabled to send paving blocks to Cincinnati. As I understand the operation of the law, if it is enforced, the fourth section, it would entirely crush out that business.

Q. Do you do any work except paving work?

A. No; I do not.

By the **Chairman:**

Q. Upon what facts do you base your opinion?

A. Upon the supposition that the roads who haul the granite would not be able to haul at a rate which would enable me to put the granite into Cincinnati; that is, if they made the long haul adapt itself to the short haul basis.

Q. Is this opinion of yours an opinion that simply responds to the opinion of others engaged in that business? Is that the way you reach your opinion in the matter?

A. It is my own opinion, not based upon the opinions of others at all. I may say this, and, if the Commission would permit me to do so, I would like to read the memorial of the Columbia Board of Trade. There is something expressed in that which would present the views not only of the Board of Trade of Columbia, but it might cover the point which the Chairman of the Commission wishes to have brought out.

The **Chairman.** We should be very glad to have it. It is not necessary that you should read it, unless you deem it important to do so.

The **Witness.** It is very short.

The **Chairman.** Very well. You may read it.

(The witness then read the memorial above mentioned.)

Q. What competition is it that gives you low rates upon granite at Columbia by shipment to Cincinnati?

A. I do not ship from Columbia.

Q. From where do you ship?

A. In Columbia I am able, by favorable rates, to ship to Charleston and place my granite on the government jetty works at Charleston.

Q. You spoke of Abbeyville as the other point?

A. Yes sir.

Q. What is the competition that gives you low rates from there to Cincinnati?

A. The competition would not come immediately perhaps at the shipping point near Greenwood.

Q. Is it not water competition?

A. No sir; it is not water competition.

By *Commissioner Walker*:

Q. What is there in the Interstate Commerce Law that requires the raising of the rates on granite paving blocks from Abbeyville to Cincinnati?

A. If, as I have said, the local rates—if the long haul is adapted to the short haul, then we would have to pay the rate which would be established according to the short haul rate.

Q. Do you know anything about that yourself, or is that what the railroad officers have told you, giving you the figures?

A. We have had a glimpse of what we might expect in the rates which were given from Columbia and to Columbia.

Q. They gave you some figures and you thought those figures were what the Interstate Commerce Law required. Was that it?

A. No; that was not announced. It was announced generally that in order to conform to the Interstate Commerce Law, the through rate would have to be adapted to the short haul.

By *the Chairman*:

Q. Are there other quarries of granite between you and Cincinnati?

A. There are quarries in Georgia.

Q. Quarries where the rates from Cincinnati are greater than they are to your quarry?

A. No sir.

Mr. Haas. Will you allow me to show why a low rate is necessary?

The Chairman. I was not questioning that, but trying to see how it was that this long haul provision of the law applied to his case.

Mr. Haas. I will be able to show that the low rate is necessary to enable him to send his granite to Cincinnati, although the same reason does not apply to an intermediate point.

Commissioner Morrison. Let him explain how the man at the intermediate point who pays the high price now is going to get along with his granite.

By *Commissioner Bragg*:

Q. Have not the railroads always given you special rates to Cincinnati on these long hauls?

A. Yes sir. This contract was entered into before the passage of this Law.

Q. But they have given you special rates?

A. Yes sir.

Q. You could not ship granite from South Carolina to any long distance like Cincinnati unless you got special rates of some sort, could you?

A. No sir.

By *Mr. Haas*:

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Q. Could you ship a short distance, to Charleston, without special rates?

A. No sir.

Q. Why?

A. I would come in competition with the ocean transportation.

By *the Chairman*:

Q. What do you understand there is in the law that prevents your having special rates now as you have had them heretofore?

A. As I construe the law—I am not a lawyer—the rate is not to be fixed by any Commission. The law, as I understand it, does not prevent the railroad companies from fixing any rate that they choose. They, of course, cannot discriminate in regard to the rate. Through a sparsely settled country like this I can imagine that the business of the roads could not be carried on on the basis of the long haul. Therefore, if they have to conform to the law they must inevitably raise the long haul rate. If it is raised up to the basis of the short haul rate then we certainly could not get into Cincinnati.

Q. But I do not understand from you that there is any short haul rate that conflicts with your rate at all.

A. It would be classed, I suppose, with other goods. I do not know what classification they would put granite into, but we would have to go into the same classification with other goods that were hauled over the road.

By *Commissioner Bragg*:

Q. Do you understand that the Interstate Commerce Law authorizes the railroad company to charge just whatever it pleases, without regard to whether it is reasonable or not?

A. It must be reasonable, of course. I understand that it should be reasonable. But it does not fix any rate. There is no rate fixed.

The Chairman. The companies fix the rate in the first place?

The Witness: Yes sir.

By *Mr. Stahlman*:

Q. At Cincinnati, the rates from the Vermont granite district, the New Hampshire district and the Richmond district are excessively low, and therefore the competition between the South Carolina granite and the New Hampshire, Vermont and Richmond granite is very strong and it necessitates a lower rate to Cincinnati than it would to Nashville or Louisville, because the rates from Vermont, New Hampshire and Richmond are higher than they are to Cincinnati. Am I not correct in that?

A. Yes sir.

Q. Is not this the case: the custom house at Louisville is just being built, a large, magnificent building. The question came up whether they should use South Carolina granite, Vermont or New Hampshire granite, or Indiana brownstone. The competition was very strong between those different grades of granite and other materials. Hence it necessitated a lower rate to Louisville in competition with that than would have been necessary if the same character of building had been put up at Nashville. It is in order to enable the interests which you represent to compete successfully with the interests from other sec-

tions, that it is necessary to make a less rate for a long haul at times than for a short one?

The Chairman. Are you calling out information from him? If you are testifying, I want to put you under oath.

Mr. Stahlman. I ask if that is not substantially the situation?

A. That is the practical working of it.

By Commissioner Morrison:

Q. I understand you to say, not in so many words, that you cannot pay a reasonable price for carrying your goods to Cincinnati; and in order to help you, the roads now reduce your charges below a reasonable price. If the law compels them to put it up to a reasonable price then you are shut out of the market?

A. I would not put it on the ground of a reasonable price. I would say they put it at a price I can get into Cincinnati on and compete with other points.

Q. We have agreed that they cannot at any time, either with or without the law, put it above a reasonable price. When they put it at a reasonable price, then you are shut out of the market?

A. It might be a debatable question as to what was a reasonable price, of course.

Commissioner Morrison. We all agree that the roads cannot go above a reasonable price. The railroad managers themselves do not claim they can.

By the Chairman:

Q. Have you shipped granite to Nashville?

A. No sir; and no other point there.

Q. Have you shipped to Louisville?

A. No sir; no other point than Cincinnati. It is a new industry.

By Mr. Stahlman:

Q. Are you not aware of the fact that there has been granite shipped to Louisville?

A. Yes sir.

By the Chairman:

Q. From where?

A. From Richmond, I believe.

Q. From South Carolina also?

A. I do not know about that. This is a new industry I have established within the last year.

H. B. Hammet appeared before the Commission and was duly sworn.

The Witness. I desire to state that I am one of the representatives of the Board of Trade of Greenville, South Carolina, and that we have prepared a short memorial setting forth what we desire to say upon the subject. As a manufacturer of cotton goods I have prepared a supplementary memorial which I intended to read at the same time. I do not know the course you desire to pursue with reference to the matter.

The Chairman. You can submit the memorial of the Board of Trade; and as for the other, perhaps you had better give your evidence under oath. If you have reduced the facts to writing, there is no objection to their coming before us in that form.

The Witness. That is just what I have done. Although it is not in the shape of an affidavit, still I will take the oath.

The Chairman. You state that it represents the facts?

The Witness. It represents the facts as I

understand them. The chairman of the Board of Trade is present. He might read his own paper; or shall I do it?

The Chairman. Read it yourself, if you please.

The witness then read the memorial of the Board of Trade.

The Witness. I will now read a statement of facts which I have written myself and which is intended to accompany the memorial. As I consider myself under oath I suppose there is no objection to reading it. It is very short.

The witness then read the paper referred to.

By the Chairman:

Q. What is the difference between the rates before the 4th of April and those that were nominally charged then?

A. The rates that were furnished me for the mill in the Town of Greenville, as I understood them from the card which was sent in from their office, was about forty per cent higher. They were not so high at the mill which I manage on the Columbia & Greenville Railroad. They were nine cents a hundred pounds higher to Baltimore, Philadelphia and New York. They have now all been withdrawn from north of the Ohio River and west of the Mississippi, where we have large orders now awaiting the delivery of the goods, and which of course we cannot deliver at all.

Q. What do you understand created the necessity for raising those rates to your mill?

A. I really didn't see any at all myself. I don't think there was, so far as I understand the subject.

By Mr. Haas:

Q. You said in your petition that you thought your mills ought to have relative rates as compared with the east to points in the southwest?

A. Yes sir; and northwest.

Q. One instance occurs to me now. Suppose the rate from New York to Galveston to be fifty cents. Do you think you could stand about fifty cents?

A. I wouldn't expect to get as low a rate as New York did. I mean relatively the same.

Q. You would have to have about that rate; somewhere in that neighborhood?

A. Yes sir; relatively the same rate.

Q. Suppose the lines made rate for you from your mills to Galveston at sixty-five cents. You would consider that a reasonable rate on Galveston business as compared with the New York business, would you?

A. I am not really able to answer that. I think the New York rate ought to be more than our rate, because we are nearer.

Q. Assuming that to be so, would you think it would be an unreasonable rate if you were charged sixty-five cents to Galveston and seventy-five cents to an intermediate point where New York had a higher rate than the Galveston rate?

A. I do not know that I should be interested in that at all.

Q. If New York paid a higher rate to that point, could not you afford to pay a higher rate?

A. If the eastern mills did; if other mills did all over the country. If the mills in Fall River and Lowell paid a higher rate I could.

All I ask is to be placed upon an equality relatively. I do not mean that I ask the same rate from Greenville to Galveston that the Fall River men should have. I do not think that would be fair.

R. L. McCaughrin appeared before the Commission and was duly sworn.

The **Chairman**. You know what you want to say; please proceed and make your statement.

The **Witness**. I represent the Newberry Cotton Mills. I can say that we were induced by promises made to us by the railroads for cheap coal to build a cotton mill to be run by steam to compete with the water mills of Augusta and the water mills in the upper part of our State. We contemplated building a cotton mill there for several years, but waited for the completion of the Georgia Pacific Road to put us within reach of cheap fuel, as we have to compete with the water mills of Augusta and the upper part of our State. We have invested over \$300,000 there, and we think with a reasonable prospect of profit. We have not made any yet. Our rates of coal we regard as reasonable, and our rates for our goods to the eastern and western markets. We can live at it.

By **Mr. Stahlman**:

Q. Is that a point where there is no other railroad?

A. Yes sir; there is no competition.

Q. And you are satisfied with the rates you have?

A. Yes sir.

The **Chairman**. Is there anything further you wish to add?

The **Witness**. I have a petition that was handed to me by the representatives of the different mills.

The **Chairman**. If it is simply a petition not setting forth special facts beyond what you state, it is hardly worth while to read it. You can file it with us and that will be sufficient.

D. E. Converse appeared before the Commission, and, having first been duly sworn was examined as follows:

By the **Chairman**:

Q. What is your residence?

A. Glendale is my residence. I represent the Glendale and Clifton Cotton Factories, and I represent the City of Spartanburg as well. I have a short memorial which I will hand in. Our points were embodied in a memorial handed to you, by Maj. McCaughrin as regards the factories.

Q. You know, if you desire to bring out any particular facts.

A. I have no special statement, more than to say that we fear any interruption of the present rates of freight or those that have been existing heretofore, both local and through rates. We fear any interruption by the action of this Interstate Law. We prefer as manufacturers, and as citizens, to have it remain as it is.

Q. You have but one railroad to either of these points, have you?

A. We have two railroads; that is, we ship east and west on the Air Line, and then we

have a road from Glendale southward to Columbia or Charleston, South Carolina. We get about the same rates at all these points, on the Charlotte & Atlanta Road, given to both westward and northward freights. We have been satisfied with them, and we would remain satisfied.

Q. Do you mean that the points where your mills are located are treated as competitive points?

A. They are competitive points. They are allowed that.

Q. You have substantially the rates that are allowed to other competitive points?

A. We have substantially the same rates. Spartanburg, Greenville and our neighboring cities have substantially the same rates.

By **Mr. Haas**:

Q. The lines you are on, are substantially the same line?

A. Yes sir.

Q. Do you know that your rates to New Orleans are lower than they are to Montgomery?

A. If you will allow me to look at a table that I have with me, I will tell you. I have mislaid it and so I cannot answer that question.

Q. The object I have in view is to inquire whether your rates to New Orleans, for example, are lower than they are to Montgomery and intermediate points, and whether you could afford to pay as high a rate to New Orleans as to Montgomery, and still do the business. Do you recall any point where you have a lower rate for a long distance than for a short one?

A. I do not. I do not think we have.

Dr. C. E. Fleming appeared before the Commission and was duly sworn.

The **Chairman**. Make such statement as you desire.

The **Witness**. I do not know that I can say anything that will throw any light upon what has been said. We are all here representing one interest. We fear the result of any change. We fear it may operate to our disadvantage. That is all.

Q. Where do you live?

A. At Spartanburg.

Q. Are you engaged in any particular manufactures there?

A. No sir.

Q. You simply speak for the people in general?

A. Yes sir. I represent the Board of Trade of that city.

Richard McCoy of Riverton, Virginia, appeared before the Commission and was duly sworn.

The **Chairman**. Go on and make such statement as you desire.

The **Witness**. I represent a lime interest in Virginia; in fact, three lime interests, as Secretary of a Lime Association organized for the purpose of arranging the prices of lime in competition with lime, that comes from the coast of Maine. Otherwise, our interests are altogether adverse. We are competitors in the territory of the Richmond & Danville and Coast Line Railroads. I have a statement of facts here in the form of a petition.

The Chairman. State the facts that are in it, so far as they are within your knowledge.

The Witness. Our business has been created and maintained by rates fixed on the principle of how much our product will bring in certain markets, in competition with lime that comes from Rockland and Thomaston, Maine and is landed at the ports throughout our territory, such as Norfolk, Portsmouth, Richmond, Wilmington, Charleston, Newberne, Savannah and Fayetteville. We believe that if the rates at these competitive points are put in line with the local rates, that we will be entirely put out of these markets. For example, take Goldsboro, North Carolina, 487 miles from our works. It is only fifty-seven miles from tide water at Newberne.

By **Commissioner Schoonmaker:**

Q. What is your location in Virginia?

A. Our location is Riverton, Virginia, on the Virginia Midland Division of the Richmond & Danville Railroad.

By **The Chairman:**

Q. Do you market your lime in the direction of the coast from where you are?

A. Yes sir.

By **Commissioner Schoonmaker:**

Q. How much lime do you produce?

A. The entire kilns produce about a million bushels annually. At Fayetteville, North Carolina, the price is controlled by the Wilmington market, where the Rockland lime is landed, and thence by steamers from Cape Fear River to Fayetteville. That, of course, would control the price in the territory between Fayetteville and Bennettsville, on the Cape Fear and Yadkin Valley road. At Tarboro we have to compete with lime brought in by Albemarle Sound up the Tar River to Williams- ton. The same rule would apply to Charleston, South Carolina.

By **The Chairman:**

Q. Do you mean that you send lime to Charleston?

A. The kilns that I am immediately connected with do not, but the kilns on the Richmond & Allegheny Road, 50 miles north of Lynchburg do. I am representing them, and they were joint petitioners with me in this paper. At Columbia the price is controlled by the rate from Charleston to Columbia, fixed by the South Carolina State Railroad Commission. We would be driven out of that market. We have a good trade there, and we would be driven out of that market if the long haul was to be put in line with the intermediate points. They have Rockland lime delivered at Norfolk and Richmond that fixes our prices in a large portion of that territory east of the Blue Ridge and as far south as Charleston and Columbia.

By **Mr. Haas:**

Q. From what you know of these rates to the points that are near the coast, do you think the railroads could be reasonably expected to make their intermediate point rates as low and do all their local business at the relative low rates at or near the ports?

A. I unhesitatingly answer, no.

By **Commissioner Morrison:**

Q. Why?

A. Because the rate, for example, to Colum-

bia is very low, and the railroads say that only some twenty-five per cent of the business is business of that kind. Of course they could not be expected to sacrifice the shorter haul business to secure the long haul business that don't pay them. That is, as I understand it, their position. The rates are very low to these competitive points, and without these competitive points there would be such a curtailment of our business as would very seriously embarrass us and all the employees in connection with our work.

By **Commissioner Schoonmaker:**

Q. How large a force have you?

A. We have about forty laborers on our payroll at Riverton, but the works give employment to wood choppers and wood haulers, and furnish a market for cord wood in that remote portion of Virginia that would be unmarketable were it not for these kilns.

By **Mr. Haas:**

Q. How many men are employed in that particular industry in Virginia; not in your works alone?

A. The entire kilns would amount to three times the number I have named for the one I manage myself, perhaps more. I cannot answer that question with absolute accuracy.

R. E. Blankenship appeared before the Commission and was duly sworn.

The Witness: I am the chairman of a committee of the Chamber of Commerce, of Richmond, Virginia. We have a very short petition, which, with your permission, I will read. (Reads petition.)

By **Mr. Haas:**

Q. Will you state the business you are engaged in?

A. I am the President of the Old Dominion Iron and Nail Works Company, Richmond, Virginia.

Q. Do you ship nails and iron to Charleston?

A. I do.

Q. And to Atlanta and Birmingham?

A. Yes sir; and, in fact, all places in the south.

Q. Do you recollect whether your rates to Charleston are lower than to intermediate points?

A. Do you mean on that same line? Yes sir, they are.

Q. Are they lower to Birmingham, for instance, than they would be to a point on the Air Line Road north of Gainesville?

A. No sir; it would be lower to Columbia than to Chester.

Q. Do you think you could compete, for example, at Columbia with nails coming in from the east via Charleston unless you did have a lower rate to Columbia?

A. No sir; I could not, unless I sacrificed the difference in freight. The nail business wouldn't stand that just now.

Q. Would not the same rule apply when you come into competition with the factories at Chattanooga, Knoxville and these other points?

A. Undoubtedly, sir. We are peculiarly situated at Richmond. We are five hundred and sixty miles from Atlanta. There are factories all along in New England, and factories

close to the ports of Philadelphia and Baltimore. They come down to Wilmington, Charleston or Savannah, and deliver their goods by short lines or by rivers into the interior. When we start from the other direction we are met at Lynchburg—I will not allude to that, because it is about the same distance we are—but at Knoxville, at Chattanooga, Brierfield, Alabama, and also at Helena, we come in contact with factories that are much nearer Atlanta than we are. There is a whole line of factories down the Ohio River, and at Louisville there is a center for shipment. That is nearer to Atlanta practically than we are.

A. H. Christian appeared before the Commission and was duly sworn.

The Chairman. Proceed with your statement.

The Witness. I did not know I was called upon to make any statement. I would be glad to answer any questions.

By Mr. Haas:

Q. State your business.

A. I am a manufacturer of paper; Secretary and manager of the Richmond Paper Manufacturing Company, situated at Richmond, Virginia.

Q. Do you remember any of the rates charged to Nashville from Richmond on your paper?

A. I cannot say that I remember accurately the rates to Nashville. I am more familiar with the rates through the Southern States.

Q. What points do you recollect?

A. Wilmington, Charleston, Savannah, Atlanta, Birmingham and New Orleans.

Q. Do you remember whether the rates to any of those points that you mentioned are lower than to any other intermediate points?

A. No sir, I do not recall that they are. We do very little business with the intermediate points, however. Most of our trade is at trade centers and distributing points.

Q. Do you do any business at Goldsboro?

A. We do some business at Goldsboro; yes sir.

Q. You do not remember what your rate is to Goldsboro?

A. No, I cannot tell you what our rate is.

Q. What is the nature of the competition that you experience from Richmond at such places as Wilmington, Charleston, Nashville, Montgomery or Birmingham?

A. Our competition at Wilmington, Charleston, Jacksonville and Fernandina is principally from New York, Baltimore and Philadelphia. As we get further west our competition comes from Cincinnati, St. Louis and Chicago.

Q. Is that so at Birmingham?

A. Yes sir; it is true at Birmingham to a great extent, although we have competition from both points at Birmingham.

Q. Chattanooga, I suppose, is a still greater point of competition?

A. Yes sir. Our business, I would state, at many of these points has been made possible entirely by the low rates of freight which we have been able to secure in competition with the water lines.

Mr. Haas. The object of these witnesses is simply to show, as far as we can, that there

may be necessities for charging less for a long distance than for a shorter distance, even though there is no water competition.

J. S. Ellett, of Richmond, Virginia, appeared before the Commission, and was duly sworn.

The Chairman. If you desire to make any statement you may proceed to do so.

The Witness. The paper that has been read sets forth my views very fully. I am in the jobbing business and not in the manufacturing business. Our business would be very considerably reduced in the interior on account of the competition that is given to the interior points by the southern seaports.

The Chairman. Do you wish to add your testimony in support of this memorial?

The Witness. Yes sir.

H. H. Smith appeared before the Commission and was duly sworn.

The Witness. This is rather unexpected to me, gentlemen. I was not expecting to be called upon as a witness. I am one of the delegates.

By Mr. Stahlman:

Q. What is your place of residence?

A. Rome, Georgia.

Q. What is your business?

A. The cotton business.

Q. You are a cotton buyer and shipper?

A. Yes sir.

Q. What is the feeling in your community as to the operations of this law and the desire about it?

A. The feeling there is general that it will work very disastrously to our section of the country. We have presented a memorial here in connection with the general subject.

Q. What is the character of business of Rome outside of cotton?

A. We have manufactures of several different kinds. We make stoves there and machinery which is shipped to all parts of the country. It is a large shipping point. We handle about seventy-five thousand bales of cotton a year there.

Q. What do you know about the feeling of the people on the line—

The Chairman. That is hardly a proper inquiry. Bring out the facts. You would open an inquiry that would be interminable. It would be impossible for us to go into an investigation of that question, without calling upon the communities a good deal more generally than would be at all within our power. The investigation must necessarily be exceedingly unsatisfactory.

Commissioner Walker. The feeling of a community is only valuable as it is based upon facts which call for such a feeling. Those facts we can tell about.

Commissioner Morrison. If they have been given to understand that it will increase their rates, we know how they feel about it.

The Chairman. It would be necessary to inquire what this feeling was based upon.

Mr. Stahlman. I beg to make myself understood. It was not my purpose to undertake to demonstrate the feeling of the people living adjacent to the City of Rome as to the Interstate Commerce Act, but the feeling as to

the existing condition of things. As I understand it, the existing condition of things is based upon the suspension of the provisions of the Act, which leaves us substantially in the same position we were before the enactment of the law. What I am endeavoring to bring out—it may be improper, and if it is improper I beg pardon of the Chairman and of the Commission—is that so far as Mr. Smith's information goes, there is no dissatisfaction with the state of affairs that existed prior to the enactment of the law.

The **Chairman**. I think we have been quite liberal in taking testimony to that effect already. You can see it would open inquiries in every direction, which it would be impossible for us to pursue now.

L. Johnson appeared before the Commission and was duly sworn.

The **Witness**. I have a short memorial from the Naval Stores Manufacturers Protective Association of the State of Georgia.

The **Chairman**. Do you wish to say anything more?

The **Witness**. No sir.

By **Mr. Stahlman**:

Q. Are not the naval stores, factories or plants, whatever you call them, located largely at local points on the railroads?

A. Yes sir; principally.

Q. And you pay local rates on your merchandise, provender, etc., to your mills and factories?

A. Yes sir; from certain points we pay local rates.

Q. You are not favored as between yourself and other people on the line of the road?

A. No sir.

Q. You are satisfied with the rates of transportation?

A. Yes sir; we are perfectly satisfied.

By **Commissioner Walker**:

Q. Then what is the trouble? What are you afraid of?

A. We look at it in this way: If the freight is raised—

Q. But the freight is not going to be raised, as I understand it, because you are at local points.

A. Well, here is the idea: We draw our supplies under the through rate. We pay the local rate from Montgomery or Savannah, as the case might be, to the local points. If the through rate is raised, of course there will be a raise on the local rate. We get a great many of our supplies on the through rate.

Q. So you have been given to understand that the rates to the local points will be raised if the rates to the terminal points are raised?

A. No sir; we are not so informed.

Q. Then why do you expect such a thing?

A. Well, we are interested, of course, in the through rates.

By **Mr. Chisholm**:

Q. Where are your industries principally situated?

A. In the southern part of the State.

Q. Do you get your provisions, such as corn, hay, and raw materials, from the extreme northwest?

A. Yes sir.

Q. They come on through cars?

A. Yes sir.

Q. At low rates?

A. Yes sir.

Q. To distributing points?

A. Yes sir.

Q. Then you get the benefit of the low rate with simply the local added to the point where you are?

A. Yes sir; that is what I mean.

By **Mr. Stahlman**:

Q. And your product goes long distances to find a market?

A. No; the manufactured product is all shipped under the short haul principle to the coast; but the supplies principally come from the long haul. Of course there is a certain amount of the product that goes westward under those cheap rates; but the bulk of it goes by water transportation.

By the **Chairman**:

Q. Do you mean that you pay on your supplies higher rates than are paid to points beyond you that have a longer haul?

A. We generally always ship our supplies to the coast and then pay the local back.

By **Commissioner Walker**:

Q. And in fact they go down to the coast and you bring them back?

A. Yes sir.

By the **Chairman**:

Q. By rail?

A. Yes sir.

By **Commissioner Bragg**:

Q. To what point on the coast do you ship your supplies?

A. Brunswick is our principal market, on the line of the East Tennessee Road.

Q. How far from Brunswick is your concern located?

A. The ones I am interested in are about seventy or eighty miles away. We have several.

Q. As I understand, you buy your supplies in the extreme northwest, take them to Brunswick, and then pay the local rate back to where you are?

A. Yes sir.

By **Mr. Haas**:

Q. What road do you live on?

A. The East Tennessee.

By **Commissioner Bragg**:

Q. If it was arranged so you could take them off the cars at your place at the Brunswick rate that would not be disadvantageous to you, would it?

A. No sir.

M. F. Amorous of Atlanta, Georgia, appeared before the Commission and was duly sworn.

The **Chairman**. Proceed with any statement you desire to make.

The **Witness**. I am the general manager of the Atlanta Lumber Company. We are manufacturers and dealers in lumber. Our markets are principally north of the Ohio River at such points as Cincinnati, Chicago, Detroit, Erie, St. Louis, Omaha and local points beyond Omaha in Nebraska. Since the operation of the Interstate Commerce Act our rates north of the Ohio River have been raised, to Chicago \$1.25 a thousand, to Detroit about

\$2.25 a thousand, to Lima, Ohio and Urbana, Ohio about \$2.50 or \$3 a thousand, and to Buffalo about \$2.25 a thousand. This raise has been made entirely north of the Ohio River.

Our rates continue the same to the Ohio River, Evansville, Louisville and Cincinnati.

By the **Chairman**:

Q. Is there anything further?

The **Witness**. I am ready to answer any questions.

By **Commissioner Schoonmaker**:

Q. Are there other companies in Atlanta besides yours?

A. Yes sir.

C. In the same business?

A. Yes sir.

Q. How many?

A. There are twenty-one lumber dealers here and about five wholesale dealers and shippers who ship north of the Ohio River. They are also interested in sawmills south of Macon in this State. We ship from the East Tennessee Road, the Central Railroad, the Brunswick & Western and the Louisville & Nashville Railroad in Alabama. Our Alabama rates and Georgia rates are on the same basis. We are practically the same distance from Ohio River points. Our business takes a special rate to the Ohio River. I first started this business about five years ago. Up to that time there had been no lumber shipped from Georgia to the northwest by rail. I was aware that there were a great many empty cars being carried back to the northwest, and I thought the railroads would be glad to fill them up at a low rate of freight. With that view I made inquiries of our western lines to see if I could get some inducements in freight rates in order to place our products north of the Ohio River. I was encouraged by the W. & A. Railroad, particularly, from Atlanta to Chattanooga. They secured me free passes and gave me an opportunity to go through the northwest and prospect. I traveled all over that country, visiting almost every town north of the Ohio River, from 5,000 inhabitants up, out as far as Kearney, Nebraska, two hundred miles west of Omaha. I ascertained the prices of lumber in those different towns and what prices we would have to have in order to get some trade in that country; and then, knowing the cost of manufacture of our lumber, I made a proposition to the railroads as to what freight rate I would need in order to give them business and help them to fill up their empty cars going back. In the majority of cases they accepted, and since then we have been doing quite a business.

By the **Chairman**:

Q. Now, as I understand you, the rates north of the Ohio River have been raised?

A. Yes sir.

Q. So that you cannot do business there?

A. I have some contracts that I made in February and have partly filled.

Q. You do not understand that there is anything in this pending investigation that applies to those rates of freight, do you?

A. No sir; I do not.

Q. So that whatever may be the rates there, that question has nothing to do with this investigation? There is nothing we can do upon this investigation that will be of any service to you there?

INTER 8.

A. The point I desired to make was that the enforcement of the fourth section, which I understand is in force north of the Ohio River, would probably increase our rates.

Q. But we are not dealing with that now. We can make no order now that would have anything to do with the rates up there?

A. Certainly; but it may in the same way increase our rates south of the Ohio River.

Q. If you have any facts that you want to bring before us that bear upon the rates south of the Ohio River, we will hear them.

A. The fact is that the rates we have at present enable us to do business up to the Ohio River. I am under oath, and I state that fact.

By **Commissioner Morrison**:

Q. If you add a considerable increase at this point, you cannot do business?

A. No sir.

By **Commissioner Schoonmaker**:

Q. Is your lumber all produced in Georgia?

A. Georgia and Alabama. We manufacture, ourselves, in Georgia and deal in lumber from Alabama also.

Q. You manufacture, yourselves?

A. Yes sir; and we purchase from other men.

By **Mr. Stahlman**:

Q. Do you do a large business on the Macon & Brunswick Road?

A. Yes sir; the east Tennessee system south of Macon. Our shipments amount to two or three thousand cars a year.

Mr. Norcross. I would inquire if you wish to hear from the opposition tonight?

The **Chairman**. We are hearing from the petitioners now.

Charles E. Hockstrasser of Columbus, Georgia, appeared before the Commission and was duly sworn.

The **Witness**. Mr. Chairman and Gentlemen: I have, as the others have, a petition. I will not ask your time to read it, but will merely give the finale of it and make my explanation as short as possible. Representing the City of Columbus, Georgia, and the Board of Trade, we humbly request that your body make permanent the present temporary suspension of the fourth section of the Law as it affects the interests of our city, and allow us to be placed on an equality with Montgomery and Selma, Alabama, except as to the difference in our mileage.

I will say in explanation—the facts and proofs are in our petition—that Columbus occupies a peculiarly fortunate position at the head of navigation of the Chattahoochee River. With 415 miles of navigable stream, we are not entirely dependent on railroads for our facilities. But having those natural advantages, Columbus has invested as a city, and through its citizens, quite an amount of money in railroads to give us advantages that our rivals in trade have; and we very much fear that the operations of this law will injure our interests in those investments. We desire that the railroads shall divide our freighting business with our river. Another reason is that Columbus has been for many years a large manufacturing section, particularly in cotton goods. Not many years ago the trade was comparatively of a local character or confined to the States surrounding Georgia; but as all of our supplies

are brought from the west, it was not infrequent that unloaded trains went out from Columbus to western points. That being seen by the mill men, an arrangement was made for a satisfactory rate, and a trade was established with the Territories and States throughout the entire west and northwest, and also through Mexico, Central America and everywhere where goods of that character were in demand. The condition of trade rendered it necessary to increase the facilities for making these goods, and for that reason the mills have been extended, new ones have been built and others are being built now; and if the operations of this law should prevent that arrangement from continuing, it would injure very seriously that interest which has grown up only on account of the reduced rates on freights carried by formerly empty cars.

Another part of our petition asks that Columbus be placed on an equality with Montgomery and Selma. That was asked by Colonel Alexander of the Central Road in his petition. Our reasons for that are these: Montgomery is situated one hundred miles to our west. We are rivals in the trade of all the country between us and always will be. We have the same natural advantages that Montgomery and Selma have, by means of our river to any part of the world through the Gulf of Mexico; and we merely ask that that competition may apply to us and that he be allowed to give us the same rate that he asks for those points. We do not ask that you force him to do it. We propose to do that ourselves. We have got the river and have used it in the past. It has dictated our rates of freight and we propose in the future to use it more extensively for that purpose.

By *Commissioner Walker*:

Q. Do you mean it has not been treated as a competing point?

A. It is not asked for in a petition dated I think on April 8, by Colonel Alexander of the Central Road; and we claim that, the conditions being similar, we are entitled to the same rate, if we can force him to give it to us, that he asks to give to Montgomery.

Mr. Alexander. A single case was taken as an illustration in the first petition; but when the question came to be argued before the Commission, the same thing was asked for Columbus that was asked for every other competing point.

The Witness. If it was a mistake, gentlemen, we are glad to hear it, as we feel that our natural advantages give us an equal right to it; and for that reason alone we ask that we may have it when we can enforce the matter, which we think we can do.

J. M. Thornburg of Knoxville, Tennessee appeared before the Commission and was duly sworn.

The Witness. I was not aware I was to be called as a witness for the railroads. I supposed I was simply called that I might present the views of the Chamber of Commerce. I have one of the shortest of the petitions presented; and as our locality is somewhat differently situated from the others, I will ask your indulgence to read it. I do not desire to make any further explanations.

(The witness then read the petition in question.)

W. E. Kyle appeared before the Commission, and having been duly sworn was examined as follows:

By *Mr. George M. Rose*:

Q. What position do you now hold?

A. General freight and passenger agent of the Cape Fear & Yadkin Valley Railroad.

Q. How long have you held that position?

A. A few months.

Q. How long have you been connected with the freighting business of the Cape Fear & Yadkin Valley Road?

A. Six or eight years.

Q. Where does your road run?

A. Our road starts from Bennettsville, South Carolina, and ends at Walnut Cove, North Carolina.

Q. What systems of roads in North Carolina does it cross?

A. It crosses the Seaboard Air Line at Fayetteville, the Atlantic Coast Line; at Sanford again the Seaboard Air Line, and at Greensboro the Piedmont Air Line.

Q. What water competition does it meet?

A. We have the Pee Dee River at Bennettsville, South Carolina, and the Cape Fear River at Fayetteville, North Carolina.

Q. Are there any points on your line where less is charged for a long haul than for a short haul?

A. Yes sir; at competing points.

Q. Is that the case at local points on the line of the road?

A. No sir.

Q. At competing points do you charge less for a long than a short haul?

A. We charge less to Fayetteville than we do to stations on either side of Fayetteville, on account of water transportation.

Q. Where else?

A. At Greensboro we charge less.

Q. How are your rates to Greensboro fixed?

A. They are fixed by the General Traffic Manager of the Associated Railways of Virginia and the Carolinas.

Q. Have you any business connection or are you a member of the Association?

A. We are not.

Q. But you say they fix the rates?

A. Yes sir.

Q. And those rates are adopted by your line?

A. Yes sir.

Q. Are those rates good to Greensboro over every road?

A. Yes sir.

Q. How are your rates fixed as to Fayetteville?

A. Our rates are the Fayetteville rates, based on the river rates to Fayetteville. We have to meet the water rates.

Q. The question was asked by one of the Commissioners this morning, how long during the year the Cape Fear River was navigable. Can you answer that question?

A. It has been navigable for the past eighteen months. The government did considerable work on it and made it a good river, and they run on schedule time.

Q. Since the government has worked upon the river?

A. Yes sir.

Q. Are there daily lines of boats running

up and down the river?

A. I think so, sir. A boat arrives every day.

Q. What class of boats run on the river?

A. They draw very little water, I think about three and a half to four inches. The tonnage I suppose is ten or fifteen car loads of freight.

Q. You say your rates to Fayetteville are based upon this river competition?

A. Yes sir.

Q. How do your rates to intermediate points compare with your rates to terminal points?

A. At some of the points mentioned there is no difference, and at others probably from one to five cents.

Q. As a railroad man do you know any intermediate point on your road where the rates of freight are unjust or unreasonable?

A. No sir; I do not.

Q. Have any complaints been made to the Company since your connection with it at any of the intermediate points?

A. No sir. There is no complaint existing of any kind, nor from any point.

Q. Upon what is your road most dependent for its receipts?

A. We are dependent on our connecting lines largely for our receipts.

Q. At what points?

A. At Greensboro, Sanford, Fayetteville and Maxton.

Q. Then the largest receipts of the Company are from these connecting competitive points?

A. Yes sir.

Q. How many miles of road do you operate?

A. We operate 189 miles.

Q. How much of that road has been built within three years?

A. 140 miles.

Q. Has the business upon the line of the road between the stations been firmly established yet?

A. No sir; the country is rather thinly settled and the business has not been well established.

Q. And therefore you are dependent upon these competitive points for your rates of freight?

A. Yes sir.

Q. What effect would the enforcement of section 4 of the Interstate Commerce Act have upon your road?

A. As our road crosses the three systems that run into North Carolina it would be ruin to us. We would lose all of the business at the two largest points on the line of our road.

By *Commissioner Bragg*:

Q. Bennettsville is on the Pee Dee River, is it?

A. It is near the river.

Q. How far from the river?

A. About five and a half miles.

Q. You treat it as a competitive point, do you?

A. It is to us a competitive point for all Charleston business; heavy goods.

Q. By navigation on the Pee Dee River?

A. Yes sir.

Q. How many months in the year is that river navigable?

A. I really do not know, sir. I supposed it was navigable at the time they handled the

cotton there in the fall of the year, and in the spring when they received the fertilizers to make the cotton.

Q. Do you know it is navigable then?

A. Yes sir; I do.

Q. How far is Bennettsville from the ocean there?

A. I don't know how far it is.

The **Chairman**. We have perhaps been quite as liberal as it will be reasonably possible for us to be in receiving testimony on behalf of the petitioners. Should there be other evidence that the petitioners deem important to be brought forward before we leave town, and should we find time to take it, it might be taken, or it can be brought forward at one of the other places of meeting. We must give the opportunity for those who oppose the granting of the petitions to be heard here, as some can be heard here more conveniently than elsewhere, and perhaps we shall have no more than a reasonable allowance of time for them now. In the program marked out yesterday those opposing the petitions were asked to hand in the names of witnesses at our meeting this afternoon. Names have not been handed in, for what reason I do not understand, but I assume that it is in consequence of some inadvertence or accidental circumstance, or perhaps because there is no general organization of those who oppose the petitions. We do not wish for that reason to decline to hear any evidence that may be ready to be offered. At Washington, parties representing organizations in this part of the country appeared to oppose the petitions. If those organizations are represented here now, and will submit the names of witnesses now, we will take them up and have them examined. If towns, commercial bodies, or any organizations, desire to produce evidence at this time before us in opposition to the petitions, they may hand in the names and we will receive them at this time. If they are not ready at this time to give us a complete list, they may hand in the names of such witnesses as are now ready to be examined, and let the list be completed by the time we shall convene tomorrow morning.

A. J. Mosset appeared before the Commission and said:

I desire to offer on behalf of the Ohio and Mississippi River Transportation Lines a protest against the exemption of the rail lines from section 4 of the Interstate Commerce Bill; but as I understood that the gentlemen giving evidence in favor of the railroads had an argument that they wanted to bring in, I thought it would be out of place just now, as there is more or less of an argument connected with this thing. I would just as soon submit it as a memorial, without any argument.

The **Chairman**. Unless you wish to state special facts under oath, you had better just hand us the paper.

Commissioner Walker. Does it state facts that you are ready to swear to?

Mr. Mosset. Yes sir.

Mr. Mosset was then duly sworn, and read the memorial as a part of his evidence, after which he was examined as follows:

By the **Chairman**:

Q. Are you aware of any other memorials or papers of any sort?

A. We were not aware that you would receive any communications from the water lines at this point, and therefore nothing was prepared until the last moment.

Q. Do you expect to present something at some other meeting?

A. At Mobile, New Orleans and Memphis we will have large delegations to take care of our interests.

Q. Are there any witnesses here to your knowledge that desire to be heard?

A. I do not know. I came here with a committee, and one of them was taken sick and had to go home again.

Q. You are not aware of any oral evidence?

A. I do not know of any evidence that we can offer at this time.

Mr. Stahlman. Is that paper sworn to as a statement of facts?

The Chairman. Yes. It is.

By Commissioner Morrison. What is your occupation?

A. I have been steamboat agent and forwarding agent for the last twenty-one years.

Q. You are engaged in that now?

A. Yes sir; and I am also engaged in the railroad business. I represent the Southern Pacific Company for the water lines at Cincinnati, Ohio.

Q. Your object here now is to show us the injustice we do the people that are in the transportation business by water?

A. Our object is to show you that the plea advanced by the rail lines that the water transportation is of such a nature that they must make lower rates to the long haul river points than they must to the interior points, by giving you this statement of facts—that the insurance, the disadvantages of the conditions, the river being navigable for certain seasons of the year, and the difference in time ought to enable them to get much better rates than they do, and we would therefore not be competitors really against them. We have 1,600 miles to go over, while their shortest route, the Cincinnati Southern, is 826. They have every advantage and we every disadvantage. Our point is to show you that practically we are not much of a competitor to the rail lines.

By Commissioner Shoonmaker:

Q. Do you claim that the railroads fix the rates of transportation and that the water lines must conform to those rates?

A. They have since the opening of the Southern Road. Previous to that we had an arrangement with the Louisville & Nashville Railroad that worked admirably. My friend Stahlman and myself had an arrangement that was very fair to the shippers and consignees. It worked very well. When the Southern Road came into existence, we did make up little patches of arrangements from time to time, but naturally the competition between three or four routes—there would be some freight taken at a little less rate, and that disturbed the arrangement. I may say for the last two or three years we have really had no arrangement. There has been practically no rate. There has been published tariffs, but they have not been adhered to by either rail or water.

Q. What do you mean by the Southern Pacific Company?

A. The Southern Pacific Company from New Orleans and Texas points.

By the Chairman:

Q. The road you spoke of was the Cincinnati Southern?

A. Yes sir.

Q. That is what is called the Queen & Crescent?

A. Yes sir; the Queen & Crescent.

By Mr. Alexander:

Q. I understood you to read some of the rates from Cincinnati to New Orleans. Do you remember any of the rates?

A. Yes sir. Whisky has been carried for nearly two years at a dollar a barrel by all rail.

Q. Do I understand you to say that there is no charge on the river from Cincinnati to any local point between Cincinnati and New Orleans of more than a dollar a barrel?

A. This tariff shows that all the way points are included in the regular tariff, unless it would be an occasional plantation landing; but Donaldsonville, Baton Rouge, Bayou Sara and all the intermediate points are included, in the rates of rail tariff, because although the rail lines have no direct connection with these points, still they work into these points by way of New Orleans and by way of Memphis in opposition to us from Cincinnati.

Q. And from Greenville and all the local points?

A. Greenville is a direct point. There is a new road there, and that naturally has no rates whatsoever.

By Mr. Stahlman:

Q. You never charged any greater sum for a short haul than a long?

A. We can't do it, not since you began to make the tariff of rates to all intermediate points the same as you do to New Orleans. We can't do it. Our rate on whisky to New Orleans has been fifty cents, and our rate to Greenville has been the same. We have had to carry it for a little less to New Orleans, forty cents when the whisky was an average whiskey. We had to pay ten cents insurance and take it for forty cents. We have had to take it to Donaldsonville the same as New Orleans, and Greenville the same as New Orleans and Bayou Sara, Baton Rouge and all those points the same. You never would let us get any more than that.

By Mr. Haas:

Q. Then that was not the rate to New Orleans?

A. Some have a rate, and some have not.

By Commissioner Walker:

Q. Which is further south, Natchez or St. Joseph?

A. St. Joseph is. Here is the nominal tariff, but it is not in force. It is the nominal tariff, with the difference between the rail lines and the water lines.

By Mr. Alexander:

Q. You did not understand my question. I want the actual rates. Are the actual rates worked from Cincinnati to New Orleans, no lower than from Cincinnati to any intermediate local station?

A. The actual rates are the same. They

cannot be any more. The tariff specifies. I will read it for the gentleman's information. This tariff places a rate on the different classes and on the different specials to Greenville, Vicksburg, Huntington, Port Hickey, Baton Rouge, Memphis and Natchez. These are all the same.

Q. They are rail competing points?

A. No sir; they are not all rail competing points. Some are not, and some are.

By *Mr. Haas*:

Q. Is there no point between Cincinnati and New Orleans to which you charge a higher rate than the through rate?

A. We don't take whisky to a plantation landing at the same rate, because we couldn't land it. We would have to reship it.

Mr. Alexander. That is just what I want to know.

The *Witness*. The plantation landing is the only exception; but I will state this for your information: that just now take for instance the item of cooerage that is put up in northern Michigan. It is now going to all these plantation landings at the New Orleans rate by water. From the necessities of the case the rail lines have made such cheap rates that we can't get it, unless we take it to the way landings at the same rates as to New Orleans.

By *Mr. Stahlman*:

Q. Are we to understand you to say that the rail lines have taken business to New Orleans which can be re-shipped to the plantations at the local rate?

A. It goes that way. I don't know whether they re-ship it. I presume they re-ship some at Memphis, some at Vicksburg and, I presume, some at New Orleans. I know some goes to New Orleans; I do not know what proportion.

Q. Does that tariff which you have presented here, undertake to show the rates of transportation from Cincinnati, to all landings between Cincinnati and New Orleans?

A. The landings we do business with principally; not all of them, because there are a great many places not mentioned on that tariff that are on the river, small places not mentioned.

Q. You spoke of railroad combinations. Is there any such thing as a railroad combination, or pool, or division of business between steamboats on the Ohio and Mississippi Rivers?

A. Not now.

Q. Or a division of territory?

A. Not now. There used to be when you and I first went into competition. We had a combination.

Q. I am speaking now of combinations between steamboats or divisions of territory. Are there divisions of territory?

A. Yes sir; but they are all the same. They are owned by mostly the same parties. The Memphis & Cincinnati Packet Company have the business by river between Cincinnati and Memphis, for the reason that our large New Orleans steamboats could not land at these way landings with any profit to themselves, or with any advantage to the cargo. If we took that way freight in competition with the Memphis packets, and in competition with you all along the Ohio River, in five cases out of ten, if we carry it by, and go to New Orleans and

bring it back, and put it out on the way back, it would be the very thing the consignees would not like, and they wouldn't give us any more of it. That is the reason.

Q. I want to ask if your line from Cincinnati to New Orleans takes business for Memphis?

A. No sir; we do not.

Q. Is not Memphis a very good place to land?

A. Not very. We would rather not land. The packets going up and down stream have lately refused to have much to do with Memphis. The fact is, it costs all you make. If you have a freight bill of \$50, it costs about that to do the business.

Q. Is not your failure to take business between Cincinnati and Memphis due to an arrangement you have?

A. We have no agreement in writing or in any other way. We have simply fallen into that way of doing.

Q. You have no understanding?

A. No understanding in writing or in a positive way. It is just a kind of tact way of doing it. We take freight going up stream and we bring cotton—

Q. Do you take cotton out of Cairo?

A. Yes sir; and Evansville and all places going up.

Q. Do you take it going down?

A. No sir; because we cannot sometimes get to the elevator to unload. That is the reason. Our boats, when they leave Cairo, are loaded flat with the guards in the water, and the elevator is in a very dangerous place, at a fair stage of water, and we do not go there for that reason. We are running too much risk, and the profit is too small.

Q. Are your steamers so much larger than the Memphis steamers?

A. Yes sir; nearly twice as large; some of them nearly twice that size.

Q. Have you a line of steamers from St. Louis to New Orleans?

A. Yes sir; we have the steamer Thomas Sherlock, which carries 1800 tons; nearly three times as large as the largest boat at Memphis, 740. We have now no tariff. You will not let us have any. I gave you the rates. I have filed the supposed tariff and the differences.

Q. I think it is unreasonable to say we will not let you have a tariff.

A. You made the rates so very low that we have to carry in opposition to you, and we can't make any regular tariff. The business that goes to the local points where there is no competition isn't worth mentioning. I don't suppose one of our boats has enough to pay for the fuel she burns in landing it. It isn't worth mentioning.

Q. How many river landings are there between Cincinnati and New Orleans where the steamboats stop?

A. I couldn't answer that without referring to records.

Q. Are there as many as a hundred?

A. It depends on circumstances. The bulk of our cargo is for New Orleans, Vicksburg, Natchez, Baton Rouge, Bayou Sara and Greenville. Those places get the bulk of our cargo.

By *Commissioner Morrison*:

Q. There are landings where boats go besides those?

A. There are, but I couldn't say how many of them there are without reference to records. I could go to the books of our office and tell exactly; but I can't state from recollection. I do not see the books of our boats. I know, in a general way, by the engagement of freight for those points. I only know what goes out of Cincinnati, in a general way.

By **Mr. Stahlman**:

Q. Then I understand you to say you have no rates to any landings on the Mississippi and Ohio Rivers, except those named in the tariff?

A. These are the agreed rates between you and ourselves in September, 1885.

Q. I mean to points where your lines have not come in competition with the rail lines.

A. We have no regular tariff; no sir.

By **Mr. Alexander**:

Q. And your rates to plantation landings are higher, as I understand you, than those to other places?

A. We generally take freight to plantation landings at so much for the lot, because it is usually stock or a small amount of produce or something of that kind.

Q. But you expect those landings to pay you more than the competitive points?

A. What we call a bank landing—those pay us higher; that is, a plantation landing.

Q. Then your statement that there were no intermediate rates from Cincinnati to New Orleans—

A. No fixed rates.

Q. No rates being charged from Cincinnati to New Orleans, higher than the through rate, is to be qualified?

A. That meant according to this tariff. I said that at the time. The places are mentioned in the tariff.

Q. But that tariff is merely an imaginary thing?

A. It is not an imaginary thing. It is a thing Mr. Stahlman and ourselves got up, but it was never enforced.

Mr. Stahlman. Before the sessions are over I will undertake to show a tariff indicating the difference between the charges to intermediate points and terminal points.

The Witness. I will ask the Commission to give us a chance to rebut Mr. Stahlman on that.

By **Commissioner Bragg**:

Q. Do the people along the Mississippi River seem very much dissatisfied, or do they complain very much because the railroads have compelled you to carry freight so cheap.

A. No sir. The case stands in exactly this way: the people that live on the banks of the Mississippi River do not complain, because they know they have got us to fall back upon. They carry cotton for them, by the way, from Greenville and Vicksburg, at fifty cents a bale, and the minute they get a little further down on that road, they charge them \$3 a bale. There is a good deal of complaint from those people; but the people along the banks of the Mississippi River, reached by our steamboats, never complain, because they have us to fall back upon.

By **Mr. Stahlman**:

Q. Do you not know it to be a fact that the steamboats are charging a less rate, or do you not believe it to be a fact that the steamboats are

carrying cotton at a less rate from Memphis to New Orleans than they are from landings along the river between those points?

A. My line, proper, does not get Memphis cotton to amount to anything. The Memphis Packet Company has gobbled it all up.

Q. I mean from Memphis to New Orleans.

A. You are mixing the thing up. That is not our line of boats at all.

Q. I thought you represented all the lines on the river?

A. No; I didn't state that.

Q. Your line runs from Cincinnati to New Orleans?

A. Yes sir.

Q. Please state whether or not the steamboats do not carry cotton at a less rate from Memphis to New Orleans than they carry it from intermediate landings?

A. Our boats are always loaded when they reach Memphis. If they were not, we would be in a bad box; I tell you that.

Mr. Stahlman. I submit, if that is the case, you are not as poor as you think you are?

The Witness. We are a great deal poorer than we were when you and I had the arrangement together.

At this point, 7:15 P. M., the Commission adjourned until to-morrow morning at 10 o'clock.

ATLANTA, Georgia, April 28, 1887.

The Commission met at 10 A. M., all the members being present.

William Calder, of Wilmington, North Carolina, appeared before the Commission and said:

Mr. Chairman, I see a statement in the papers that a memorial was presented from the City of Wilmington, North Carolina, in favor of a suspension of the long and short haul clause. I would ask if that is the case. It was not done in my presence. I am chairman of the only committee that is to represent Wilmington here.

The Chairman. The clerk will give the information. I do not think it was brought to my personal attention.

Commissioner Walker. Here is a petition signed by quite a large number of men doing business in the City of Wilmington, North Carolina, favoring the petition of the Atlantic Coast Line for authority to charge less for a longer than for a shorter distance.

The Chairman. Would you like to be examined on the subject?

Mr. Calder. Yes sir. It was stated that was a petition of the Board of Trade. Such is not the case. It is probably an error. The petition is not dated. I don't know when it was sent out. It is not from any authorized body.

The Chairman. You may make such statement under oath in regard to the matter as you see proper.

Mr. Calder was then duly sworn and said:

I will simply state that the Committee of which I am Chairman are the authorized representatives of the Chamber of Commerce and Produce Exchange of the City of Wilmington, and after a very full meeting, and two or three days' discussion of this question they sent this committee here to present a cer-

tain memorial, which I will do at your bidding. The petition you have here is simply a petition of citizens and not a petition of the authorized representatives of the trade of the city.

The Chairman. You can present the memorial now and any facts in support of it that you care to bring forward.

The Witness. Here is the memorial. We have no witnesses, and simply desire to present the memorial.

The Chairman. Do you wish to make any statement of facts in the same connection?

The Witness. The facts are all in it.

The Chairman. The assertion of facts in this memorial you understand to be true, do you?

The Witness. Yes sir.

By Mr. Haas:

Q. (Handing to witness the petition first mentioned by him.) Do you know anything about the signatures to that paper; as to the responsibility of the gentlemen who signed the paper and their business standing in the community?

A. I do not know the genuineness of the signatures, but the names represent among the best men in Wilmington; a very good list of signatures.

Q. Do they not represent practically the largest business interests of Wilmington?

A. They do not. They represent large interests, but not the largest.

Q. I mean combined?

A. That would be a very wide question. They are very responsible names and very excellent men.

Q. I understand in the petition you present here you say you are satisfied with your own rates, but you complain of the discrimination against local points?

A. No sir; we are not satisfied with our rates. You charge us more from New York to Wilmington than you do to Jacksonville. That is not at all satisfactory. You charge us more than you charge Savannah or Charleston.

Q. What particular trade have you reference to?

A. The trade of selling goods to the interior of North Carolina; general merchandise trade.

Q. What competition have you from Savannah and Jacksonville?

A. Not any from Jacksonville; that is simply a comparison; but we have competition from Charleston and Norfolk.

Q. Whereabouts in North Carolina, for example, does Charleston compete with Wilmington?

A. It begins right at Wilmington and strikes the line of road running through the southern border of the State again at Wadesboro and strikes the line at Charlotte and enters the State of North Carolina at that point.

Q. Do you know of your own knowledge that any business of importance is done by Charleston into that territory?

A. I do, sir.

Q. Can you tell what description of merchandise you have reference to?

A. Very largely that of fertilizers.

Q. Which are largely manufactured in Charleston?

INTER 8.

A. Yes sir: some of them are imported and some manufactured.

Q. What point in North Carolina have you in your mind where you are being discriminated against at Wilmington in favor of Charleston?

A. I have no particular point in my mind. The discrimination is not in favor of Charleston so particularly, but we cannot reach the combination stated of their rates from eastern and western cities to Wilmington, combined with the local tariff out of Wilmington, and it practically excludes us from much of the territory. We cannot ship goods eighty-four miles from Wilmington and get a satisfactory rate on the Richmond & Danville road at Goldsboro, and into the interior of North Carolina. That has been our experience.

Q. What is the reason of that? What is it that fixes that rate, and how much higher is the rate?

A. You know the reason better than I do.

Q. You are representing an interest here and you charge that you are being discriminated against?

The Witness. What is the cause of it?

Mr. Haas. No; I want to know what discrimination exists in favor of Richmond or Norfolk against Wilmington on that North Carolina Road that you have reference to just now?

A. I am not prepared to state any figures as to the discrimination; but I simply state the fact that that is the tariff sent us for that part of the country. For instance, you haul goods 280 miles to Charlotte for eight cents more on a thousand than we are charged about 180 miles from Wilmington.

Q. On another road?

A. Yes sir.

Q. You referred just now to Goldsboro. We will take up the Charlotte question afterwards. Take some point on the North Carolina road, to which you referred just now when you said you could not work via Goldsboro on the line from Richmond. Take Greensboro. Would that be a fair example?

A. I am not prepared to go into the figures.

Q. I will give you the figures myself, if you are willing. Take either Durham, Greensboro, Concord or any point that would be a fair example?

A. Take Rockingham, North Carolina.

Q. You do not remember what the rate is from Portsmouth to Rockingham?

A. No sir, I do not. Take the rate on flour from Richmond to Rockingham.

Q. I have the fertilizer tariff here if that answers your purpose as well?

A. No sir, it does not. The fertilizer trade stands on a different principle from the general trade.

Mr. Haas. I am sorry I cannot refresh the witness' recollection. I have not my papers with me on that subject, not thinking they would be called for this morning. In the absence of figures, if the Commission will allow me some little latitude I will ask the witness as to the character of the discriminations.

The Chairman. Go on.

Q. You do not mean by your statement that the rate from Wilmington to Rockingham is higher than the rates from Norfolk to Rock-

ingham, and Charleston to Rockingham, do you?

A. I state you charge less from Richmond to Rockingham than you do from Wilmington; and the difference in favor of Wilmington as to mileage is very large; from 100 to 200 or more miles.

Q. You mean we charge a less rate per mile?

A. Yes sir.

Q. Not a less total rate?

A. Yes sir.

Q. The rate in the aggregate is higher from Richmond and Norfolk than it is from Wilmington?

A. Yes sir. It is stated in that memorial that the combination of eastern and western rates to Wilmington added to the local rates to the interior, practically excludes us from a large portion of the territory.

Q. In other words, what you really mean is this: That the rates from New York to Wilmington plus the rate from Wilmington to Rockingham, are higher than the rate from New York to Rockingham?

A. No. I say that you charge us to bring goods from New York and the west to Wilmington, when we sell them to the country—you put us at a disadvantage with Charleston, Norfolk and Richmond.

Q. I am not ready to admit that, but I am trying to get your explanation, and I am trying to help you to express an opinion as to whether that is really so, and if so in what way. I understood you to say at first that the rates from New York to Wilmington plus the rates from Wilmington to Rockingham were higher than the rate from New York to Rockingham on a through rate. Now you say that is not what you mean?

A. I do not say that.

Q. Will you state in what way you are being discriminated against at Rockingham?

A. I did not take Rockingham. That was your selection. You wanted that point. I simply said that your rates from Cincinnati to Wilmington are higher than the rates from Cincinnati to Charleston, practically the same distance. Your rates from New York to Wilmington are also higher than your rates from New York to Charleston; and in going into the interior from the two points, the local tariffs on your roads in North Carolina make it almost prohibitory that we should trade with some points there that we ought to trade with.

Mr. Haas. I have no doubt that is your view, from the manner in which you express it; but I want the information that the Commission will want in order to form their opinion. I am satisfied you and I will never agree about it, but I would like to get the information for the benefit of the Commission.

By Commissioner Walker:

Q. Is there an ocean line to Wilmington that belongs to the Southern Railway & Steamship Association?

A. There is only one line between Wilmington and New York, and that is known as the Clyde Line.

Mr. Haas. It is not a member of the Association?

The Witness. The conduct of that line is such as to make us believe that their rates

are fixed in connection with the railroad, so that it is not really a competing line. It enables the railroads to charge high rates to Wilmington, much higher than they charge to Charleston, although a greater distance.

By Mr. Haas:

Q. The only complaint then that you have to make is that, notwithstanding the fact that on general merchandise, which you select as the example, the rates from Wilmington are fair as compared with the rates from New York, they are not fair as compared with the rates from New York to Charleston, though Charleston does not work into the territory to which you refer?

A. No; I do not admit that; not entirely.

Q. Then I will put it another way: the only complaint you have to make is that the rates from New York to Wilmington, by reason of this alleged arrangement between the railroads and steamship company running to Wilmington, are higher than they are to Charleston?

A. Yes sir.

Q. Do you know the character of the competition at Charleston as between the water lines themselves?

A. I do not. I am not thoroughly posted on that.

Q. Do you know how many ships run from New York to Charleston?

A. I do not.

Q. Do you know that there are lines from New York to Charleston?

A. My information is there is more than one line from New York to Charleston.

Q. Do you know that there is a line from Philadelphia to Charleston?

A. I do not know it. I am under that impression.

Q. And Boston reaches Charleston of course also by water?

A. Yes sir.

Q. At Wilmington you have but one line of steamers?

A. One.

By Commissioner Bragg:

Q. What is the population of Wilmington, North Carolina?

A. It is generally estimated at about 20,000, in round numbers. It may be a little less than that. That is the popular estimate.

Q. Do you know about what proportion of the business there is done by the railroad, and about what proportion of it is done by the steamship lines on through business?

A. Into or out of the city?

Q. Both. Take it in first, and out afterwards.

A. I should say the railroads did the largest importing business into the city, and the steamers probably the largest out of the city—the steamers and foreign ships. There is a large foreign trade there.

Q. Where is Marl's Bluff?

A. It is in South Carolina, just beyond the line; I suppose it is about twenty miles. It is near the Pee Dee River.

Q. How far is it from Bennettsville?

A. The same distance from Bennettsville; that is, in another direction to the west of it.

Q. Where is Lake City, South Carolina?

A. That is north of Charleston.

Q. How far?

A. About eighty odd miles, I think.

Q. Do you know the time of the steamers from New York to Wilmington?

A. Yes sir. It takes them from forty-eight to sixty hours, I think, according to the weather.

Q. How many ships of the Clyde Line run between Wilmington and New York?

A. Generally three. There are always two.

Q. About how often? Give us as near as you can the schedule.

A. They have from one to two steamers sailing a week.

Q. What is the tonnage of those ships?

A. I think they are about eighteen hundred tons. That is my impression. I am not positive about that. They carry quite large cargoes.

Q. How is the insurance from Wilmington to New York?

A. I think by steamer it is about one per cent.

Q. Does Wilmington do much Baltimore business?

A. Not now, sir.

Q. Why not?

A. There was a steam line established there, but the competition between that and the railroads became so sharp that it was driven off.

Q. Does Wilmington do much Philadelphia business?

A. No sir; not very much.

Q. Why not?

A. I cannot say why, except that Philadelphia probably has not exactly the goods we want to buy. We did have a steam line years ago to Philadelphia, but that also was withdrawn and not profitable.

Q. Do you mean to say New York City is your best market at Wilmington for buying eastern goods?

A. Yes sir.

Q. How about Boston; do you do much trade with Boston?

A. Not a very great deal, sir. We export a good deal of cotton there on orders, but we do not buy much merchandise there.

By Mr. Haas:

Q. You say that you have no water line from Baltimore to Wilmington, and that the rail lines drove off, by reason of the very low rates, the line that existed there.

A. I did not say that. I said the competition was so great. I did not say the rail lines.

Q. How do the rates from Baltimore to Wilmington compare with the New York rates to Wilmington? Are they higher or lower from Baltimore?

A. I think they are lower.

Q. Although there is no water line from Baltimore to Wilmington, the rate, you think, is lower by the rail line from Baltimore than from New York?

A. Yes sir.

Q. That is correct. Now you have said in your previous statement that you believed an arrangement existed between the water and the rail lines by which the water rates would control?

A. Yes sir.

Q. Do you make up your mind to that be-

cause the rail lines charge a higher rate than the water lines?

A. No sir.

Q. Is it not a fact that the rail lines do charge a higher rate than the water lines?

A. If you add the insurance necessary by water it is not higher.

Q. The actual rate as it stands is what I mean.

A. The actual rate is higher.

Q. You are speaking of inward business. Do you think it would be profitable to Wilmington as a naval store and rice market that the relief we ask for should be withheld under the long and short haul clause? In other words, do you think that you could reach the markets that you want to reach in the west, northwest and southwest upon a strict construction of the long and short haul clause?

A. If it was applied to the whole country, I think we could.

Q. That is to say, you could compete with the Mississippi River on Louisiana goods in the northwest, provided the Commission rule that we have to charge intermediate rates on rice, the same as we charge to points reached by this competition of markets and competition of the Mississippi River?

A. I do not know why you select rice.

Q. That is a very important product about Wilmington.

A. It is not the leading product.

Q. It is one of the leading products. What other products have you that are leading?

A. We have naval stores and cotton.

Q. Could you ship naval stores to that section of the country, against Mobile which has the river?

A. We can't do it now.

Q. Why?

A. Because we understand you give Savannah a special rate, which cuts us out.

Q. You say "you." Do you mean the Atlantic Coast Line, or the water line by Baltimore?

A. The Associated Railroads. I don't mean you individually, but I speak of the railroads.

Q. I am very anxious to have your statement correct, because you are under oath. The Southern Railway & Steamship Association does not make the naval stores rate from Savannah?

A. I am not aware of that.

Q. Did you ever know of the Atlantic Coast Line taking any business from Savannah to the west—any naval store business?

A. Not of my own knowledge. I have not seen the stuff in transit. I cannot say of my own knowledge.

By Mr. Walters:

Q. I understood you said that there was no steamer line from Baltimore to Wilmington?

A. Not at present.

Q. And that the rates from Baltimore to Wilmington are less than those from New York to Wilmington, where there is a steamer line?

A. The distance is much less also.

Q. I understood you also to say that Baltimore had very little business with Wilmington at present?

A. I would not like to say, as to the volume of it. There is certainly less than formerly.

Q. You are not aware then, that the Baltimore and Wilmington business is a larger volume of business than any other business done to Wilmington?

A. The local business from Baltimore or the western business through Baltimore?

Q. All the business that passes between Baltimore and Wilmington?

A. If you take all the business that comes through Baltimore I should think you were right. If you take the business with Baltimore merchants I should say you were wrong.

Q. Then you are not aware that there is very little business that comes through Baltimore from the west to Wilmington?

A. I am not aware of that.

Mr. Walters. That is a fact.

By Commissioner Bragg:

Q. How many bales of cotton did you ship from Wilmington last season?

A. About 133,000.

Q. About what proportion of that went by water and what proportion of it went by rail?

A. A very large majority of it went foreign.

Q. By water?

A. Yes sir.

Q. What was the amount of your naval stores shipped from there last season?

A. I think some four hundred thousand barrels of rosin and seventy thousand casks of spirits.

Q. About what proportion of that went by rail, and what proportion of it went by water?

A. Most of that goes foreign.

Q. About what amount of rice do you ship from there?

A. We do not keep the statistics of rice shipments, and I cannot say.

Q. What statistics do you keep of other leading articles you export?

A. No others except lumber.

Q. How about lumber?

A. The lumber trade is very large.

Q. What would you say was the yearly value of it, as shipped from the Port of Wilmington?

A. I do not deal in lumber. I should say it was two or three million dollars.

Q. Does much of it go by rail?

A. No sir.

Q. Most of it goes by water?

A. Most of it goes foreign, and some coastwise by water.

Mr. Haas. I would like to get the witness straight on one question. I know he would not make a misstatement for anything. Commissioner Bragg asked a question, as to the amount of business done by rail and by water. I think the witness was under the impression when he answered the question, that it related to general business; but I think what Mr. Bragg wanted to know was what per cent of business went east by the rail lines, and by the water lines, and what per cent came from the east; as to what the proportion of the business was.

Commissioner Bragg. Yes.

The Witness. I understood the question to allude to the business out of Wilmington; the export business, and I answered with that understanding.

Mr. Haas. The export business to New York and other eastern cities?

The Witness. He asked me about the proportion.

By Mr. Haas:

Q. You said you thought the most was done by rail?

A. No sir.

Q. What proportion of business do you think is done by the rail lines, as against the water line to New York?

A. I think the water line has the majority, that is, of export business. I stated that originally. The water line has the majority of the export trade, and I think the railroad brings in much more merchandise than the water line.

Q. From New York?

A. I would not say from New York. I mean entirely. Really I could not say what proportion the railroad brings. It is just simply a matter of observation. I see certain goods come by sea, and certain by rail. The railroads themselves could answer that question very positively.

Q. You said the cotton mostly went foreign?

A. Yes sir.

Q. Does that cotton always go directly foreign or does it sometimes go via New York?

A. Sometimes via New York; generally direct.

Q. When it goes foreign, does it go by steamer or by rail?

A. By steamer.

Q. I mean when it goes via some other point.

A. I should think most of it went by steamer. It goes both ways.

By Commissioner Walker:

Q. What is the combination called the Associated Lines of Virginia and the Carolinas?

A. That is a matter of hearsay with me. We understand it to be ruled by the Richmond & Danville, comprising the Piedmont Air Line, which takes in the Seaboard Air Line, the Atlantic Coast Line, which takes in the Wilmington & Weldon, the Wilmington, Columbia & Augusta Railroad, and its branches—in fact, it practically takes, we think, every line of railroad in North Carolina, with the exception of the short line running from Goldsboro to Newberne. I would state that on that short line from Goldsboro to Newberne, if you will allow me, the local tariff is almost identical with the tariff fixed by the Georgia Railroad Commission; while the local tariff on all the Associated Railroads of Virginia and the Carolinas, is very largely in excess.

Q. In North Carolina is it very much higher?

A. Yes sir.

By Mr. Haas:

Q. How is that road owned?

A. I think the State owns it.

Q. Do you know how the interstate rates on that road to a point like Kingston, compare with the rates to La Grange? Take the New York rate to Kingston and the New York rate to La Grange?

A. I do not sir.

By Mr. Stahlman:

Q. How did they compare before the law was passed?

A. I couldn't say. That is out of my section.

By **Mr. Haas**:

Q. How do the present rates on the Atlantic compare with the rates before the Interstate Law was passed?

A. They are very much less. I cannot say what they are now, this law has been in operation so short a time.

The **Chairman**. I hold in my hand a memorial from the Board of Trade of Savannah protesting against the suspension of the law. I would inquire if there is anybody here representing that organization who desires to be heard on that subject? If not, we will simply place the memorial on file.

Mr. J. G. Oglesby, of Atlanta. I have here a paper given me by perhaps the largest cotton manufacturing industry in the south. It is in support of the petition.

J. W. Ponder, of Opelika, Alabama, appeared before the Commission.

The **Chairman**. Does your complaint bear upon the subject of the present investigation?

A. It is a complaint of discrimination against Opelika.

The **Chairman**. Do you, or does any one from your place, desire to be heard upon the subject of this investigation? If so, we will hear you. (Mr. Ponder was then sworn.) Do you understand the statements set forth in your paper to be correct?

The **Witness**. Yes sir; to the best of my knowledge.

The paper referred to was read by the witness as his evidence in the matter.

W. O. Harwell appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Ponder**:

Q. Where do you reside?

A. At Opelika, Alabama.

Q. What business are you engaged in there?

A. General business, but principally the grocery business; heavy business.

Q. How long have you been in business there?

A. I have been seventeen years in Opelika in business, but not for myself that long.

Q. On what railroad is Opelika situated?

A. On the Columbus & Western, and the Western Railroad of Alabama, and then we have a short line running out twenty miles to Lafayette, the East Alabama & Cincinnati.

Q. Are you familiar with the railroad rates from the west to Opelika, Montgomery and Columbus, and if so, please state them, and state how these rates affect Opelika?

A. We will take the western rates from Louisville, Evansville and other western points. These differences exist, as I understand them: The Opelika rate from these points on first-class freight is \$1.80 per hundred pounds; to Columbus, Ga., it is \$1.07, making a difference in favor of Columbus of twenty-three cents a hundred pounds upon freight from the west.

By **Commissioner Walker**:

Q. That freight goes through Opelika?

A. It passes over the road 29 miles this side. On second class our western rate from these

points that I mentioned is \$1.10 against 92 cents for Columbus, making a difference of 18 cents in favor of Columbus. Third class, 97 cents to Opelika; 81 cents to Columbus; difference, 16 cents.

Commissioner Walker. You need not go through those. They are on the schedule.

The **Witness**. The Montgomery rate has a greater difference. Now I will try to show how we are hemmed in under these rates. I will take our rate from any of these points to Opelika on grain, to illustrate it, and then take it for Columbus, and add the Columbus local back to Opelika, on bacon, or any of those things. Take bacon to Columbus, Georgia, and add the local rate from Columbus, twenty-six miles back, to our place. Supposing it is within three miles of Opelika; let Opelika ship to Youngsboro, three miles of us, and Columbus has a better rate. We are not able to get there. Take the western road and pass Opelika six or seven miles—I don't recollect the exact distance—our first station—and Columbus is able, with her local rates added to the western and Opelika's local added to the western, to deliver goods there so that we are not able to supply that point by rail, and all points beyond in the same proportion. Take the Western Railway of Alabama. Take Montgomery. Her rates are so by the local from Montgomery to Auburn, Alabama, within seven miles of Opelika, and the western rates of Opelika to the local to Auburn, seven miles, on grain—Montgomery has four cents a hundred pounds the advantage in seven miles on that end of the road. I will state that these are based upon the rates of the roads which we have here. They are actual, so far as we can manage them. To Montgomery, and her local added to La Grange, Georgia, which is 38 miles, and from the west to Opelika, and the Opelika rate added to La Grange—I will not mention the rates, but give the differences in favor of Montgomery. From the west the Montgomery rate locals added from Montgomery to La Grange, 88 miles this side of Opelika, these are the differences that exist in favor of Montgomery: On first class, 30 cents a hundred; on second class, 19 cents; third class, 12 cents; fourth class, 21½ cents; fifth class, 19½; sixth class, 15½; seventh class, 9 cents. Flour is 80 cents. Montgomery can ship a barrel of flour from the west to Montgomery, and ship it by our door, for 80 cents a barrel less than we could, and she can ship it to West Point. She can ship it anywhere less than we can. Now, as I understand the way the rates work with us, take grain from Chattanooga, Tennessee. We haven't a rate from there, of the railroad, but this is by those parties there who give their rates as they exist, and we buy corn delivered. That will give an illustration. Take a car load of corn and ship it from Chattanooga to Opelika, Alabama, and our rate is 23½ cents a hundred. Ship it over the same line of road by Atlanta, West Point and Opelika to Montgomery, 66 miles further, and 12½ cents I believe is the exact rate. Montgomery can take that car load of corn, take the locals back from Montgomery to Auburn, Alabama, right over the same road and in seven miles of Opelika, and deliver it there four cents a hundred cheaper than Opelika

can take her 28½ cents and add her local of 8 cents. So we cannot get to Auburn in that way. We cannot get to Cusseta, the first station this side. We cannot get to Youngsboro. We cannot get to Gold Hill, on the Columbus & Western. Take Lafayette, Alabama, 20 miles up that road.

Q. That is a branch road?

A. That is a branch road. I would like to be understood on that. I have not seen the manager of that road to talk with him for some time, but his rate has always been (and the last time I talked with him, and I know of no change) just the same on all through goods that Opelika pays. In other words, a car of corn comes from the west to Lafayette; when it goes to Opelika you add 12½ cents. If Opelika wanted to ship a car of corn to Lafayette, it would be the same. There is no difference there. Take Chattanooga. Our rate is 28½ cents, and Lafayette, Alabama, is 34½ cents. Now add 12½ cents that that local rate gets from Opelika to Lafayette, and you will find that Lafayette gets a car of corn from Chattanooga to Opelika for 1½ cents a hundred cheaper than Opelika gets it, unless that rate has been changed. I have heard the manager of the road say he got his locals on all goods, and I know nothing to the contrary.

Q. You do not mean less than Opelika gets, but less than Opelika can put it at?

A. Yes sir; and that road makes a concession. The other road gets her rates. Now, take the Columbus & Western from Columbus. All those points up there, Alexander City and all those points on that road, have a rate from the west that is based upon the Columbus rate with the local rates from Columbus to those points back upon that road; that is, where it is shipped from the west, as I understand it, and never passes over that road at all. Those rates are adjusted in that way, and yet those goods never touch Columbus and come to Opelika and there are distributed up those two roads, the East Alabama 20 miles, and the Columbus & Western 60 miles.

By **Mr. H. B. T. Montgomery:**

Q. Is it not a fact that the railroad takes the freight for Lafayette business for their proportion less than for Opelika business?

A. Let me see if I understand the question. Do you mean to say that freight from the west shipped to Lafayette—when it arrives at Opelika, the line of road that brings it gets less freight for it than it would if it stopped at Opelika?

Q. Yes.

A. That is my understanding. That is just what I stated on that car of corn. It is a fact unless there has been some changes, and I know of none.

Q. Is it not a fact that Montgomery in shipping goods by the C. & W. Road received from the Western Road does not get her full local as much as she charges to Opelika?

A. Yes sir; we have rates here that we can turn over to the Commission, if they like, showing when it goes to Montgomery that, there the Western Railroad and the Columbus & Western make a through rate from Montgomery to these points up that road by Opelika, so that they can pass and sell goods up that road for less than we can. In other

words, they don't take the local to Opelika and the local up that road, but they have a through on those two roads that gives them an outlet up in that section that we do not enjoy. Take meat, for instance, from the west. It passes right through Opelika to Columbus. We pay 8 cents a hundred, which seems but little; but on a car load it is \$20. We are only 29 miles apart and there is the territory between us. We have \$20 more to pay for a car of beef, although it passes right by us.

Q. How much more for corn?

A. Six cents a hundred. Corn usually runs from 80,000 to 85,000 to the car, making a difference on a carload of meat, corn, flour and that heavy class of goods from the west of about \$20; some of them a little more and some a little less. The principal part of the business I do—and I reckon I might safely say more than any house in town, in the direction of Columbus—I don't mean I do more business than any house in town, but in that particular territory, that is between Columbus and Opelika, 29 miles—my trade lies in that way principally since we first began business. Then we did a jobbing business until we were cut off. They can sell corn while it is only six cents a hundred—it is 3½ cents a bushel. Take a man that lives ten or fifteen or eighteen miles from Opelika and he will go to Columbus for 3½ cents. Hence, we have to sell him at cost. Columbus can make a fair profit while we sell at cost, and in that way they have just about got right up in our door all around. I would like to state this: on the same rates from Chattanooga and West Point, 20½ cents on grain from Chattanooga, Opelika pays 28½ cents and yet it passes right on only 29 miles further and Columbus pays 17½ cents. That is the reason we don't understand the working of the long and short haul. It seems we are not either the short or the long haul. We are just between. We were all in favor of the Interstate Commerce Bill and we are willing to leave it with the Commission. We think they can manage it better than we can. It needs adjusting some way. We are just between Montgomery and Columbus also. We have got the short haul when we go to Columbus and when you go the other way it is the long haul. (Laughter.) I would like to state this, too, and I can state it on every street in our town: I have been there seventeen years and have occupied houses in business on four of the best streets we have. The first house I did business in I paid \$600 a year rent. I was working for a hardware store then. That house last year rented for \$10 per month, only one fifth of the former rent.

By **Commissioner Schoonmaker:**

Q. Was that an exceptional case or the general rule?

A. I will state further. The house I occupy now is on a corner and considered a fair piece of property. It is owned by Dr. Fitzgerald. He told me seven or eight or ten years ago that it cost some \$5,500 to build it. I rent it for \$20 a month. It is 30 feet wide, 90 feet long, has a good cellar and a 25 foot vacant lot by the side for any other privileges I might want. To offset that we bought a piece of property in Alexander City, 60 miles up that road, for which we paid \$1,200 and that we rent for

\$250, making an investment 60 miles up that little road offset our rent there. In other words, a \$1,200 investment pays the rent of a store that cost \$5,500, except the rooms above. I can take on our main street nine houses that are now occupied by the best business firms there, and I don't know but one that pays \$300; the balance all less than \$200. Ten years ago all paid from \$500 to \$800 rent.

By Mr. Montgomery:

Q. Is not that house that rents for \$300 right in the principal part of the town?

A. Yes sir; it is the drug store building and never has been occupied for anything else, and brings the largest price. The one right by it was bought and sold at half cost about five years ago for \$2,250 less the taxes and insurance, and don't pay four per cent. If I wanted to buy it and figured it, and saw I couldn't—

By Commissioner Schoonmaker:

Q. Do you mean that is the general rule there?

A. Yes sir. I have mentioned two corners. Those are the best. I will mention one other. Fitzgerald paid \$3,500 for a half interest in it about five or six years ago. He bought the other half last year some time for \$1,750. That is half of what he paid five or six years ago. I attended to the deeds and things for him.

By Mr. Montgomery:

Q. Have you ever done a jobbing business?

A. Yes sir; when I first commenced business there.

Q. What is the difference on car loads of meat and car loads of corn in favor of Columbus?

A. The difference that exists between Opelika and Columbus is about \$20.

Q. What is the usual profit on car loads of meat and corn at wholesale?

A. We never fail to sell them if we can get \$5 a car on grain; a cent a bushel usually.

Q. Don't they usually sell for half a cent a bushel?

A. Yes sir; we all want a cent, but we sell for half a cent.

Q. What on meat?

A. It depends on the market, but about the same in proportion.

By Commissioner Morrison:

Q. They do like the long haulers; they get all they can?

A. Yes sir; but we are so fixed we can't get anything just now—hardly.

By the Chairman:

Q. You attribute this want of prosperity in your town entirely to the discriminations against you in matters of freight?

A. Yes sir; on goods and cotton. Take cotton with a discrimination of 35 cents a bale against us in favor of Columbus, and give her the advantage of other goods that we labor under and the two together has reduced our receipts from twenty-six or twenty-eight thousand to 11,500. I will state that Mr. Barnes says Lafayette will receive the 11,000. Last year was an extra crop. We received somewhere between thirteen and fifteen thousand. We put it liberal. Fifteen will cover it.

By Commissioner Walker:

Q. Do you know that Opelika is one of the

towns as to which the railroad companies have been authorized to charge for ninety days less for shorter distances than for longer, and that Opelika is mentioned in the temporary order made by the Commission?

A. Yes sir; I know it. I read it. We claim that we have equal facilities with those points, or substantially the same. They, I suppose, claim not; but in putting it down, when they strike Opelika, they put it in large letters, as they do all other distributing points. It seems to come in, in that way. I understand that the Commission, in speaking of them, mentioned us, too.

The Chairman. The rates seem to be larger than the letters, according to the statement.

The Witness. Yes sir.

By Commissioner Schoonmaker:

Q. Have you knowledge of other local points that are affected in the same way?

A. No sir; none that I know of that I could state the facts in regard to, exactly. We don't complain of the rate we pay, but we feel if they can haul to Columbus, they could certainly haul to Opelika which is a less distance, for equal rates. We are not opposed to railroads, for our town is a railroad town, as we think, and we hope soon to have some further outlets from there, as they are being built.

By Mr. Ponder:

Q. What you want is simple justice?

A. That is what we want. We can't sell goods in any direction.

By Commissioner Bragg:

Q. What is the population of Opelika?

A. Somewhere between 3,500 and 4,000.

Q. About how many business stores have you there?

A. Somewhere between 75 and 80. I have counted up, but not in the last year.

Q. Have you any banks there?

A. Yes sir; we have two.

By Mr. Stahlman:

Q. I want to ask you if you know it to be a fact that stations nearer the west than you, on the line of that road, are paying a greater rate than Opelika is paying?

A. I see that West Point, twenty miles this side, pays a less rate from Chattanooga than we do.

Q. Is it not true that Loachapoka, nearer the west than you, is paying a higher rate than your point?

A. Yes; from this way and from both, I suppose. She pays a little different rate.

Q. And Auburn, a point nearer than you, pays a higher rate?

A. Yes sir; she pays a higher rate.

Q. Is it not true that the rates to Opelika are less than to any other local point on the line of that road?

A. No sir; I have just stated that West Point and Cusseta pay a less rate than we do. Those are the nearest stations this side. I think Cusseta is the first. She pays 21½ cents on grain, and we pay 23½ and we are about twelve miles apart.

By Commissioner Walker:

Q. Which way does that grain come from?

A. Either way, I think.

By Mr. Stahlman:

Q. Are you not mistaken about the rates from the west to Cusseta?

A. I have got these rates from the men we buy and sell of, too. I reckon they are working under the reduced rates.

By **Mr. Alexander:**

Q. How long have the present rates been in effect at Opelika?

A. Do you mean the western rates exactly as they now stand?

Q. The comparative rates?

A. I don't recollect the exact dates, but it has been something about two years, I think.

Q. Do you know something of the situation of Columbus?

A. Yes sir.

Q. Is it on a river?

A. Yes sir.

Q. How long has Columbus been a competing point in getting low rates?

A. Not a great many years; I don't recollect how long; a few years ago. They have been kicking like we have for some time, until you hushed them up; some time back; a year or two; I don't recollect the time.

Q. Did you ever hear of any improvement made by the government in the navigation of the river to Columbus?

A. I don't recollect. I have heard a good deal about their not being able to get any goods up and down frequently when they didn't have plenty of rain.

Q. All Opelika wants is to be made a competing point?

A. I don't know how you railroad men term it. If I was to talk about competitive points by looking at your rates, I should take the points with the large letters; and if so, we are already that. We are merely asking for an equal rate, and we feel that we are entitled to it.

Q. You want the same rates as Columbus?

A. Yes sir.

Q. Between you and Columbus is a little town called Youngsboro?

A. No sir; Salem.

Q. Is not your comparative situation as good as Salem?

A. I don't understand the question.

Q. Are you discriminated against more than you think Salem is?

A. I have not noticed Salem rates only in this way: take Columbus and take Opelika and add both of our locals to those points and she is pretty badly hurt. We can't get there, and she is at the mercy of Columbus.

Q. Columbus is competitive and Salem is not?

A. Yes sir.

Q. Is Auburn a competing point?

A. No sir; I should not consider it so. She has no facilities whatever, and neither has Salem, for distributing goods. We distribute goods from the west to Salem. They come there and there the trains are made up.

Q. If Auburn was made a competing point and given Columbus rates, could not Auburn do a good deal of business and build up?

A. No sir, I think not. She has no roads to distribute over at all.

Q. She has all the roads you have, with seven miles further haul?

A. She is not situated right there. She has not the facilities for it, the depots and nothing of that kind.

Q. You are at the junction of two roads,

where two roads cross each other. Do you know who are the owners of those respective roads, or who practically controls them?

A. I couldn't say I knew positively, but it is generally understood that your system controls them—entirely so—the Central. We have always labored under the impression that the Louisville & Nashville was willing to make the concession; in fact they said to us that they were always ready to do it. It is the locals that your roads work for.

Q. The Louisville & Nashville have a small interest in one of the roads, have they?

A. I don't know. That is my opinion. I have understood that the Central owned enough to control it.

Q. Do you know anything of the history of the Western Railroad of Alabama, one of the roads that crosses there? Did that road ever go into bankruptcy?

A. Those matters I do not know anything about.

Q. You live on the line of the road. Don't you remember ever hearing of it?

A. I don't know that I do.

Q. Do you remember hearing of the road being advertised for sale and being bought by the Central Railroad—the Western Alabama to West Point, Montgomery and Selma?

A. If I have I don't recollect it. I know you bought the Savannah & Memphis.

Q. That also went into bankruptcy, did it not?

A. Yes sir; at least it was sold.

Q. Both of those roads then have been through bankruptcy and sold out?

A. I don't know about that. I can't answer those questions. I can state that our town is in about this fix: that when you were there and owned that road, was the time that the biggest decline commenced. I recollect your coming, and asking Mr. Crayton in my presence—you asked at that time if we knew what was the matter of the falling off of the trade of Opelika, and Mr. Crayton told you it was the rates you fixed to come from these points past us. I recollect that conversation in our house.

Q. Was not that near about the time that Columbus was made a competing point, although it had before been a local point?

A. I could not say as to the exact time, but I think it was several years ago, probably. Montgomery was doing us the greatest harm at that time.

Q. That was your nearest competing point?

A. You gave through rates from Montgomery up that road that passed us.

Q. Now it is Columbus that does you more harm?

A. No sir; I don't know that there is a great difference, as they both work about the same way. I could get the exact difference; but in substance it is made so that we can't get there. We have it amongst ourselves.

By **Mr. Ponder:**

Q. Do you know how many railroads Columbus has?

A. Just the same that Opelika has.

By the **Chairman:**

Q. They are all under this system?

A. Yes sir.

By **Mr. Stahlman:**

Q. You stated that you thought the rates were less to West Point than to Opelika, and gave as your reason the quotations of grain?

A. From some points. From West Point to Chattanooga the rate is 20½ cents a hundred against 28½ for Opelika.

Q. Is that the quotation by the commission merchants?

A. Yes sir; and that is the way they are shipped. We buy goods under these quotations and the railroad bill of lading guarantees these rates.

Q. Is it not a fact that the grain dealers, or some of them, undertake to make deliveries of corn at less prices than their competitors by underbilling freight and agreeing to deliver at certain markets in competition with other certain markets?

A. What do you mean by underbilling?

Q. Underbilling in weight.

A. Making the weight less than the invoice?

Q. Yes.

A. I will state this: I have been in the grocery business for eleven years and never honored a draft with a bill of lading attached to it that had a less weight in it than my invoice, for I thought if a man would hook from a railroad I was in bad hands.

Q. You have heard of such things, have you not?

A. I don't recollect what I have heard. I must say that out of the whole time I have never had a complaint with any foreign shippers. I never heard any trouble from the North, East, or West, where I buy goods. I never had any differences but what we could settle with a letter.

Q. The quotations of the merchants on grain or western produce as to the cost of transportation are not always reliable because of the price that is offered, are they?

A. We get bills of lading with these rates in them.

By the **Chairman**:

Q. And you honor them?

A. Yes sir.

By **Mr. Stahlman**:

Q. Assuming that the rates from Chattanooga to West Point are less than to Opelika, is it not true that the distance from Chattanooga to West Point is less than from Chattanooga to Opelika?

A. Yes sir; it is true. I don't know whether you would consider it the other way or not. We don't. You take it both ways.

Q. Is it not true that by one route the distance to West Point is less than to Opelika?

A. I don't know the distance both ways. I will have to get the mileage. There is not a great deal of difference, I don't think, in the rate from Chattanooga to Opelika than to Montgomery. Opelika's freight comes by way of Atlanta. I don't think there is much difference.

Q. I feel exceedingly kindly toward the people of Opelika, but I want to put the facts before this Commission. Is it not true that the distance from Louisville to West Point is shorter than it is to Opelika?

A. I don't know the distance either way, but I am satisfied if you were to ship anything on the Louisville & Nashville it would go by way of Montgomery.

INTER S.

Q. Is it not true that the rates from Louisville, Henderson and Evansville to Opelika are even less than to West Point?

A. Yes sir; I think so.

Q. I understood you to say, originally, they were greater.

A. No sir. They are greater from Chattanooga on that line of road. The tariff shows precisely the difference. There is a little difference either way.

Q. Is it not true that the rates from Louisville, Henderson and Evansville, to points intermediate between Montgomery and Opelika, being a shorter distance from the western points, are higher than to Opelika?

A. Yes sir.

Q. Is it not true that the rates from Louisville, Evansville and other western points to Opelika are lower than to points on either side on the same line of road except Columbus?

A. Yes sir. I would have to refer to the tariff to tell the exact difference; but here is the question you are after, and I want to answer it: Auburn pays, from the West, a trifle more than we do, I think, being seven miles nearer the West; but Montgomery pays a great deal less, and with her local can come up there even less than Auburn can.

By the **Chairman**:

Q. Your point is that at these local points between you and Montgomery, or even beyond Opelika, produce from the West can be delivered at less rates than at Opelika, being the first delivered to Montgomery. Provisions or other freight from the West can be delivered at these intermediate stations at less than the Opelika rate, by going first to Montgomery and then locally from Montgomery to the intermediate station?

A. I mean to say, take a car load of flour, grain or meat for Montgomery and then add the local from Montgomery to Auburn to the Montgomery rate, and then take the Opelika western rate and add her local and they have the advantage, not only over Auburn, but as I understand it, Montgomery has it over the West and us too.

Commissioner Morrison. Mr. Stahlman thinks you ought to be satisfied with that, because they treat your poorer neighbors worse than you.

The Witness. We got to complaining that Montgomery sold our merchants, and they said, "We will give you a rate you can live on, but not pay." They gave us that and let us go ahead.

Mr. Stahlman. What I endeavored to demonstrate was that Opelika, coming here as a complainant, was more favored than other localities similarly situated that were not here complaining.

The Chairman. Do you not overlook the ground of his complaint? He explained that very fully at the outset. The ground of the complaint is that the rates are so arranged that this business can be done by Montgomery and Montgomery can take away the local business around there—Montgomery and Columbus; and in point of fact Opelika is shut out. In that aspect of the case as he presented it, it was not very important what were the intermediate rates to these stations.

Mr. Stahlman. As I understand the point

in the gentleman's testimony and in the efforts of our friends from Opelika in coming here—and I have a very great respect for them—it is that this law may be enforced. The testimony has tended to illustrate that the enforcement of the law is a necessity to them.

The **Chairman**. That is the tendency of the evidence.

Mr. Stahlman. The testimony thus far has demonstrated that the rates to Montgomery, being the nearer point, are less, and the rates to Columbus, being a more distant point, are less for reasons which we think we can demonstrate; and that the rate to Montgomery, the nearer point, being less, and Columbus, the distant point, being less, those two cities are able to go from their terminal points to points on the line of the road other than Opelika, and sell goods at less rates of transportation than the City of Opelika, and can ship to Opelika and re-transport to points on the line of the road. Assuming that is wrong—I am rather arguing the question a little as I regard it—and apply the fourth section of the Interstate Commerce Act, and instead of Opelika having the benefit over its local points on the line of the road, and being able to build up a distributing market at Opelika, and distribute to the local points on the line of the road tributary to Opelika now, the rates from all the points in the West will be identically the same to the interior points as they are to Opelika, and hence Opelika's business will go "kiting," so to speak, and they will have none of it.

The **Witness**. That is not the way we understand it. If we understand the fourth clause of that section it leaves the power with these gentlemen to say whether we are similarly situated.

By **Mr. Alexander**:

Q. Would you like to have these competing rates given, not only to Opelika, but to Cusseta, Youngsboro, Salem, Lafayette, West Point, Loachapoka and all the places around?

A. I will answer the question in this way: Our idea was to state our case here and these gentlemen can apply that. I am glad they have the power to do as they see fit. We want them to have that power. I feel that they will not hurt you, but you have hurt us. I don't mean you personally. I mean your roads.

Q. I think the whole point between us is that you think that Opelika has advantages other points do not possess, and I do not appreciate it.

A. On that we would get a better rate from the West than Columbus would, and if she had a bigger rate than we did we would have got pretty close up to her doors, and while we lost on one side we would take it on the other. As it is we can't get in in any direction.

Q. Did it ever occur to you what the result would be if all the points had the same rate; say if Chattanooga or Chicago had exactly the same rate to Columbus, Salem, Youngsboro, Opelika, Auburn, Loachapoka and all that country? If the rates were on a dead level so that you could put a stamp on a barrel of flour and send it like a letter to any one of those points, did it ever occur to you where you would be then?

A. I do not think that would be right, and I am satisfied the Commission will take care of that.

By **Mr. Montgomery**:

Q. State the size of Cusseta and Auburn.

A. They are small places.

By **Mr. Ponder**:

Q. Have they facilities or advantages for handling these goods?

A. None at all.

By the **Chairman**:

Q. Do they appear on the rate bills in large letters?

A. No sir; they are very small.

By **Mr. Stahlman**:

Q. Is not West Point a pretty good town?

A. Yes sir.

Q. As large as Opelika?

A. No sir.

By **Mr. Alexander**:

Q. How large do you think a town ought to be?

A. I think when they are large enough to have facilities for handling the goods—I am not up to that business like a railroad man. If I was I could answer the question. I would like to call the Commission's attention to this: That on the Lafayette business they get a rate for less from the West than Opelika gets. They get a rate and ship up that road for less than we can. That road gets a local added to all western goods. In other words Opelika can ship a car of corn to Lafayette as cheap as if it came from the West.

By **Mr. Haas**:

Q. Suppose the roads to Opelika charge as much for business going to Lafayette as they charge when it stops at Opelika. Would that in a measure relieve your troubles?

A. I am not mentioning that as a matter of relief to us, but feel it is an injustice to us.

Q. The Lafayette man gets a lower rate than the Opelika rate, plus the rate from there to Lafayette?

A. Yes sir.

J. W. Ponder was recalled and further testified as follows:

The first thing I would call your especial attention to is our freight rate from Opelika to New Orleans.

Mr. Alexander. If you will allow me, as representing the petitioners, I would say that to save the time of the Commission, we will admit anything on the subject of rates. It seems to me it has been very fully gone into. We will admit that Opelika is away up on the bill. No point is made, and none of our argument will be based upon anything in regard to those rates.

Mr. Harwell. We would like to have Mr. Ponder state how it affects him.

The **Witness**. If they admit all the facts that is all that is necessary.

Commissioner Walker. How do we know what they are?

The **Witness**. The through rate has been withdrawn. In last October or November shippers of cotton from Opelika petitioned the Alabama Railway Commission that they were unjustly discriminated against. They went before the Commission and had a hearing,

That Commission decided that they were unjustly discriminated against and requested that the roads grant Opelika some relief; that they would lay themselves liable for damages if they did not. The roads refused to grant the relief and withdrew all through rates from New Orleans and we haven't any today. I go down to my agent and get the local rates on New Orleans, which has a market sometimes we would like to get to. I am a cotton shipper. They have got facilities in New Orleans and sometimes it is a specially good market. We don't get any through rates whatever from Opelika to New Orleans. The agent will tell me to ship the cotton locally to Montgomery on a rate of 27 cents a hundred for 500 average, and from Montgomery I will get a through rate of 45 cents a hundred equal to about 72, or something over. On Savannah we get a rate of 52. That is over the Central line, a long haul. They refused absolutely to grant us a rate to New Orleans because it don't go over their line. Savannah being our natural outlet most of our cotton goes that way. I can't go otherwise. We can't ship to Charleston because we have got a rate of 52 and at Savannah they give a rate of 52, and give us a rebate on compress. If we ship to Charleston they don't do that.

By **Commissioner Schoonmaker**:

Q. How much rebate?

A. This year 35 cents a bale. I think it has been 65.

By **Commissioner Walker**:

Q. Why can't you ship the cotton to Columbus? What is the rate there?

A. Ninety cents a bale. You see we can't adjust it. If we could ship our cotton on a very low rate to Columbus and get a through rate it would do. We can't do that. They so fix the locals that we can't get away from there to any other point.

By **Commissioner Morrison**:

Q. Unless you go their way?

A. Unless we go their way. Then it is all right. Montgomery is further from Savannah than we are. I don't know the exact miles, but the railroad agent told me the other day it is further. Looking at the map you will see it is further. They have the Central Railroad to carry the cotton to Savannah. They give Montgomery a rate of 45 cents a hundred, and Opelika, that goes over the Central Railroad, 52, so it has seven points the advantage of us. Those are the facts of the case. That is equally true of all the eastern points too. I will further state that West Point, Georgia, 82 miles above us, got the same rate on cotton to Savannah that we did. They come right by us.

By **Commissioner Schoonmaker**:

Q. What do you ask for?

A. We want it adjusted properly.

Q. What do you consider a proper adjustment?

A. We consider as we are nearer to Montgomery than Savannah we ought to have the same rates. They have no competition and neither have we. We are on the Central and so are they.

Q. Exactly what do you claim; the same rates as Montgomery?

A. To Savannah; yes sir. We would like to have the same rates.

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Q. What do you claim about New Orleans?

A. We can't very well ask the same rates there, because we are sixty-six miles further; but we ought to have something better than between 45 and 72.

Q. What do you think you ought to have?

A. A rate of 50 or 55, or anywhere in reason, so we can do business in comparison with these other points around us.

The **Chairman**. Gentlemen, this completes the list of witnesses that has been handed to me. I would inquire if parties who oppose these petitions are present and desire to be heard further? If not, we must understand that as far as Atlanta is concerned, the hearing upon that side is closed. Have the petitioners any evidence in rebuttal that they desire to bring forward?

Solomon Haas, who had been previously examined, again appeared before the Commission and was further examined as follows:

By **Mr. E. B. Thomas**:

Q. Reference was made by the gentleman from Wilmington to the Associated Railways of Virginia and the Carolinas. Will you kindly state to the Commission the character of that Association?

A. It is an Association under contract to as far as possible maintain rates at junction points—between three lines known as the Seaboard Air Line, the Atlantic Coast Line and the Piedmont Air Line. The contract is now in course of preparation to be submitted to you gentlemen as indicated to you several weeks ago.

Q. You are the traffic manager of the three roads referred to?

A. Yes sir.

By **Commissioner Schoonmaker**:

Q. Is this a sub-contract under the Southern Railway & Steamship Association?

A. It is a contract entirely independent of that and does not come into its territory at all, except so far as the maintenance of joint rates is concerned.

By **Mr. Thomas**:

Q. Is not the object of the Associated Railroads a maintenance of agreed rates at competitive points, without any pool, allowing the business to find its own channels?

A. Yes sir; and I will say in addition to that, that whereas the three lines control the junction points within their own systems, the rates are not greater for the short distance than for the long, and that the intermediate rates are in no case higher than the junction point beyond it where such junction point is controlled by the three lines.

By **Commissioner Walker**:

Q. You say you are going to furnish a copy of the contract?

A. Yes sir; it is in course of preparation now. It would have been furnished sooner; but under an understanding it will be given hereafter.

Q. Is it the case that the local rates in North Carolina are about 40 per cent higher than in Georgia?

I really do not know; but admitting that to be true there is no reason why they should not be so if the rates are not unreasonable.

We are willing to take our chances with you, gentlemen.

Q. You do not deny the facts stated in that respect?

A. I cannot deny them because I really have not made the comparison. The roads in North Carolina have formed this Association. There are other roads than the one indicated by the gentleman from Wilmington that are not in the Association Contract, but I believe there are no two roads in the State that have the same local tariff, the roads being governed in their local tariffs very much like the roads of every other State. Reference has been made to the North Carolina tariff and the Georgia tariff. I hope you gentlemen will not understand that we think that our friend Major Campbell Wallace has treated us exactly right about the Georgia tariff. We are not banking on the Georgia tariff as a good tariff.

By *Commissioner Schoonmaker*:

Q. You do business under it?

A. We have to. It is a "ground hog case."

By *Mr. Thomas*:

Q. I will ask you to state the reasons for the drop in the rates according to the diagram now submitted.

A. Continuing the rate from Charlotte as far as it is practicable to do so, the rate advances until we strike a point where the rate bases on Columbia, which rate is made by Charleston. The highest rate that can be maintained here is the local rate added to the Columbia rate.

By *Commissioner Walker*:

Q. The local rate from Columbia where?

A. To these local stations north of Columbia. Take Blythewood, Ridgway, Winnsboro, etc. As you leave Columbia going towards Augusta, the Augusta and the Columbia rate being the same from New York, being made via Charleston or via Savannah, the local station rates intermediate can only be the rates added to Columbia or added to Augusta. Therefore the rates run up from Columbia and run down as they approach Augusta. Graniteville is also a junction point with the South Carolina Road, and it has been customary for years to give Graniteville Augusta rates. For that reason the rates are carried out from Graniteville upon a level, making the same at all the stations as Augusta. The Statesville rate has for years been the same as Salisbury; the distance being so short, we carry out the Charlotte level. There is a road from Statesville to Charlotte also. We come up from Statesville carrying the rates by a gradual advance until we get to the point where we strike a level as far as Asheville. Then we go up and carry it out to the end of the line. We have no rate beyond Statesville that is higher than the junction point beyond.

By *Mr. Thomas*:

Q. On the main line from West Point to Atlanta there is a depression in the rates, or a reduction, at Greenville, South Carolina.

A. I will start at the West Point end. The rates, as far as we are able to show, from New York, for a distance of about 350 miles, are no higher for any point than another intermediate point. At those points we have not the competition which controls the rate for us. But when we strike Spartanburg, we do strike a competition that has heretofore existed.

By the *Chairman*:

Q. What is that?

A. The competition by Augusta, and the system of roads under the control of the Central. The rates are reduced there.

Q. Competition by rail?

A. Yes sir. For that reason the rates are reduced. Competition exists at Greenville. The rates are carried out until we strike Gainesville, which is known as the junction point to Athens. There we have to go back on account of Gainesville. There the rate is made by the Georgia Railroad the same as to Atlanta. By contract with the people of Gainesville, they give Gainesville the same rates they give Atlanta.

Q. Is there a higher rate between Gainesville and Atlanta than the Gainesville rate?

A. No sir. We work back from Gainesville just enough to keep the people from paying a higher rate than the Gainesville rate plus the local.

Q. The same reasons obtain, do they not, in making the rates from Richmond to Atlanta?

A. Yes sir; the same rule there governs.

By *Commissioner Walker*:

Q. You have not on this line any depression at Spartanburg. Why not?

A. That is caused in this way: we have in this territory here not only competition of roads, but competition of Charleston on the one side, and Savannah, Atlanta, Richmond and Norfolk on the other. In order to satisfy all these parties, we have all the roads who are interested agree upon certain differences that shall exist. That makes the rate, perhaps, a little different from Richmond on this line than from New York, because the differences are not exactly alike. The South Carolina tariff is made upon a fixed difference at Charleston. The Richmond rate is made by taking the Charleston rate and adding so much for the Richmond rate.

By *Mr. Thomas*:

Q. Is that the schedule of all rail rates from New York by the Virginia Midland?

A. Yes sir.

Q. The rate is lower at Charlottesville than at the stations on each side. Will you state the reason for that?

A. The reason for that is the competition by water to Newport News, and from Newport News to Charlottesville, which makes a very decided depression there as against our rail line by Alexandria.

Q. The same depression exists at Lynchburg?

A. By Norfolk and Norfolk & Western.

Q. And at Danville again?

A. That is on account of the rates to Danville, by their own lines by water, and Richmond, in order to enable the rail lines to come in there with their rates.

Q. Is that the schedule of rates of the Columbia & Greenville division?

A. Yes sir.

Q. There is a depression at Greenville?

A. Yes sir; the rate is affected by the rate from Augusta, and Greenville the same.

By the *Chairman*:

Q. In several places on these diagrams there appear depressions which are the result of concessions to competition by rail?

A. No; not at this point.

Q. In several places?

A. That is only on the Virginia Midland.

Q. What I wanted to direct your attention to was this: Suppose there was a strict enforcement of the fourth section of the Act. Would not, in many cases, that competition necessarily disappear so that there would not be such an arrangement?

A. Yes sir; we have already arranged to eliminate a good many points which really ought not to have existed—competitive points. This was done before we had a meeting with you. We intended to so arrange these rates as would, perhaps, meet your views a little better than this sheet does; but under your order we had to suspend its preparation, because it was necessary in reducing some of the local points to increase others. Take a point near Greenville that had to be raised unless we reduced all the points to the level of the competitive points. Under your order we cannot advance a single local station, and, for that reason, we have just left it there.

By *Commissioner Walker*:

Q. State what point of depression you are intending to line up.

A. Greenville is one of the points.

By the *Chairman*:

Q. Do you intend to line that up so that these differences will disappear; that is, so that there will be no intermediate higher rate?

A. Yes sir.

By *Commissioner Walker*:

Q. Will that reduce some of the locals?

A. Yes sir. One reason why we could do that was on account of the South Carolina Commission. The road running through Georgia into South Carolina was required by the South Carolina Commission to use a continuous tariff which made the rate naturally very low; but under a more recent decision they held that the road might not use a continuous tariff, but might use a joint tariff, which would make it higher.

Q. There is nothing in the order that forbids the raising of some of these points?

A. No; but we cannot raise those without getting into the same trouble we are in now.

Q. You can raise them a little and reduce the local rate?

A. Yes sir; but our object was to line up the whole business and let it all conform.

Commissioner Walker. There is nothing in the order that would prohibit your making that arrangement.

By *Mr. Thomas*:

Q. What would be the effect of bringing up the rate at Charlottesville, Lynchburg, Columbia and Augusta?

A. We have now this trouble: the Chesapeake & Ohio Road refuse to give us any business because we could not work as low a rate to Charlottesville as they want us to work through Charlottesville to their stations. That business is worth \$100,000 a year, but we cannot make Charlottesville as low as Staunton.

By *Commissioner Walker*:

Q. Do you mean you cannot afford to make Charlottesville as low as Staunton itself is?

A. Yes sir. We have raised Charlottesville because it did not require an increase in any local station. We simply brought Charlottesville

ville to the point where we had the local stations, and made that rate a higher rate than the Staunton rate, preferring to lose the Staunton business rather than to lose the local business.

By the *Chairman*:

Q. You say it is worth \$100,000. You mean it amounts to that?

A. Yes sir.

By *Commissioner Walker*:

Q. Was it not really an advantage to you to get rid of it?

A. No sir. Our companies run rates on exactly that basis. We will make up a list of rates and submit them to you, and if you gentlemen think they can be improved, if you will simply say the law does not require us absolutely to hold on to the local station rates, I think we can make a satisfactory rate, certainly as far as our associated lines are concerned. There is one thing I think we ought to explain, on account of all the railroads here represented. The Central Railroad which is working a rate of \$1.25 to one point, works a rate of \$1.61 to another. It wants to reduce those local station rates and does not want to increase Greenville to the high point. It wants to raise Greenville some and reduce the local stations. That will necessitate the increase of some few stations near Augusta. Under our construction of the order we cannot do that. If you will relieve us of that, we will get up a set of rates that will meet all the requirements.

Commissioner Walker. I think you had better understand that corrections of that sort will not be considered by us a violation of the order.

The *Witness*. Any rates that are unreasonable rates we know of course will not be regarded.

On the 5th of April it was said yesterday very high rates were charged, and you want to know what was in the Interstate Bill that made us charge those rates. The answer to that is simply this: We did not know what the short lines were going to charge. We did not know what rates we could make under a strict construction of the fourth section. We fixed upon a rate. Take Atlanta for example. Then we ran up all our intermediate rates to conform to that rate. That was the reason why, pending our argument on the 5th of April, these high rates went into effect. Another question was brought out frequently yesterday: the advance in the rates for a short period on manufactured products, cotton goods. That was for the reason that it became necessary for us to revise the classifications we had in force giving to the products of southern cotton more than a sixth class rate, while on the same character of goods shipped by individuals we were charging second class rates. Of course that was a discrimination that we had to avoid, and to do that we struck out southern cotton mills and put all cotton mills on a parity, reducing the rates from second to fourth class and increasing from sixth to fourth class, knowing that to a great many points where we come in close competition with the eastern mills we would have to make special rates. It is certain we will have to make some special rates, which of course will conform to the general ruling.

The *Chairman*. I will ask again if there is

any other witness who desires to be heard or that parties desire to bring forward, either in opposition to these petitions or in rebuttal of the evidence that has been produced on that side? I hear of none. I will now ask if anybody desires to be heard to discuss the evidence?

Argument of Hon. W. S. Chisholm.

All of the petitioners before the Commission ask the same relief, which is a suspension of the fourth section of the Act. The facts which have been elicited in the different cases are in some respects different; and there are two constructions which may be given to this section. One construction will materially affect the companies which I represent. The other construction will affect them but will not affect them so seriously. Section 4 provides:

That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance.

The first point is upon the meaning of the words "aggregate compensation." Do they refer to the aggregate joint rates, or to the aggregate rate upon one particular line? My suggestion is that the words refer to the aggregate rate upon a particular line. I read in connection with section 4 to sustain that interpretation, section 6. Section 6 provides:

"That every common carrier subject to the provisions of this Act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this Act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in anywise change, affect or determine any part or the aggregate of such aforesaid rates and fares and charges."

Here is an interpretation of the word "aggregate" in the schedule which is required to be published according to section 6; and the word "aggregate" refers to, and is to be determined by an addition of the terminal charges and any other charges which may be established by any rule or regulation in force upon that line.

Further on in section 6 there is a provision made for joint rates:

"Every common carrier subject to the provisions of this Act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements or arrange-

ments with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission."

In this section, referring to joint tariffs, the Commission will perceive that the plural number is used all the way through. They speak of lines. In section 4 the reference is to a common carrier in respect to a line. The plural is not used. It is a common carrier and the word "line" is used. The further limitations in section 4 all support this view, because it says that the limitation shall be for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance. Now if I should be right in that interpretation, then the longer and the shorter haul apply to such rates as may be made by a common carrier having one line, or a common carrier operating several lines, but still under one management or control as defined by the first section of the Act. Then, if this rate is to be applied only to the line and you are called upon afterwards to make a joint rate or to unite in a joint rate, I then claim that under the proviso of the first section this interpretation is also strengthened. The first section prescribes:

"That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, when both are used, under a common control, management or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States or the District of Columbia, to any other State or Territory of the United States or the District of Columbia," etc.

The Commission will notice that after the words "Or from any place" there is a stop and the disjunctive then begins, and after the disjunctive there is another kind of traffic provided for. The first part of it provides for the passenger traffic between states and territories. When we strike the disjunctive it provides:

"Or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country, and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country; *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property wholly within one State, and not shipped to, or from a foreign country, from or to any State or Territory as aforesaid."

The first section makes two species of property. One species is that carried from State to State or from State to Territory. That is provided for by continuous lines. The other species is property which comes from a foreign country. The property which comes from a foreign country is stamped with the character of the traffic which is controlled by this bill. The property which comes from different States is not stamped with the character of this bill if it is received in a State and transported to its destination in the State.

To illustrate now this idea with regard to the Savannah, Florida & Western Railroad. At Savannah we do business with the Ocean Steamship Company and we do business with the Charleston & Savannah Railroad. The Charleston & Savannah Railroad in turn does business with the Atlantic Coast Line. The Atlantic Coast Line in turn does business with the Pennsylvania Railroad. The Savannah, Florida & Western commences in Georgia, at Savannah. There is no limitation in the Act upon the receipt of its freight. It receives freight either from the Charleston & Savannah Railroad in Georgia or it receives it from the Ocean Steamship Company in Georgia. It handles it in Georgia. It transports it then from Savannah to Thomasville, Bainbridge and Albany. Under the construction which I claim for the Act that traffic from Savannah, after it is received by the Savannah, Florida & Western Railroad, is not subject to the provisions of the Interstate Commerce Bill, if it is handled, received and delivered in Georgia. If it is handled, received and delivered in Florida, then it does become subject to the provisions of the Interstate Commerce Act. In further illustration, if it goes to Albany, at Albany the Savannah Road connects with the Central Railroad, and that system connects with the Louisville & Nashville and other roads. The freight goes to Albany, and if that freight is to go from Albany it is received. Now the Savannah, Florida & Western Road is not a part of any continuous line. It is not operated, nor is it managed by either of these systems. They have nothing but joint rates. It is a system of joint rates. They receive this property at Albany, and if it is transported to any point in Georgia, then the carriage by the Savannah, Florida & Western is not affected by the Interstate Commerce Bill. But if it is transported to Florida it is affected. Therefore, if I am right in this construction, the principal part of the business which this road does, being the delivery of this produce and of this commerce in the State of Georgia, is not affected by the Act, and it would only ask to be relieved from that portion of the Act which relates to the business delivered in the State of Florida.

Many, however, differ from me in this proposition, and hold that the word "aggregate" does not mean what I have contended it does, but that it refers to an aggregate of joint rates. If that should be the meaning, then there is not a station upon the Savannah, Florida & Western Railroad, either in the State of Georgia or in the State of Florida, that is not materially affected by the Bill; and that would bring us to the construction of section 4. In that connection we inquire what would be the

power of this Commission in interpreting that law, under the facts of the case, to grant relief? My position about it is that this Commission has ample power to grant relief and to suspend this Act whenever a court would be authorized to do so, or to declare that the case was not a case of similar circumstances or conditions. My position is that whenever a court would decide that a rate was just and reasonable, or whenever a court would decide that there was and could be no unjust discrimination, this Commission has the same power to review the facts of the case; and if in their judgment a court would be justified in relieving the carrier, they can exercise the same power; that their power, in other words, in granting relief under section 4, is concurrent with the courts. It may not be the same relief, but they can exercise the same powers of judgment that a court would exercise. I claim further that the Commission has greater power than the courts. The Commission may go further and investigate a case and may grant the relief by suspending this section, although the case may not be a proper one for adjudication before the courts.

That being so, what principles, as gathered from this Act, should be the guide of the Commission in granting the relief, not only upon the petition which I represent in this case, but which would be applicable to all the petitioners? I read section 1 simply so far as it relates to rates. Section 1 prescribes that rates shall be just and reasonable. Take that section alone, disconnected from the other portions of the bill. "Reasonable" and "just" are words that are legal terms. They have been in use for years. They have been construed by the courts of this country and by the courts of England. Reasonable and just rates have been held to be rates which are not excessive. To illustrate: it has been held by the courts when only that question was involved, when it was not mixed up with the question of discrimination, or any statutory prohibition, and the only point was, "Is the rate reasonable and just," that the question before the court was, Is the rate excessive? And the principle was laid down that a rate might be reasonable and just, though it be \$1 to A, fifty cents to B and nothing to C. In most cases, however, combined with this principle of reasonable and just rates or charges, there have been other questions before the court than those alone, arising out of legislation upon the subject of unjust discriminations, or the common law upon the subject of unjust discriminations, independent of reasonable and just rates. This Act has itself prescribed what shall be the measure of unjust discrimination. It is defined in section 2, and it is very limited. To make an unjust discrimination, there must be a greater charge for a like contemporaneous service in the transportation of a like amount of traffic under substantially similar circumstances and conditions. That section, in my judgment, applies principally to personal discrimination, and is not before the Commission upon the construction of this Act any more than it is a part and parcel of this whole system. Section 3 provides:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to

make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

In the first case it provides that there shall not be an undue or unreasonable preference or advantage. It next provides against an undue or unreasonable prejudice or disadvantage. Now that was put in the Act to meet the class of cases where there has been discrimination, not in rates, but in the conduct of the transportation. As an illustration, A brings his goods to the depot today, and B does not bring his goods until tomorrow. The train departs tomorrow. B, on account of favoritism, or preference, has his goods shipped, and A's goods are left over for the next train. The same kind of preference had existed in the delivery of goods. In order to enforce section 4 the traffic must be under similar circumstances and conditions. Now my point, as far as the Commission is concerned, is that all these should be taken together in deciding whether or not you should grant relief by suspending section 4. The question as to whether the rate is reasonable and just should be considered. The question whether there has been any undue preference or advantage, whether there has been undue or unreasonable prejudice or disadvantage in any respect to any person, should be considered, and then as to whether it is all under similar circumstances.

I submit without argument simply a statement of the proposition that the circumstances cannot be similar when there is the difference between through and local shipments. In the first place, the receipt of a through shipment is often nothing more than the uncoupling and the coupling of a car; whereas, the receipt of a local shipment, received at a local point, or even at a through point, involves the collection, the billing, the handling and the shipment. Then there is another element in connection with the through shipment, a shipment received from some other line, or a shipment even beginning at one terminal point of a company and going to another terminal point of a company. Here are through cars; cars frequently unbroken. The cars must go through. All those facts should be first taken into consideration. Next, each company has generally provided itself with costly terminal facilities. They do a large amount of business at those terminal points, or even at the junctional points. They have a large force always employed, and a large force must be employed at the local or noncompetitive points. At such stations frequently the employees are not kept in employment. The work is desultory, but the pay goes on all the same.

The great question to be considered is whether the shipment is competitive or whether it is noncompetitive. If it is competitive, and the competition is by water lines, it seems to me that the statement of the case argues it and nothing more. Also, if it is competition by water lines, or part water and part rail, in

each of those cases the rate is also dominated by the water line, if the water line has any important part to play in the transportation; and in such cases the railway company must meet, not the net rate, but the rate fixed by the water line, or it must lose the business at the competitive point. Of course this very doctrine of competition comes up also in cases where the competition exists between two railroads, and hence the great principle that is before this Commission today; the great point which they are asked to settle, as I understand it, a point applicable to all the petitions, is that they should recognize the distinction and the differences as they now exist between competitive and noncompetitive points, whether that competition has arisen from rail and water, from water alone or from rail alone; and the Commission is appealed to because the testimony has shown this state of facts existing: That the whole business south of the Ohio River and the Potomac River for years and years has grown up under a system by which these competitive points have been recognized; and the contest before the Commission for the last two days has been upon the part of these competitive points to retain their position, and on the other side to pull them down and to obtain in some slight degree the advantages the others have acquired. When the Commission find that an entire section of the country has grown up under a system, would it not be wise, does it not appeal to their discretion, does it not appeal to their sense of justice, that that system should not be suddenly abrogated? That these competitive points where money has been spent, where manufactories have been built, where trade centers have grown up, should not, without warning, except the passage of this Act at the last session, all be wiped away with a resulting financial revolution in this section of the country almost equal to the Civil War?

As I understand the appeal of all the companies, it is that this state of things shall not be disturbed at present; that the Act shall at least be suspended until Congress can act upon it again, and until the people themselves can be heard more fully upon the subject. Have you the power? It seems to me that you have, unquestionably. You have the power, because your power to suspend is unlimited. You have the power, because you would be in a proper exercise of it in deciding that the circumstances and the conditions are not similar. You have the power again under the third section, which prescribes:

That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage.

This Act was passed when a certain condition was in existence. Would it not be giving now, at this time, an undue and unreasonable preference, in the present state of the country, to the local noncompetitive points, and would it not, in the language of the latter part of the section, be putting an unreasonable prejudice or disadvantage upon the competitive points and upon the trade centers which have been built up and have been nourished by the system?

In conclusion, I simply ask on behalf of the

Savannah, Florida & Western Railroad, and on behalf of the Charleston & Savannah Railroad, that the names of those two companies shall be added, if this order is continued, to the list of the companies enumerated in the order; and that in addition to the places enumerated, Jesup, Waycross, Chattahoochee and Yemassee be added, as to which the operation of the fourth section shall be suspended.

The Chairman. We have been accustomed to ask those who request orders of us to draft the order that they think themselves entitled to upon their petition, and present it for our examination in the light of the facts.

Commissioner Walker. I think the papers we have here will answer.

Argument of Mr. J. F. Hanson, of Macon, Georgia.

Mr. Chairman and Gentlemen: The business situation in Georgia, and I imagine the same is true with reference to most of the Southern States, is rather peculiar. Our agricultural population, which constitutes a very large proportion of the productive population of the State, is engaged in cotton culture. By reason of this fact cotton is our only money crop, and consequently the agricultural interests of this State have to be carried very largely by the mercantile interests. The farmer buys his supplies, fertilizers, etc., from the dealer in the smaller towns. The dealers in the smaller towns concentrate their demands upon the jobbers and dealers in the centers of trade in the State. I make this brief statement now, and beg you will bear it in mind, because I propose a little later on to make an application by which I think I can illustrate the result of the enforcement of the long and short haul clause of the Interstate Commerce Law. It is a well known fact to all of you that the local rates in Georgia are fixed by our State Commission. It is generally conceded, I think universally conceded, that the local rates of freight in Georgia are as low as our railroads can stand. I think it is generally conceded it is impossible for them to stand any considerable reduction in their locals and maintain their property. This being the case, the only effect of an enforcement of the long and short haul clause in the law, would be to increase through rates. Now, I want to make this statement: that, representing the business interests of this State as I do, my conception of this question is the conception of the question entertained by the business interests of the State as far as I have had an opportunity to investigate the matter; and while I am as friendly to the railroads as any man in the country, appreciate their value and appreciate the assistance they have rendered to the important interests of the country, I have not now, and never have owned a dollar's interest in a railroad in the State. I am interested only as a large shipper of freight. I am interested in this question, because, in my judgment, it affects the prosperity not only of the State of Georgia, but of the entire Southern States.

If you concede the point that our railroads cannot reduce their locals any further, the effect of an enforcement of this clause in the law will necessitate an advance in our through rates. I know that the opinion obtains, and

probably that impression has been made upon the Commission, that all these interests that have assembled and by memorial, petition and evidence, have asked you to suspend permanently this clause in the law, have been induced to act thus by a threat on the part of the railroads to put up the through rates of freight. So far as I am concerned I have accepted the assurances of the men connected with our railroads with reference to this question. They are the same men I have dealt with for many years, and I will say that they have never deceived me on any occasion. I am assured by these men, some of whom I know very intimately, personally, that they have applied the local tariffs that would be necessary in order to adjust local rates to present through rates under the Interstate Commerce Law, and that the result shows that it would be utterly impossible to maintain the railroad property of this country upon that basis. Receiving the assurance in such a positive form, I accept it as correct, and I infer from it that the only effect of enforcing this law so far as the territory covered by the Southern Railway & Steamship Association is concerned, would be to advance our through rates. If the Law is enforced, the through rates must be advanced. I accept the assurance of these gentlemen that they cannot operate their roads and maintain their property if they reduce their locals.

What would be the effect? Several very remarkable demonstrations have been made here and several very remarkable facts have come to the surface. The agricultural population in this State are practically the consumers of the State. We have seen delegations coming from all sections of several States. We have listened to numberless memorials. So far the agricultural interests of this section have not appeared before your Commission. Why? It is for the simple reason that the agricultural interests of this country have no grievance to redress. They are not here appealing either for a reduction of through rates, or an advance of local rates, and for the simple reason that within the State, under the operation of our own State Railroad Commission Law, there is a condition of perfect peace as between the railroads and the shippers of freight. It is not only time that the agricultural population of this State, which are both consumers and producers, have not been represented here, but the further fact is demonstrated that there is no contest here to protect either producer or consumer. There is but one question that is in controversy. There is but one point about which there is any conflict, and that is with reference to equalizing the advantages of dealers. It is a commentary, and a sad commentary, upon the condition of affairs that exists and upon the transportation problem, that all this turmoil and strife comes from a contest as to who shall handle the supplies of the only productive class in this section of the country. I do not think that that is an unreasonable statement. It is warranted by the facts. This Interstate Commerce Law was based upon a demand on the part of small dealers in smaller places to be put upon an equality with large dealers in the centers of commerce and trade in this State. If any class of people in this country demanded the passage of this Law, it was the

smaller dealers of the country. The arguments adduced before this Commission show not that the local rates are too high; so far as Georgia and Alabama are concerned, no man in my hearing has complained that he was charged too much. The only complaint that has been made here, so far as I have been able to hear the testimony, was that while one man is charged a given price, another man is charged a little less. The question of unreasonable or unjust rates, so far as I have been able to catch the testimony that has been offered, has not been raised before this Commission. I repeat that the point in controversy is the leveling of advantages between jobbing merchants in the commercial centers and at the competing points of the State, with dealers at local or noncompetitive points and in smaller places. That constitutes the issue.

Now, Mr. Chairman, I propose to illustrate the effect of this Law provided our through rates must be advanced. I assume today, with all the candor and earnestness of my nature, upon the information to which I have alluded, that, so far as Georgia is concerned, it is not practicable to reduce the local rate. What would be the effect if the through rates are advanced? Take Atlanta and Jonesboro. I mention those points only in illustration. Jonesboro does not complain to-day that her rates are too high. If she lodges any complaint with this Commission, if, as representing the smaller points who constitute the parties in interest upon one side of this question, she asks you to enforce the conditions of this law, it is by reason of the fact, not that Jonesboro's rates are too high, but that Atlanta's rates are too low. That is the logic of the whole controversy. Now, what will be the effect? Suppose, for instance, the long and short haul clause of the law is enforced, and Jonesboro for all western or eastern rates is put upon a comparative basis with Atlanta. The result will be to increase the through rates to Atlanta. The through rates to Jonesboro may be less than the through rates to Atlanta, now, with the local from Atlanta to Jonesboro added. It will get, coming from the East, the same rates that Atlanta would get; and coming from the West it would probably pay a little more. The effect is to advance the rates upon all the products handled by the jobbers of Atlanta. Now, owing to the peculiar economy or want of economy, whichever you may term it, that characterizes our agricultural interests in this State—every gentleman present who is familiar with the financial economy of Georgia knows that I take a correct position with regard to this matter—the people in the surrounding country that trade at Jonesboro do not rely upon Jonesboro primarily for their supplies. The merchant at Jonesboro requires all the assistance he can get from the merchant in Atlanta in order to carry him through the season. The whole agricultural interests of the State must be carried by main strength from the first of March until about the first of October. It taxes the banks, the cotton factories, the jobbing merchants, and all the other agencies from which the country merchants can derive any assistance, in order to enable him to carry the planters who are his customers direct. He does not draw his sup-

plies of bacon from Chicago or Kansas City. He draws them from this city. If the rates to Jonesboro were the same as they are to Atlanta, he would still be compelled to draw from this point, for the reason that the question of credit enters not only into the transactions in bacon, but into the transactions by which this country raises its cotton crop. Now, if it be true that it is not practicable to reduce the local rates on freight, and to equalize the position of Atlanta and Jonesboro, you must advance your through rates. What is the result? The merchant in Atlanta who buys his ten car loads of bacon in Chicago, ships it here and sells one of them to a merchant in Jonesboro, by virtue of the fact that under the conditions of this law you must advance your through rates, is compelled to pay an advance in order to lay the bacon down at this point. He charges an advance to the merchant at Jonesboro, and the merchant in turn charges it to the farmer, and the consumer has it to pay. Now I submit that this is a fair statement of this case, not only with reference to the industrial organism of this country but with reference to the effects that must come from an increase of through rates, which I maintain upon the assurance of these gentlemen is absolutely sure to come if that provision in this Law is enforced.

There is another interest that I wish to occupy a few moments of time in calling to your attention: the manufacturing interests of the State. I maintain that what is a just and reasonable rate of freight depends upon competition as a condition; and while it may not be suspected (for probably a great many have not thought about it) there is a vast difference between the conditions that influence and control, and determine the question of competition as between our jobbing merchants and our manufacturers. Whatever the effect of this Law may be if it is enforced, and if my assumption is true: that through rates will be advanced so far as the merchants are concerned, the effect will be much more detrimental to the manufacturing interests. As I said just now, the conditions of competition determine very largely the question of just and reasonable rates. To illustrate, take a jobbing merchant in the City of Atlanta. He competes with Augusta, with Macon, with Columbus, with Knoxville, with Chattanooga, with Rome and with Athens. In handling domestics or in handling notions or any other class of goods, the question for him to ascertain is whether or not his rates are equal to those of his competitors. If this be true, the question of rates that would affect a manufacturer in the South very seriously, would affect a jobber immaterially, for the reason that the business of the jobber is localized. There is not a jobber interested, so far as I have been able to ascertain, in any memorial that has been presented to this Commission, in any trade outside of the territory covered by the Southern Railway & Steamship Association. Take the cotton mills of this State for instance, and contrast the territory to which they sell goods with the territory of the jobbers, and see what the conditions are. There is not a cotton mill operated in Georgia or in any of the other Southern States to-day whose product

does not go to the entire country. We ship goods everywhere. The mills that I am managing have a trade that is scattered over thirty States. Now while you propose to determine what is a fair and equitable rate to a jobber in view of the competition he has to meet, the same rule should be applied to the manufacturer. We are located in this territory, but we are shipping goods beyond the territory, and consequently we are not only affected by the competition between each other, as a jobber is affected by competition between himself and his competitors in neighboring cities, but we are affected by competition existing in other States, or by reason of varying circumstances surrounding the transportation business. Other freight rates vary very radically from our own. I do not propose to go into this question at any length. I will be very brief. I know the idea prevails that there is vast advantage in manufacturing so far as the South is concerned. To sum the whole matter up, our advantage here, stretched to the utmost extent, is limited by probably five eighths of a cent a pound, certainly not over three quarters, in the cost of our raw material. While we have this advantage in raw material, there are other very great disadvantages under which we labor, and to which our competitors in the Middle and New England States are not subject. For instance, we are situated a thousand miles from our base of supplies for machinery, findings, etc. Upon the enormous weight of all this machinery we have to pay freight when we construct a mill. Repairs are perpetual and we have to pay freight upon the material for repairs. Notwithstanding the fact that a great deal has been said about the cotton manufacturing development of the South, I am prepared to maintain here, or anywhere upon the result of experience—and this position will be substantiated by any board of experts that may be brought from New England—that in inferior construction, in cost of our mills, in faulty production and in expensive production, consequently in the lower price at which we have to sell our products, we are placed at disadvantages that far outweigh any advantages we derive from the small margin we have in the price of cotton. What is the effect when we come to compete with a mill in the Middle States, or in the New England States, for the trade in the West? We ship goods to Cincinnati and St. Louis, from the Ohio River points all over the Northwest, and into New England. We start out with a bare advantage of five eighths of a cent a pound. If we are running mills in the Southern States that cost \$45 a spindle to construct, and if their construction is imperfect in many instances, as against mills that do not cost over \$25 a spindle in New England, you can see at once that the amount of capital invested in our business upon which we have to earn returns is far in excess of an Eastern mill, and far outweighs any advantage we may derive from our cheaper cotton. This suggestion will bear investigation. I have become firmly convinced not only that our advantages are much smaller than we estimated them, but the advantages of New England are very much superior to what we generally considered; and I have said over and over again that if I had to

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invest money in a cotton mill for my children, I would invest it in New England. That is my judgment standing in this presence. I deliver it here as I have delivered it on many other occasions when the question was under discussion.

The conditions under which our railroads operate in this section of the country are essentially different. It takes an average of twelve acres of cotton to produce a ton staple. The great bulk of the railroad business in this State—I have not taken the pains to get the figures—consists of the cotton crop and the Western supplies that are shipped here, including fertilizers. That certainly constitutes the freight that would be affected by the Interstate Commerce Law. Of course our lumber trade is very largely within the State. Our shipments of lumber to other States are yet small. It must be clear to any reasonable mind that in a sparsely settled section of the country, whose population is almost solely engaged in agriculture and requiring twelve acres of land to produce a ton of staple—it must be plain to anyone that in a country thus situated, the volume of freight is much less than it is in a country like the West, the Middle or the New England States, where the agricultural product in one instance will yield probably six to twelve times the freight that an acre will in this country. In the Middle and New England States they have a vast diversity of other interests that increase the volume of trade many fold over anything that we can expect to see in this section of the country for a long time to come. If it be true that the volume of freights in the South is light, it must be true that our roads in the South cannot operate for the same rates or for as low rates as the great traffic lines which run through the thickly populated States, furnishing a vast volume of freight.

Now upon this very brief and imperfect presentation of the case, I conclude first that it is impossible for our railroads to reduce their locals. They say it is; and for that reason the effect of that enforcement of this Law will be an increase in the through rates. By virtue of the very condition of things which I have explained that increase of rates must be paid for by the consumers of the produce shipped into these States. I maintain in the second place that what is necessary to determine a fair and just rate of freight, varies as between the merchants and manufacturers of this section, because the business of the merchant is localized, and he is interested only in obtaining rates that will enable him to compete with his immediate competitors. I maintain in the third place that the conditions that surround the manufacturing interests of the State are essentially different from those to which the jobber is subjected, and for the simple reason that instead of having the business localized as the jobber has, the manufacturer is doing a business with the entire country, and hence he is affected by the rates of freight that prevail in sections of the country where his competitors are located. I maintain in the next place that as conditions involving the volume of freight are radically different as between the Southern and the New England, Middle and Western States, it is impossible for our railroads

to do business at the rates that the great trunk lines can afford to take by virtue of the vast difference in the volume of the business. I insist that these conditions under the construction of the law are radically different. They are not at all similar. And while I do not propose to undertake the discussion of any legal question involved, it seems to me that if it is illegal for a railroad to charge different rates of freight under similar circumstances and conditions, it would be wrong to enforce an arbitrary rule applying to the railroads of all sections of the country, with reference to this long and short haul clause, where the differences are so radical as those I have imperfectly indicated.

A great deal has been said here with reference to water transportation. The gentleman who was on the stand yesterday explained to you very fully, and I will not attempt to improve upon what he said, the assistance that the lumber interests in this section have received, by virtue of the fact that cars were coming here loaded with western supplies, and going back empty, and the railroads, in order to get something out of the return trip, had given a very low rate upon lumber, and thus this interest had been very much benefited. If you will think of the situation a moment, if you will reflect that this State—and what is true of Georgia I suppose is true of the other States—is a large consumer of western produce, you must realize the fact that what the railroads can derive from return freights must determine in a large measure the rates at which they can bring goods into this country. These low rates of freight we now enjoy. The rates are low enough. As I said awhile ago, so far as Georgia is concerned, I have not heard a man complain that rates were too high at any point. The only complaint that has been made is that at some points they were lower than at others. Men insisting that rates were too low to Atlanta have not said they were too high to Jonesboro. These low rates of freight have not only enabled our people to obtain cheaper supplies, but they serve another great purpose; and if anything should come to disturb the existing order of things, it will affect the industrial portion of the country very seriously. It must be plain to any man that these low rates of freight furnish the means by which the excessive products of one State or section can be exchanged for the excessive products of another State or section. The west has more bacon, corn, grain and flour than she can consume. We have not enough to live upon. We bring their corn, grain, and flour to our consumers and we load their cars with granite, with lumber, with factory products, or with any other products of which we have an excess. By virtue of this order of things we are furnished facilities for interchanging the surplus products of the States. What is the result of it at last? Who gets the benefit of it? The men in Ohio, in Indiana, in Illinois or some other western State who get the benefit of our demand for their produce, and our consumers here who get the benefit of low prices for an article of necessity. On the other hand, we are enabled to ship products for which we have no use. We are compelled to seek a market for the products of our cotton mills, or we

must stop. The State of Georgia today is producing more cotton goods daily, I imagine, than she consumes in a week; probably more than that. I doubt if the consumptive demand for the cotton factory products of this State would equal in a year what the mills will produce in a month. If there is to be any serious interference with rates of freight, there must be interference with this interchange of products, and consequently it must react upon industrial conditions, both west and south. What is true with reference to the cotton goods of the south and the products of the west, is true with reference to the products of all other sections; and the effect of any change by which the through rates of freight are advanced, must be to reduce the profit of producers, and increase the price the consumers must pay at both ends of the line.

There has been a great deal of complaint because the rates are lower at points near the coast than they are at this section of the State, for instance, with reference to western produce. I beg here to call your attention to one fact that seems to have escaped the mind of a good many or all of our friends. It is that in determining the question of water competition to the Atlantic ports, you seem to have left out entirely the effect of the sailing vessels. The lumber trade of the coast is carried very largely in sailing vessels. In determining the rates of grain, for instance, at Savannah or Charleston those rates are determined, I imagine, not only upon through rates by the great trunk lines to Baltimore, and from Baltimore to Savannah by steamer, but by the trunk line, rates from the west to Baltimore, and from Baltimore to Savannah by sail. Every man knows that the sailing vessels that are doing the coasting trade are operating, in a majority of instances, each upon its own hook, independently. They are not organized into companies, and the question of rate is a question of contract for a single trip. While that state of affairs gives the ports advantages so far as rates are concerned, the people derive the benefit from it at last; and if it is necessary for the railroads to give a lower rate to Savannah upon a barrel of flour than they give to Macon by virtue of the fact that they would lose the carriage of it if they did not do it, I do not see, so long as I get a barrel of flour at a reasonable rate of freight at Macon why I should concern myself about it. To find fault seems to me to be "dog in the manger" policy. That is another phase of the case as presented here, that no man seems to complain that his rates are too high. The only complaint is that the rates of other people at other points are too low.

Mr. Chairman, I have thus hastily and imperfectly run over this ground; and, on behalf of all the memorialists who have presented memorials on that line, and of our own Board of Trade, I beg you, from all the considerations that have been presented, to make the suspension of the fourth section of the Law permanent. Instead of waiting for complaints, in order to enforce it, make the suspension permanent, and then revoke that suspension whenever satisfactory evidence is submitted that the policy was wrong in the first instance in suspending it. We cannot afford the disturbances that must come to this section of the country by

reason of the fact that our through rates must be increased. In support of my proposition that local rates cannot be reduced, speaking especially with reference to Georgia, I cite the fact that our friend from Wilmington this morning in his memorial indicated that he thought the policy would be for the railroads of North Carolina to bring their locals down to the level of the Georgia State Commission, and leave their through rates undisturbed. There is evidence from another State that the exceedingly low rates that prevail in this State have attracted attention. The people of North Carolina, the memorialists of Wilmington, ask no more than that the local rates of North Carolina shall be brought down to the Georgia level and that their present through rates shall not be disturbed. That was the proposition as I understood it, and I submit it to you as a very strong argument in favor of my proposition and my faith in the representations of these gentlemen that so far as Georgia is concerned, our railroads cannot maintain themselves upon lower rates of freight and that the consumers of the State should not be taxed by any advance in through rates.

Argument of Mr. D. P. Hill:

I am a farmer, and as we are not represented, and it has been said we have not been heard, I would like to make a few remarks in opposition to the lines indicated by the two gentlemen who have just been heard. I have no testimony to give, but I would like to make a few remarks. I come from that class which it is said are not represented, an unorganized class, it is true. We have no representatives here. We have held no meetings. We have trusted the Law in the hands of the Commission. I represent an unorganized set of people, the farmers. The farmer is not here to-day. He has held no meetings. He has sent no agents here. But when we are told upon this floor that there is no complaint from the farmers, I say the complaints went up to the Congress of the United States from all over this land, until you had to formulate the common law into a statute. The farmer is not here to complain. Why? He is scattered all over the country. His business is such that he is not grouped together. He is not here as are the people in the towns. He is scattered over the country, driving the plough, wielding the axe, felling the forest, and producing for the good of the country. That is the man that this bill was intended to benefit. That is the man that the farmers of this country ask this Commission to stand by and reduce these intolerable freights and charges upon them that they have lived under so long.

It has been said by the gentleman that that will break down these terminal points. If the terminal points have been built up in defiance of law, if they have been built up by injustice to the people, it is time there should be a division of the spoils, and that the people should reap some benefits from the running of railroads through the country. We have had protection in every shape in this government long enough, in God's name. The farmer is not here to complain, and therefore I suppose it is to be considered he is satisfied with all that these railroad gentlemen, their attorneys and retain-

ers, may see fit to put into your ears. The farmer is contented with the Bill, and wants the fourth section executed. He believes it will do him justice, and his neighborhood and people. That is what the farmer expects from this Commission. He expects the law to be carried out faithfully and honestly, and I believe it will be.

The last gentleman told you the people in Jonesboro can do business better by trading with Atlanta than at other points, because they must get credit here in Atlanta, and they would not be benefited by lower freights. Why, if you reduce the freight to Jonesboro, if you put them upon an equality with Atlanta, I presume some of the Atlanta capital would go to Jonesboro to do business. Atlanta might lose a man or two, but Jonesboro would be the gainer. Is that any crime to the country? Is it ruinous to us? No. We want the fourth section in force because we expect to receive benefits. I speak for the farmer; the man who makes the tonnage for the railroad; the man who makes something out of the earth, who furnishes the cotton and the corn which is to be transported, and who has paid from time immemorial and is doing it today high freights upon everything he makes and everything he gets. In God's name haven't we suffered long enough? It is strange to me that they have not made complaints before, and that the Congress of the United States did not enact long before the redress that has now been given in this law. I can only liken it to what Mr. John Bright said the other day speaking of how our people had submitted so much to this protective tariff, with an overflowing treasury with millions in it lying useless. He said he could only explain it upon one idea, and that was that the manufacturers were organized and the consumers were nothing but a disorganized mob.

No; we are not here. We trust to the Law. We expect the Law to be executed. But, gentlemen, as I have only a little time, if you will allow me, I have a few thoughts committed to paper that I will read, and then not take up your time any longer. I know I cannot do a great deal of good, because you cannot expect much good from a farmer, but you will get the farmers' idea:

A great deal is being written about the Interstate Commerce Bill and the Commission appointed to execute the same, and from what is said one would suppose the Congress, President and Commission are the enemies of railroads, and seeking their utter destruction. Can anyone believe for one moment that these functionaries fail to recognize the blessings of railroad transportation in this age of progress and development and seek to do it injustice? Such a proposition is silly, puerile and unjust. The law enacted by Congress is nothing more nor less than a formulation of the common law. Now, if the railroads have been observing the law, does it lie in their mouths to complain that Congress has provided a quick, speedy remedy by the Commission or courts to settle differences between common carriers and their patrons? I have always supposed those who have law on their side are anxious for speedy trial and swift justice. But the railroads take a different view of the matter, and from one end of the country to the other they denounce

the Law, the Commission and Congress, as if it were a crime to make them obey the law of the land, which ages of experience has proven wise and just to all parties.

If railroads have been observing the law and trying to live up to its requirements, is it not passing strange they should be holding conventions and calling on the Commission for advice, counsel and instruction, how to act so as to be within its purview? No, these mammoth corporations have acted so long without obeying the law that they had supposed they were a law unto themselves, and when the law-making power provides speedy remedies to control their conduct, they seek by all manner of means to bring the law in disrepute and evade its just requirements. Many thoughtless people say the stockholders built the railroads with their money, and they should be allowed to use their property in such manner as to yield the greatest profits. How absurd this proposition. It has from time immemorial been the law of the land to control and keep within proper bound capital that seeks to make profit out of the public, and regulate the same, so that the weak and poor may be protected against wealth and power, whether in the hands of individuals or corporations. The man of means builds his mill or ferry, but the law says what he shall charge for his service; the capitalist lends his money for gain, but the law says "Thou shalt take no usury." If it be just that the law should control capital and money in these instances, is it not much more so in the case of railroads upon which the people must depend for transportation? The right of eminent domain being vested in the people, and they having lent its use to railroads for public use, it is the imperative duty of the law-giving power to see to it that the public be treated justly and fairly in the use of the same.

Most of the States have enacted laws and appointed commissions to hold in check these vast and powerful corporations, but State Commissions being powerless to control beyond the jurisdiction of the State, railroads have circumvented the state authority by rebates, pooling, and unjust charges for short hauls compared with long ones; and the people, justly indignant, pressed upon Congress the enactment of such laws as would compel the railroads to do equal justice to all persons and places. The law is wise, just, and equal to all, and time will soon prove its inestimable value. The great efforts of the railroads to evade the law of Congress by buying and leasing connecting roads, only show their anxiety to deal with the people in the future as in the past without restraint, and upon such terms as their greed for gain may dictate.

Have railroad commissions injured railroads? Let us see. Georgia has a stringent railroad law, and a Commission that has seen it executed to the letter and spirit, yet there are more railroads being built in Georgia than at any previous time in the history of the State; and so I might say of other States with railroad commissions.

Now, as long as railroads continue to multiply, we may rest assured capital is being profitably invested, and that commissions and laws are doing no harm.

Let the people stand by the State and Federal Commissions and Laws, and the time is not far distant when all the States and sections will feel that aggregated capital in railroads may bless, but is powerless for harm.

At this point, 2 P. M., the Commission took a recess for two hours. At 4 P. M. the Commission reassembled, all the members being present.

General E. P. Alexander addressed the Commission.

(Gen. Alexander's argument is to be submitted in print.)

The **Chairman**. This completes the hearing at Atlanta. We propose to resume it at Mobile, New Orleans and Memphis. I take pleasure in saying, on behalf of the Commission, that we have been gratified with the clear, concise and logical manner in which the parties on all sides have presented the facts; and we trust that our investigations will be greatly facilitated by what has taken place.

Thereupon, at 5:15 P. M., the Commission adjourned the hearing.

PROCEEDINGS AT MOBILE.

Names of Witnesses, in Order of Examination, etc.

W. Butler Duncan, President Mobile & Ohio R. R.

H. S. Depew, Traffic Manager Mobile & Ohio R. R.

T. M. B. Talcott, General Manager Mobile & Ohio R. R.

T. G. Bush, Mobile Chamber of Commerce.

Samuel Brown, Mobile Chamber of Commerce.

A. Proskauer, Mobile Cotton Exchange.

O. R. Hudley, Huntsville, Alabama.

J. P. Walker, Meridian, Miss., Board of Trade.

J. R. Satterfield, Selma, Ala., Board of Trade.

H. H. Stewart, Selma, Ala., Board of Trade.

A. C. Danner, Saw Mills, Shingles and Coal, Mobile, Alabama.

W. G. Cochrane, Tuscaloosa, Alabama.

C. W. Gibson, Aberdeen, Miss., Board of Trade.

Samuel Burnaugh, Merchant, Birmingham, Ala.

R. J. Peley, Lumber, Brewton, Alabama.

Daniel Smith, Pres. Gardeners Association, Mobile, Alabama.

E. B. Stahlman, 8d V. Pres. L. & N. R. R.

J. M. Culp, Gen. Freight Agent, Louisville & Nashville R. R.

D. G. Dunklin, Merchant, Greenville, Ala.

James Bowron, Sec. and Treas. Tenn. Coal & Iron R. R. Co.

Thos. A. Mack, Superintendent Eureka Furnace Co.

C. P. Williamson, Pres. Williamson Iron Co., Birmingham, Alabama.

Thos. Ward, Gen. Manager Birmingham Rolling Mill, Alabama.

B. B. McKenzie, Lumber, Alabama and Mississippi.

Mr. E. L. Russell. Please make your statement to the Commission.

The Witness. Mr. Chairman, I have embodied in the form of an affidavit, to which I have sworn, a statement of the facts which I propose to submit in support of so much of the petition as refers to the past and present condition of the Mobile & Ohio Railroad, the policy of its management, and the fact that it cannot afford to abandon any of its business or sustain a loss in its revenue, as stated in the petition. I would ask permission of the Commission to read that affidavit, and I shall be prepared to answer any further questions that the Commission may desire to put to me.

The Chairman. There is no objection to that.

(The witness then read the affidavit referred to.)

The Chairman. You have not explained in that statement what necessity there would be under the new legislation to abandon any of your business.

The Witness. That is a matter which the gentlemen who are called after me will expound. The Vice President will state the traffic difficulties and questions more clearly than I could.

The Chairman. You may remain here, so that if it is necessary to ask you any questions we can do so afterwards.

H. S. Depew appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Russell:**

Q. What is your occupation?

A. Traffic manager of the Mobile & Ohio Railroad.

Q. How long have you been in that position?

A. Since the first of last October.

Q. How long have you been in the traffic business?

A. I have been connected with railroads thirty-two years.

Q. Are you acquainted with the competition that the Mobile & Ohio Railroad Company encounters, both water and rail, at present?

A. Yes sir, I am.

Q. (Handing map to witness.) I will ask you to explain this map to the Commission so that they can understand the difficulties we encounter.

A. The red lines represent the water routes. Here (indicating) is the Mississippi, and here (indicating) is the Ohio. The line I now indicate represents the Mobile & Ohio Railroad. The blue lines crossing represent the roads that are connected with the Mississippi River and the Mobile & Ohio. From St. Louis to Cairo the Mobile & Ohio Railroad almost parallels the river within a few miles, meeting competition from the river in almost every one of its local stations.

The Chairman. Perhaps as you begin and go south it would be well to explain the general nature of your traffic, especially as regards the through traffic for which you have a long haul.

The Witness. Along the line of our road for 100 miles from East St. Louis, the country is entirely agricultural, producing wheat more

particularly, and upon the road are many flouring mills which sell their product in the St. Louis market or ship to the south, either by the river or the railroad, as they can get the best rates. From a point near Murphysboro south to Cairo, the country is heavily timbered, and produces mostly piling, ties and lumber. That is mostly a local business entirely. At Percy, some 65 or 70 miles from East St. Louis, we have a railroad crossing us fifteen miles to Chester, on the Mississippi River, from which we meet competition in making rates to the south. In fact, the river takes all our business mostly from points on our road near Percy to Chester, and thence south by river. At Cairo we, of course, meet the Ohio and Mississippi Rivers. The rates from Cairo to Memphis, Vicksburg, New Orleans, and way landings are very low, usually, and they compete for all the freight that is brought into Cairo and all the freight that is based upon Cairo's rates from the interior portion of Illinois, Indiana, and some portions of Missouri. At a distance of twenty miles below Cairo we strike the Mississippi River at Columbus, where the Iron Mountain branch of the Missouri Pacific Railroad also has a line running out into a section that produces corn and grain of various kinds. It is brought to Columbus and there goes south by river or by rail. Then we strike a point that is a few miles below the Nashville & Chattanooga Road which strikes the Mississippi River at Hickman, which also competes for the business that is naturally tributary to those points both north and south of Union City. At Rives, a few miles below, the Newport News & Mississippi Valley Railroad, which runs from Memphis to Louisville, also competes with that territory, and the river takes, and can take, certain products from a certain territory, both north and south of Rives. Eighty-nine miles below Cairo is Humboldt, the crossing of the Louisville & Nashville Railroad; 90 or 95 miles thence is the City of Memphis, where we strike the Mississippi River. One hundred and six miles below Cairo we strike the City of Jackson, Tennessee. That has no direct line running to the Mississippi River, although it is a competing point with the Illinois Central. It is only in competition with the river as far as it may be affected by the line from Humboldt. At Corinth we meet another line which is 93 miles from Memphis on the Mississippi River, the Memphis & Charleston Road. Fifty miles below there is the new road, the Kansas City, Memphis & Birmingham Road, which strikes us at Tupelo, which has been built about a month. They are competing for that business which is based on the rates made from St. Louis to Memphis, the local rate from Memphis out to our stations and to the stations it touches, affecting our rates both north and south. After leaving Tupelo, the point of crossing or junction of this road between that territory and Meridian, almost exclusively 150 miles, we are affected by competition from the Tombigbee River, upon which the Cities of Aberdeen and Columbus are situated, and to which this line has branches running from Artesia and Muldon. The Illinois Central has lines also running to those points. At times this river has boats which make very low rates into these points and which necessa-

riously take the traffic and the business of all points between Macon, which is 40 miles above Meridian, clear to Tupelo, where we strike the line that runs from Memphis, direct to the Mississippi River. So we have practically the competition of two systems of rivers, the Alabama and the Tombigbee, running from Mobile, and the Mississippi River at Memphis. At Meridian we have a very strong competition from the Mississippi River at Vicksburg. A line from Vicksburg to Meridian is entirely within the State of Mississippi and is not within the jurisdiction of the Interstate Commission, as I understand it; which is also true in regard to these roads that are mentioned, the Newport News & Mississippi River, and the Louisville & Nashville, both being entirely within the State of Tennessee. Also at Meridian we have lines diverging east, a line direct to New Orleans, and our own line to Mobile. Mobile is situated upon the Gulf, and we meet the competition of the rates made by the Mississippi River to New Orleans, and the rail rate from New Orleans to Mobile, which is made necessarily low, otherwise both schooners and steamers could be placed upon the lake and through the Mississippi Sound and make very low rates to Mobile.

Q. From St. Louis to Meridian what influences the rate?

A. The rates by river from St. Louis to Vicksburg and those by rail, 140 miles to Meridian.

Q. The river and the road being beyond the jurisdiction of this Commission, being exclusively in the State of Mississippi, is the rate in Mississippi fixed by a railroad Commission?

A. Yes sir; that is, maximum rates, as I understand it. They can make lower rates if they see proper.

Q. The river and this road combined determine the rate at Meridian?

A. Yes sir.

Q. If the Mobile & Ohio Railroad Company was not allowed to meet the rate as determined by the river, and the V. & M., could you do any business over this portion of your line in bringing western products into this territory?

A. No sir; we could not. If we were obliged to maintain the same relative rates between intermediate stations, we could not afford to do it.

Q. You say the Louisville & Nashville runs from Memphis to Humboldt, and the Newport News & Mississippi Valley to Rives?

A. Yes sir.

Q. Both of these lines from Memphis are within the State of Tennessee, are they?

A. Yes sir.

Q. So that the rate of the Mississippi combined with these rates, which are beyond the jurisdiction of this commission, could determine the rate?

A. Yes sir; they can make the rate.

Q. They can compel us to receive freight at every one of these points as domestic freight in Tennessee?

A. Yes sir.

Q. And there the State could fix the rate south and north until we struck the south and north line of Tennessee.

A. They could fix the rate, but there is no Commission in the State of Tennessee.

Q. Not at present?

A. No sir.

Q. At Meridian, Mississippi, by the rate fixed from here to Meridian, and the Commission fixing the rate south to the state line and north to the Tennessee line, they could make us do its business at the rate fixed by the Commission as internal domestic commerce?

A. Yes sir.

Q. That part of our line then would be dead?

A. It would be entirely. It would not have any advantage of the haul from St. Louis to Corinth, 315 miles, or more than that to Meridian, very nearly 550 miles; 520 miles.

Q. From St. Louis to Mobile what determines the rate in Mobile?

A. The same element; river rates to New Orleans and the rates from New Orleans to Mobile.

Q. Would the same principle apply coming North?

A. Yes sir.

Q. And to the eastern points?

A. Yes sir.

Q. Have you the rates fixed by the State Commissions?

A. Yes sir.

Q. Has Illinois a State Commission?

A. Yes sir.

Q. Has the Railroad Commission of Illinois fixed the local rates?

A. They fix the maximum rates to govern us in the State of Illinois.

Commissioner Walker. Please file with the Commission the rates as fixed by the Illinois & Mississippi Commissions.

Mr. Russell. We will do that.

Q. If you are not allowed by this Commission to meet competition at all these different points, could you get any of that competitive business?

A. No sir; I could not get any of the competitive business, if we were not allowed to meet the rates made by the river and those points that reach the river by railroad.

Q. In the case of the different roads leading from the Mississippi to where they intersect the Mobile & Ohio Railroad, as a matter of fact, almost all the local stations which are called noncompetitive are affected more or less, are they not, by this competition?

A. Yes sir. It is a peculiar traffic we have there. The business along the line of our road south of Corinth, you might say, is dependent upon cotton. The station that cannot buy the cotton from the planter and producer, loses the business, and they will haul cotton across our track twenty-five, thirty and forty miles where they can get a few cents more per pound or per bale for their cotton. Towns like Aberdeen, Columbus and other points on the river that enjoy the competitive rates produced by the river and the boats, would be able to pay more for their cotton as against the local stations between Corinth and Meridian, and consequently they would lose the trade. We are necessarily obliged to shade our rates from those cross points reached by rail, and come in competition with these points on the river, in order to meet the rates made by the river to those points; otherwise we would lose the traffic entirely and we would have to draw it a very short haul from the center of our road.

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Q. This territory between Jackson, Tennessee, and Corinth, Mississippi—is the proximity of the Tennessee River such as to affect the rates?

A. Yes sir. They took sixteen hundred bales of cotton on the Tennessee River right away from our line last season.

Q. This is a competitive territory with water transportation?

A. Yes sir; they even haul cotton from the station of Henderson, right on our road, over to the Tennessee River.

Q. The same case applies here by the Bigbee running parallel?

A. Yes sir; we will have to meet those rates at our stations or else the cotton will leave us and go to those points and go down the river. The Kentucky Commission does not fix the rates, but the Commission have approved the rates we make. Here are the rates for Mississippi, Kentucky, Alabama and Illinois.

Q. In Mississippi they fix the rate, do they?

A. Yes sir.

Q. And give it to us to operate under?

A. Yes sir. Here are our rates (submits rates.)

By Commissioner Walker:

Q. Are these the rates since the modifying order was made?

A. Yes sir; they were the same rates that were in effect on the 31st of March. I sent you gentlemen copies of these with the necessary certificates on them. Here is our fruit tariff to Mobile. (Submitting tariff.)

By Mr. Russell:

Q. Have you any rates fixed by the river, or do they give you any rates?

A. They give us no rates, generally. We find out what their rates are from time to time.

Q. You find it out when you find the business going that way?

A. Yes sir; of course. There is no arrangement between the rail and water lines at all in regard to rates. On the other hand, we have to follow the river rates, because the President of the Anchor Line Traffic Company, the largest company on the Mississippi River, said to me personally, a few weeks ago, it made no difference what rates the railroad made, his rates were so much less; and consequently we don't name any rates. We simply compete with the river, if there is enough in it. Sometimes there is, and sometimes there is not. Sometimes they make it so low we can't afford to meet them. We can in the interior, however.

Q. If we were to put all our rates at local noncompetitive points, on the basis of the present competitive points, would they not go below that?

A. They would, necessarily, of course, and it is based upon that. We couldn't begin to compete with them, except to our local points, because we have the benefit of the rate from the river there, which enables us to get rates sometimes that otherwise we wouldn't be able to work at.

Q. Without having our hands untied at all the competitive points, it is a combination of water and rail you would be unable to meet in rate?

A. Oh, no sir; we couldn't do it.

Q. Could we afford to put our local rates at

noncompetitive stations, what few we have along here, on a basis with the competitive rates?

A. We have done so, to a certain extent. We have to scale them from the fact that a point like Tupelo, or Corinth, or West Point, which is a crossing near the river, is in direct connection with the river. If their rates are much lower than the stations each side of them, it would naturally draw the business to that point to the detriment of the stations on each side. Hence, we have to scale those rates; and a low rate to any one point on our road naturally fixes the rates to the points nearest; but we scale it up and down from those points as the case may be. We are in the habit of doing it.

Q. It is to the interest of the Railroad Company to protect its territory on the road, or to try to protect it?

A. We think so; and we try to do it as near as we can.

Q. You fix the rates so as to try to protect the stations, and yet to control the business?

A. Yes sir; and still we have to meet the competition at these other points in connection with the river.

By the **Chairman**:

Q. Has it been the case that at any time within the last year or so you have been obliged to abandon any business at Mobile because the rates by water were so low you could not afford to carry it?

A. No sir.

Q. You have carried whatever has been offered to you?

A. Yes sir; we have.

Q. Is that true at other competitive points?

A. Yes sir; at those competitive points on the line of our road we have met competition.

Q. And you have taken such business as was offered to you?

A. Yes sir.

Q. You have not abandoned any business in consequence of the competition?

A. We have not abandoned any business in consequence of the competition.

Q. Could you tell what proportion of the business carried south on your road has been business to those points where the rates are forced down by water competition.

A. I am not positive, but I should judge about 65 per cent. I am not positive about that.

Mr. Russell. Give it approximately.

The Witness. I see Colonel Talcott has the figures on that. I am not prepared to answer that question.

Mr. Russell. That is all set forth in the schedule attached to the affidavit.

The Witness. (Referring to schedule.) The through tonnage total is 257,000 against 227,000 local in 1885 and 1886.

Q. What do you mean by local as distinguished from through?

A. The local tonnage is tonnage going from one point to a local station on our road, and the through tonnage is tonnage from a competing point to a competing point.

Q. Then the tonnage from St. Louis to Cairo would be called through tonnage?

A. I think so; yes sir.

Q. And from Cairo to Tupelo?

A. It has not been so considered, but it might be hereafter.

Q. I wanted to know simply what was to be understood from your figures there?

A. Tonnage from one competing point to another.

Commissioner Walker. That has not been so treated heretofore.

The Witness. We are speaking of Tupelo. That has recently become a competing point within the last three or four weeks.

Mr. Russell. At Corinth and Meridian it would be true.

The Witness. Yes sir; Meridian, Mobile and New Orleans.

Q. Between these several competing points the rates would be higher than from one competing point to another?

A. Yes sir; in some cases.

Q. Do you think the competition is such that it would be practicable for you to equalize the rates as between the local and the competing points?

A. It would be very disastrous to the Mobile & Ohio Railroad to be obliged to do it.

Q. You say the competition by water determines the rates. Do you mean that the rates are put down first of all by the water carriers invariably rather than the carriers by rail?

A. Yes sir; the water carriers make the rates first and the railroads, as far as our line is concerned, if we see proper meet their rates at a fair rate of insurance higher. We make a higher rate than the water lines do usually, and can maintain a small differential above their rates.

Q. For the last few years it has been the case about all the time that you have had no understanding with the water carriers as to the rates to be charged?

A. I know of no understanding for a number of years. I have not been connected with the southern roads, however, for three or four years, and I couldn't say positively in regard to that; but for fifteen years prior to 1883 and for the last six months we have had no arrangement with them.

Q. Then your opinion that the railroads could not afford to do business under a strict application of the fourth section of the new law is based upon the supposition that it would be impossible for you to equalize the rates?

A. We could not.

Q. Between local and competitive stations?

A. In my opinion we could not possibly do it.

Q. Do you think the people who have been your customers for the transportation of goods along the line of your road from local points have been satisfied with your rates?

A. So far as I know I think they have been.

Q. Have you had complaints occasionally?

A. Sometimes we have had complaints; yes sir.

Q. What have been the nature of those complaints? Have they been at times of your rates, or have they been of discrimination between towns?

A. Both; sometimes one and sometimes the other. There have always been complaints, more or less. I have not received very many complaints, however, since I have been con-

nected with the Mobile & Ohio Road. I have not been connected with it but a few months.

Q. Tell us what complaints you have received during that time, from whence they have come, and what has been their nature?

A. The main complaints that we get have been from some of our local stations that wanted the same rates that were made from East St. Louis and Cairo. Some wanted lower rates in order to help their manufactures. As a general thing, we make concessions at our local stations to persons who are in the manufacturing business. For instance, we make as low rates as we can on certain products on our line. On the southern portion of our Cairo division we make as low rates as we can on the products of that country, ties, piling and wood blocks that are shipped some to Cairo and some to East St. Louis for the manufacture of fellows, spokes and chairs. It is nothing but wood, and it has to be carried at a low rate in order to allow the manufacturers to get their raw material. That also is true south of Cairo through the heavy lumber district between there and Humboldt. That is local however.

Q. Do you make those concessions by way of classification of the freight?

A. In some cases we do and in some cases we make them simply arbitrarily.

Q. In some cases you make them to a particular business.

A. Yes sir; but they are made open to the public for whoever wishes to take advantage of them.

Q. Do you mean that you make them to everybody who cares to take advantage of them?

A. Certainly. We make a rate of \$10 a car between two stations on wood blocks, which is open to everybody who wants to ship wood blocks between these stations.

Q. But when you do that to one kind of wood manufacturer, do you make the same rate to all other kinds of wood manufacturers?

A. I would; yes sir.

Q. I speak of your course in the past?

A. Yes sir.

Q. When you make it to one kind of manufacturer, do you make it to all other kinds of manufacturers?

A. Yes sir. We try, in other words, to nourish and develop all the manufacturers on our line, and if it is necessary we help them in that way.

Q. Where you make a concession to a manufacturer at a local point, and a manufacturer may also exist at a competing point, you do not put the rate down at the local point to the same figure it is at the competing point, I suppose?

A. I don't recollect of an instance that is parallel with your question. I should say we would; if the point should come up, I should say we would. I think I would. It is simply a question of letting the manufacturers live. The timber is growing there. I am speaking now particularly of timber. It is a class of business that requires very low rates in order to move it, and in order to allow the manufacturers to continue their business, whether at competitive points or otherwise.

Q. You give it of course sometimes to orig-

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inate manufacturing I suppose as well as nourishing it?

A. Possibly; yes sir.

Q. Suppose at some point between Corinth and Jackson, a particular wood manufacturer should spring up and another at Corinth at the same time. Do I understand that in a case like that you would give the same rates to the man at the little way station that you would at the competing point?

A. We could afford to do it on that particular class of business, because it is very small. If we made a rate at Corinth for a party on wood to Cairo for instance we could afford to make the same or less rates at any point between Corinth and Cairo, because it is a commodity that is—

Q. What I want to get at is your general custom, if you have one.

A. We have no general custom in such a case.

Q. Cases of that sort you deal with specially?

A. Yes sir; individually.

By *Commissioner Morrison*:

Q. You carry in Illinois under the Illinois State rates?

A. Yes sir.

Q. From East St. Louis to Cairo?

A. We don't charge the full Illinois State rates, except in some instances. In the lower classes we do not.

Q. According to the Illinois classification there is no instance where more is charged for a shorter distance than a longer one?

A. No sir.

Q. Have you been charging by that scale?

A. No sir.

Q. I mean for freight carried in Illinois?

A. Yes sir; I understand you. You mean, in other words: Have we charged less to Cairo than we have to a point this side. For instance, suppose we were at East St. Louis—

Q. Starting at East St. Louis the rate fixed by the Illinois Commission gradually rises until you get to Cairo?

A. We have the river competition between East St. Louis and Cairo, and we have not scaled our rates north of Cairo to conform to it.

Q. You have paid no attention to the Illinois rates in Illinois?

A. Yes sir; we do in our local business proper.

Q. I mean the business from East St. Louis to Cairo?

A. No sir; between East St. Louis and Cairo we do not.

Q. They are both in Illinois?

A. Yes sir.

Q. How do you get around that?

A. Well, we have the printed tariffs and they are filed with the Illinois Commissioners, and they have not disturbed us on it for a good many years. We have not charged more than they prescribed, but we have charged less, as the competition of the river required us to do it.

Q. For the longer distance?

A. Yes sir.

Q. This rate does not seem to have the Cairo point on it. It begins at East St. Louis and stops at the last station outside of Cairo. What is the object of that?

A. Because the Cairo rates are lower than the rates to these points.

Q. But under the law they could not fix them lower, could they?

A. I think they could. We have so taken it, and the railroads in Illinois have been working upon that theory.

Q. They gradually rise from East St. Louis down to Cairo. Take the fourth class freight. That begins at seven cents and goes up to twenty-three. You have not followed that out, I understand?

A. We have not followed that out as far as Cairo proper is concerned between East St. Louis and Cairo. We have met the competition by the river. I did not intend to be understood as competing with Illinois rates. If I made that statement it was a slip of the tongue.

Mr. Russell. He means he never exceeds the maximum rates fixed.

The Witness. We never charge up to the maximum rates between East St. Louis and Cairo. Between our local stations we do.

By Commissioner Walker:

Q. Supposing a man on one of those local stations has a car load of flour he wants to send to Mobile. Does he get the East St. Louis rates?

A. He does now.

Q. How long has he been getting those rates?

A. Since the first of April.

Q. That was not your previous custom?

A. No sir; we charged about six cents a barrel higher from those local points than our East St. Louis rates. That was the general custom of all the roads in Illinois, both east bound and south bound.

By the Chairman:

Q. Is there any hardship in respect to that business in charging the East St. Louis rate at local stations?

A. I think not.

Q. That is, you think you can conform to that rule north of Cairo, do you?

A. Possibly we could, so far as we are directly situated in Illinois, which is only a few miles from East St. Louis. We could not do it on all our business, I think; still we might.

Q. Point out where you think you could not do it.

A. For instance, I don't think we could be governed—in other words, I think that while we might charge that rate to a flouring mill near East St. Louis, we would be unable to charge the same rate from Mobile. We couldn't make the same charges on all property to all local stations, and reduce our rates on a through basis.

Q. What freights do you carry to local stations that it would be necessary to charge higher rates?

A. In some cases we carry flour and grain.

Q. Those are your principal items, are they not, that you carry to local stations in there?

A. Yes sir; grain and flour.

Q. Will you tell us what has been your average rate from St. Louis to Mobile since you have been on the road?

A. On flour from 45 to 50 cents a barrel and 40 cents.

Q. What have been the highest intermediate rates?

A. We have charged as high as 80 and 85 cents a barrel.

Q. Where are the stations at which you have charged those rates?

A. Those stations are between these two points.

Q. Between Decatur, Corinth and Meridian?

A. Yes sir; and stations below Corinth and below Meridian also.

Q. Is that a considerable business?

A. Yes sir; it is a considerable business; that is, it is a large proportion of traffic; but very little is shipped there except merchandise, bacon, grain and flour.

Q. You do not ship merchandise to Mobile very much, do you?

A. Not much; no sir.

Q. So that the prices of merchandise would not be much affected by the equalization?

A. Not to Mobile.

Q. Are there any other items of freight that are considerable in amount that would be affected by a process of equalization?

A. Those are the largest proportion of our shipments.

Q. Have you brought with you any detailed statement of what your freights have been for the last year at the several stations?

The Witness. The several different kinds of freight to each station?

The Chairman. Yes.

A. No sir; I have not. We could file it with you gentlemen, if you desire it.

By Commissioner Walker:

Q. You have divided your freight into classes of competitive and noncompetitive?

A. Yes sir.

Q. What constitutes competitive freight under that division?

A. Freight either to or from a point that is in competition with other lines, either water or rail; sometimes both.

Q. How many such points have you included in this sheet you have submitted?

A. All of the points between Mobile and St. Louis.

Q. How many are there?

A. The first would be Enterprise.

Q. No; the first would be Mobile.

A. Excuse me. Yes. Then Enterprise; next Meridian, then Lauderdale, Artesia, West Point, Tupelo, Corinth, Jackson, Humbolt, Rives, Union City, Columbus, Cairo, Percy and East St. Louis.

Mr. Russell. Also Columbus and Aberdeen.

The Witness. Columbus and Aberdeen reach us at Artesia, and West Point.

Q. Out of all that business you have classified as competitive business about how much of it is Mobile business?

A. I think a large proportion of it, so far as tonnage is concerned, is Mobile.

Q. What do you mean by a large proportion; 85 per cent, 75 per cent, or what?

A. I couldn't tell without looking at the figures, but I should say the larger proportion of the tonnage was to Mobile.

Q. Do you mean more than half?

A. Yes sir; I should think so.

Q. Upon this sheet which you have filed as your freight tariff a large number of those

places you have mentioned do not seem to have any competitive rates given them?

A. They are not given on this sheet. This sheet is just exactly as it was printed, although there have been what we call special rates made to those points.

Q. Then this sheet does not correctly show the rates the other points get?

A. That sheet does not correctly show the rates they have had heretofore at some of those points.

Q. If that was posted in a station, then, it would not convey true information to one town as to the rates its neighbor was getting?

A. It would at this time, because we are working, so far as this sheet is concerned, under the Interstate Law.

Q. Are you working according to that sheet?

A. Yes sir; we are now. I am speaking of it before. We were not then.

Q. Your rate then from East St. Louis on flour in barrels to Mobile is 50 cents, to Meridian 70 cents, and to a large number of stations here that are grouped together between Waynesboro and Eight Mile \$1.13. Is that so?

A. Yes sir; I think so. Car loads \$1.07.

Q. When you get up above Meridian it is over \$1?

A. Yes sir; for some distance, until we strike what we call this group which is affected by the competition of the rates on the Tombigbee River. We have to make those rates the same or nearly the same.

Q. Aberdeen and Columbus are not now treated as competitive points?

A. Yes sir. I mean the rates are made to them on a competitive basis.

Q. But their rates are stated in this sheet?

A. Yes sir.

Q. And they are the same as the adjoining places?

A. Yes sir; they are the same rates that were made by the competition and it was necessary for them to be made, as you will see, lower than other rates.

Q. They are not lower than any rates further north?

A. No sir. They are a good deal lower—

Q. On flour, in car loads, the rate is 98 cents, and that is the highest rate down to that point?

A. Yes sir; but that whole section is grouped, otherwise we would make the rates to Aberdeen and Columbus much lower and still keep up our grouping, if it was not for the effect which the Aberdeen and Columbus rates have on the stations between, for instance, Macon and Okolona, something over 100 miles.

Q. Are Aberdeen and Columbus now treated as competitive points in the sense that freight coming to those places is charged less than freight to points further north?

A. No sir; they are not treated as competitive any further than simply as the rates were fixed prior to the first of April. Those are the rates that were in effect at that time, and the rates that are in effect now. We had no occasion to change them, either to lower them or to raise them. Do I understand you correctly?

Q. I am only trying to understand you.

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What I want to know is whether this sheet, as it stands now, is what you are working under now to all the points named on it?

A. Yes sir.

By *Commissioner Bragg*:

Q. You give special rates to manufacturers and industrial enterprises, do you not, to help in the development?

A. Yes sir; sometimes.

Q. And you do it because there is a statute of the State of Alabama that authorizes it, do you not?

A. Yes sir; in Alabama we do.

Q. The railroad Commission Law of Alabama authorizes that?

A. Yes sir.

Q. What is your tariff on a barrel of whisky from St. Louis to Mobile?

A. I couldn't say exactly. I think it is somewhere in the neighborhood of 90 cents or \$1.

Q. Your tariff shows, does it not?

A. Yes sir.

Q. Just look at it and tell me.

A. (After examining tariff.) 80 cents per 100 pounds.

Q. How many hundred pounds are there?

A. We generally calculate a barrel of whisky will weigh about 880 pounds. That would be \$1.14 a barrel.

Q. What is the freight rate on a barrel of whisky from New Orleans to Mobile by water?

A. I couldn't tell you. I don't know as there is any established rate by water.

Q. What is it by rail?

A. I think it would be about 57 cents.

Q. On a barrel?

A. Yes sir. I think so. I am not positive. I haven't got their rates, but I think that is about it.

Q. Do you know what is the freight on a barrel of whisky by steamboat on the Mississippi River from St. Louis to New Orleans?

A. Yes sir; I can tell you. (Examines paper.) I haven't them here, but I think they were in effect 17½ cents a hundred. They figured 850 pounds to the barrel, but we will say 880. That would be about 65 cents a barrel.

Q. Is your rate from St. Louis to Mobile made to meet the river rate from St. Louis to New Orleans?

A. Yes sir.

Q. There is a railroad known as the Louisville, New Orleans & Texas Road that runs along down the Mississippi River much nearer than your road to the river, is there not?

A. Yes sir.

Q. How much nearer does it run to the Mississippi your road on an average?

A. I should suppose 100 miles probably. There are points where it would be 100 miles. Memphis is 93 miles away. It would average 100 miles.

Q. That road competes directly with the Mississippi River at various points, does it not?

A. Yes sir; I believe it does.

Q. Do you state to us as your opinion or as a matter of fact that that road does not protect your road at all against the competition of the Mississippi River?

A. In what way?

you make your rates on cotton from Mobile to New York at forty-five cents a hundred, and out of all the cotton that is shipped to Mobile from the interior you carry only about two or three thousand bales from here to New York?

A. I may be mistaken, but I think we only carried a very small portion of it this year. A good portion of the cotton went from here to Liverpool, and went to New York by ocean. There is another road running between here and New Orleans that is a great deal shorter than we are. We are a roundabout line. We have to take it to Meridian.

Q. Had your road any understanding or agreement with any other railroad or any ship line by which you should not charge more than that on cotton?

A. No sir.

Q. Or that you should charge that much?

A. No sir. We have an agreement with the Louisville & Nashville Road as to the rates to New York and New Orleans.

Q. You maintain that?

A. Yes sir.

Q. What is that agreement in substance?

A. Simply an agreement that we will charge those rates.

Q. Whether you get much cotton or a little?

A. Yes sir.

Q. You do not cut as you do at Memphis?

A. We have not very much this year. I presume we have done it. I am speaking of this year only. I have not been connected with this road very long. We have not been cutting this year very much. We have been pretty honest, I think.

By *Commissioner Walker*:

Q. What do you say you get for that cotton you take from Mobile to New York?

A. Forty-five cents a hundred.

Q. How many miles is the rail haul?

A. The short line?

Q. The line the cotton went by.

A. Some of it went thirteen or fourteen hundred miles, I should judge; twelve or thirteen hundred. We took some to Cairo, and some we took to other points this side.

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Q. I want to ask if the Mississippi Commission, in fixing the rates of the Mobile & Ohio Railroad, do not recognize competitive points?

A. Yes sir.

T. M. R. Talcott appeared before the Commission, and having been duly sworn, was examined as follows:

By *Mr. Russell*:

Q. What business are you engaged in?

A. I have been connected with railroads for a great many years.

Q. How many years?

A. Since 1855; that is, about thirty-two years.

Q. What positions have you held in the railroad service during that time?

A. I commenced as an engineer in the construction work. For eighteen or twenty years past I have been a general manager of railroads.

Q. Of what railroad were you general manager?

A. Prior to the time I came to the Mobile

& Ohio Road I was the general manager of the Richmond & Danville Railroad. I occupied that position for some twelve or thirteen years.

Q. Are you the general manager of the Mobile & Ohio Railroad at present?

A. I am, sir.

Q. How long have you been in that position?

A. About two years and a half.

Q. From your experience, then, you thoroughly understand the transportation business?

A. I think I do understand it generally.

Q. You have studied it very closely?

A. I have studied it very closely. I do not profess to know all about it, though.

Q. Does it ever cost a less sum in an aggregate to transport a given amount of freight for a longer than for a shorter distance?

A. Yes sir; sometimes. Sometimes the difference in terminal charges alone, the cost of receiving and delivering freight, would pay for the transportation a long distance.

Q. Is there any other reason beside the great cost of maintaining stations for light business, why local freight costs more than through freight?

A. Yes sir. The general cost of transporting through freight is less than that of transporting local freight.

Q. If through and local freights are carried on the same train, is not the cost of transporting them a like distance the same?

A. In one sense, yes; but the additional cost of transporting the through freight over and above the cost of transporting the local freight which has to be transported, is very much less than the cost of transporting the local freight on that train. It does not add in proportion to the increased amount of freight to the cost of the train.

Q. What is the relative cost of transporting equal amounts of local and through freight on the same train?

A. Well sir, answering to the best of my recollection of the results of my investigation into that subject, I should say that adds it about 23 or 24 per cent to the cost. Therefore, I may say the cost of the local business being taken as 100, the cost of the through added to that would be about 23 per cent.

Q. That is as twenty-three is to one hundred?

A. Yes sir. I have not those figures accurately fixed in my mind, but that is approximately correct.

Q. Is the cost of transporting through less than the cost of transporting local freights when they are transported on different trains?

A. It is sir.

Q. When you speak of the cost of transportation what do you mean?

A. I mean the cost of moving the freight from one place to another on the train.

Q. Are there not other expenses besides the mere cost of transportation; and if so, what are they?

A. There are. There are the terminal or station expenses, and there are also the fixed expenses of the road.

Q. How do the terminal or station expenses on through freight compare with those on local freight?

A. They are very much less; as much less.

Q. In any respect?

A. I don't think it does. I never knew of its protecting us to any great extent.

Q. It competes with you, does it not?

A. It competes with us as it competes with the river. All of those roads are in competition with each other.

Q. But it competes with the river to a much greater extent than it does with you?

A. It has more close competition with the river I should judge than we do.

Q. I understood you to say in answer to Judge Cooley that the Mississippi River boats made the rate, and then that you conformed to it. Did I understand you correctly?

A. The boats make the rates, and if we see proper we make our rates to conform.

Q. Did I understand you correctly to answer Mr. Russell in his examination that you did not know what the rates on the river were; that they kept the rates hid from you?

A. In some cases they do.

Q. Is it not their rule? Is it not only now and then, and only after great effort, that you find out what their rate is in any instance?

A. The Anchor Lines generally do keep their rates printed; that is, they have a printed blank that they fill in, and they furnish it to certain of their shippers. They furnish it to the Merchants' Exchange, and they are the nominal rates that the Anchor Line charge.

Q. But they charge as much more as they please?

A. They charge as much more as they please; and in some cases to large shippers in large quantities, to be shipped at one time, they will make special rates for them, and charge much less than their regular established rates.

Q. Will you please inform us how it is that you are able to make your rates conform to or compete with rates thus hid and kept secret from you, and of which you know nothing until after they are made?

A. Sometimes we cannot, and the boats take the freight. We don't get it simply because we don't know what their rates are.

Q. And, therefore, you just shoot around in the dark and make the best rates you can?

A. Sometimes that is true; there is no doubt about that.

Q. What is the cotton rate over your road from Mobile to eastern points, New York and Boston?

A. The cotton rate has been 45 cents a hundred pounds; \$2.25 a bale.

Q. To New York?

A. Yes sir.

Q. What is it now?

A. I do not know.

Q. What is your cotton rate from Meridian to New York?

A. Two dollars and seventy-five cents.

Q. What is it from Enterprise?

A. I couldn't say without looking, but I think it is about the same.

Q. What is it from Aberdeen?

A. Aberdeen is \$4.05, I think.

Q. What is it from Artesia?

A. I think it is the same. I am quoting from memory, but I am nearly correct. I would have to look at the tariff to be sure, but I am getting it approximately correct.

Q. What is it from Corinth?

A. It is very low from Corinth. It is based upon Memphis. On compressed cotton I think it is about 50 cents a hundred; \$2.50 a bale, I think.

Q. Will you please explain to us how Memphis compels you to make such a rate as that at Corinth?

A. Simply because the actual rate on compressed cotton from Memphis to New York is 30 cents a hundred, which is \$1.50 a bale, and the rate by the Memphis, & Charleston Railroad to Corinth is so low we would have to make a low rate from Corinth in order to get any of the business. I will say that we get very little of it. It is taken mostly by the Memphis & Charleston Road.

Q. If I understand you, Memphis makes a lower rate on cotton for New York and eastern points, with no other competition than that of the Mississippi River, to New Orleans and thence by ocean, and alone at Mobile the competition of the ocean?

A. That is it, so far as the actual facts are concerned. The Memphis rates should be 33 cents a hundred. They should be 118 per cent of the St. Louis rate; that is the rule; but as a matter of fact, owing to the competition at Memphis by railroad and water, taking the cotton to New Orleans, and there taking the low ocean rate from New Orleans out, they have been obliged to cut those rates in order to do the business all around. In some cases it has affected our rates to the east, in consequence of the fact that they had to make lower rates in order to meet the competition from the river to New Orleans and the ocean rate from New Orleans to New York.

Q. What is the ocean rate from Mobile to New York on cotton?

A. I really do not know. There is no established ocean rate that I know of. There is no regular line of steamships running to New York.

Q. Upon what is your rate from Mobile to New York based, if there is no established ocean rate?

A. It is based upon the rate that was made all rail from Mobile to New Orleans and the ocean rate from New Orleans added.

Q. What is the ocean rate from New Orleans?

A. Thirty cents.

Q. What is it from here to New Orleans?

A. Fifty or 75 cents: 75 cents is the rate—15 cents a hundred added to 30 makes 45 cents.

Q. You maintain these rates I have questioned you about, do you?

A. We have this last season; yes sir.

Q. From Mobile, Enterprise, Meridian, Aberdeen and Corinth?

A. Yes sir. We have taken no cotton, however, from Corinth. I don't think we have taken a bale.

Q. About what amount have you carried from Mobile east?

A. Well, but a very small quantity; I don't know exactly how much; two or three thousand bales, I presume.

Q. Not more than that?

A. No sir, I think not. I may be mistaken. I can very easily give you the information if it is important.

Q. You compete here with the ocean, and

you make your rates on cotton from Mobile to New York at forty-five cents a hundred, and out of all the cotton that is shipped to Mobile from the interior you carry only about two or three thousand bales from here to New York?

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I may say, on the Mobile & Ohio, as the result of my examinations, as seven cents compared with sixty cents in some cases.

Q. It costs that much more to handle the local?

A. It costs as much as sixty cents in some cases, and it costs as little as seven cents in some cases at junctional points which include the through freight. That includes the through, and the through must be even less than that. It cannot be more.

Q. What do you mean by the fixed expenses; what are they?

A. By fixed expenses I mean those expenses that are not affected by the transportation done; either a greater or a less amount of transportation done.

Q. Can you give a full explanation, so that the Commission may understand it?

A. They include the maintenance of road ways and structures; everything that is under the rails which is affected by the volume of the traffic; the taxes, the insurance on property and also the cost of administration, to a very large extent. Administration is generally considered a fixed expense.

Q. A railroad would have these fixed expenses whether it did any through business or not; if it did exclusively a local business?

A. Yes sir.

Q. What proportion of the total expenses of the Mobile & Ohio Railroad are the fixed expenses?

A. A little less than 40 per cent sir.

Q. If the present freight tariff on the Mobile & Ohio Railroad were increased, what are the expenses that would be increased?

A. The terminal expenses would be increased slightly, and the car and train expenses would be increased materially.

Q. Would these expenses, or any of them, be doubled if the present freight traffic were doubled?

A. No sir; none of them would be doubled; some nearly so, but none of them actually, unless the increased traffic was divided into through and local in exactly the same proportion as the present traffic. Then both train and car expenses would be exactly doubled.

Q. What proportion of the whole expense of the freight service are train expenses, and how much would they be increased if the freight traffic of the Mobile & Ohio Railroad were doubled?

A. The train expenses are pretty nearly 24 per cent. They may be one more or one less on the Mobile & Ohio. They would be increased by doubling the traffic in the same relative proportion of through and local very nearly, if not exactly, double.

Q. What proportion of the whole expenses are car expenses, and how much would they be increased if the freight traffic of the railroad were doubled?

A. According to my recollection about 23 or 24 per cent. It would not vary much from that. If the traffic was doubled in the same proportion as now, through and local, that would be about the sum; but not if the through was increased and not the local. That would not be done. It would not double those expenses, or the train expenses either.

Q. Are not the train expenses less for through than for local trains?

A. Yes sir.

Q. Can you explain that?

A. I speak of the through trains on the Mobile & Ohio Road, and the through trains are moved on shorter schedule, there being no stops to distribute and receive local freight. The consumption of fuel and some other expenses are therefore less on the through than they would be on the local trains.

Q. Do cars generally carry heavier loads on through or on local trains?

A. On through trains they generally carry heavier loads, for the reason that parts of loads are taken out at many stations in distributing local business; besides which the through business is generally more heavily loaded into the cars. We have more of it and can load the cars to better advantage.

Q. You get more tonnage out of the same amount of car service?

A. We get more tonnage out of the same amount of car service on the through than on the local trains.

Q. Does the heavier loading make any material addition to the cost of carrying the cars?

A. It adds necessarily to the consumption of fuel and it adds necessarily to the wear and tear of the train. It adds somewhat, but not a great deal, to the wear of the running gear; but it does not affect quite a number of the expenses or the road.

Q. Would not the car expenses be less for through than for local business by reason of the longer haul?

A. Yes sir; they would be, for the reason that on the long haul we get more service out of the cars at the same time than we do on local business, and as some of the expenses of maintaining cars are due to the time and not to the mileage, that would be the case.

Q. Then your engines and cars make a greater mileage per annum on through business than they do on local business?

A. They do sir?

Q. Is not the cost of motive power less on through than on local trains?

A. It is in this respect: that the larger amount of work being done by the motive power on through trains than on local trains it is a smaller element of cost in the transportation.

Q. Do you include interest on the value of engine and cars as part of the train and car expenses, or should it not be taken into account as an element of the cost?

A. We do not include it as a part of the expenses, but it undoubtedly should be taken into account as a part of the cost, being interest on the working capital.

Q. Should not the interest on the warehouses used for freight be taken into account in determining the station or terminal expenses; and if so, would it be greater charge on through or on local freights?

A. It should be taken into account, and it would be a greater charge on local than on through freight, for the reason that a very large proportion of the through freight is not received in warehouses, and delivered into warehouses, but is received in cars already

loaded and is delivered partly the same way. Of course it has at some point, either at the commencement or at the end of the trip to be treated in that way; but so far as the Mobile & Ohio Railroad is concerned, that is our experience.

Q. So at a local station you have to have a station house and an agent to do the business, if you do not do a ton a day or a week?

A. Yes sir; sometimes the State Commissioners require us to have those when the business is very small and sometimes we are very willing to do it ourselves when not compelled, in order to give the facilities to enable business to develop there which otherwise could not be developed.

Q. Is it not your opinion that the local freight should pay all the fixed expenses on a railroad?

A. It is my opinion that the fixed expenses should be paid by the local.

Q. For what reason?

A. I think that the principle is one than can be compared to the highways of the country over which the wagon transportation is done. For instance, each county pays for the maintenance of its own roads. The adjoining counties passing through there get the benefit, and they maintain their own roads. The system of railroads has grown up by the construction of roads to accommodate the local business, and it is only by extensions and connections made, sometimes designedly and sometimes accidentally, that the through lines are established. When those roads are local, in many cases the local business paid for the maintenance of the road; and when the new additional business was offered by means of connections, it added nothing to the maintenance of the road; and at least there can be, in my opinion, no injustice in making the local business pay for the maintenance of the road that accommodates the local business.

Q. Should the cost of transportation have any influence upon the rates, except to determine the lowest rates to be charged under any circumstances?

A. I think not sir. I think that it should undoubtedly control the rates so far as to allow no rate to be made at less than the cost of transportation; but I am unable to see why a small profit out of a business is not as good when made, or a large amount of business if it cannot be made otherwise, either in a large volume of haul for short distances or in freights hauled for long distances—just as good as made out of a smaller amount of transportation. I think the value of the products at the place of production, and their value at the point of consumption, must necessarily control rates to a very great extent.

By the Chairman:

Q. You speak of through business and local business. In your testimony what have you called through business?

A. I mean the through business which is carried long distances over the road between termini or between junction points or between termini and junction points.

Q. Do you mean, speaking of your own road, the business which is carried from one of these competing points to another?

A. Yes sir.

INTER 8.

Q. That is what you mean by through rates?

A. Yes sir.

Q. And local business is what originates between any two of those points. Now as I understand you, you say the cost of handling a given amount of local freight between those points is very much greater than the same amount of through freight carried the same distance?

A. Yes sir.

Q. It is very much greater?

A. Yes sir.

Q. How do you make that out?

A. I make it out in this way: In the first place the through rate we get by competition is for freight in excess of the regular freight that is shipped, and therefore I consider that it is not to be charged with the fixed expenses.

Q. Exactly. You start out then with the theory that the fixed expenses should be charged upon the local business?

A. I do.

Q. And it is in that way that you make out the cost of handling the local freight to be so much more?

A. In that way it is that I make it cost so much more; yes sir.

Q. They you say, too, that the cost for station and other expenses is very much more for local freight?

A. Yes sir.

Q. Do you mean that strictly now?

A. I do; yes sir;

Q. Take your station expenses at these competitive points. Do you say that the station expenses at the local stations between are greater in proportion to the business than at the competitive points?

A. I do sir.

Q. In making that estimate, do you take into account your station buildings and everything of that sort?

A. Yes sir; I take the actual cost of handling the business.

Q. Do you take into account the expense of the buildings at the stations for the purpose of doing business?

A. No sir; I have not been taking into account the cost of buildings or interest on it; but that is an element that should be considered. I had not considered it.

Q. You do not charge that to either kind of business?

A. No sir.

Q. But you start out with a theory that the fixed expenses should be thrown upon the local business? Tell us why that should be done.

A. I start with that idea on the principle that the roads—I will make an illustration of it as coming within my own experience. A road is built up to a certain number of miles in the country from a market town, a central point. It accommodates the local business of that country. That road is extended from time to time, until it reaches the state line. That was the terminus of the road. All the business of that State went over the road and maintained the road. A road is built up in the adjoining State and connected with that road. That gave the opportunity to do through business. We were glad to take on that road,

which happened to be under my management, any business we could get from the adjoining state that would pay more than the cost of transportation—through business—because it was that much additional net revenue in the treasury of the company.

Q. Has there been any road within your knowledge built in recent times for the mere purpose of accommodating local traffic; as for instance the traffic between Mobile and the first competing point north of Mobile?

A. Yes sir.

Q. Name any such road?

A. I will have to go back to where I have been. I am too recently here. The Richmond & Mechlenburg was so built in Virginia, to furnish an outlet to the business of Clarksville via Keysville on the Richmond & Danville Road. The construction of that is one instance sir.

Q. How is it with the Mobile & Ohio Road? Was that built to accommodate exclusively the business between these competing points in such a sense that the cost of all these fixed charges ought to be put upon the local business?

A. It was built under charters from the several States undoubtedly with the intention of making a continuous line, but also for the accommodation of the States.

Q. Was not that road built just as much for the through business as for the local business?

A. That I could not say sir, because I am not familiar with the history of the Mobile & Ohio Railroad.

Q. Is it not a fact that a road is quite as likely to be built for through business, mainly or exclusively, as to be built for local business mainly or exclusively; and are there not in this region of country, roads that have been built almost exclusively for through business?

A. I cannot say that there have been any roads built almost exclusively for through business in this country, but I may be ignorant of the facts in the case. So far as my advice as an engineer is concerned, I can only say that I would rather advise the building of a road for local business than for competitive business in this country, from my experience in it.

Q. I think you would be quite wise in that; but of course the facts are what we are endeavoring to get at. I want to get, if I can, the basis of your theory, that fixed charges ought to be imposed upon the local business rather than the through business; and for that purpose I would like to ascertain, if the fact is within your knowledge, whether as a matter of fact the roads are more likely to be built for local business exclusively, than for through business, or for local business mainly, rather than for through business.

A. I could not answer that of my own knowledge, for the reason that I am not a builder or projector of railroads.

Q. In order to get at what ought to be paid by the local business, you spoke of charging what it would cost to bring it out. You would charge higher rates upon it because the price is low at the point where you find it. Is not the price or the value of the product that you find there, dependent very largely upon what you charge to bring it out?

A. To some extent; yes sir.

Q. Is it not almost exclusively?

A. It does largely influence the price.

Q. If instead of charging so much upon it, instead of applying a theory that imposes the fixed charges upon it, you were to apply a theory so as to impose it upon the through traffic, rather than upon the local traffic, or to equalize it between them, would not the effect be that the competitive traffic would receive much more benefit from the transportation than it now does, and the local traffic much less?

A. If we charge the fixed expenses to the competitive traffic?

Q. If you apportioned them between the local and the through traffic, instead of charging them all to the local traffic?

A. We should reduce the volume of our competitive traffic by that means, and we should reduce the profit in our treasury that much.

Q. That might not be so under all circumstances, might it?

A. I do not know of any circumstances in which it would not be the case, except where we are not doing business we might do.

Q. But certainly when you speak of the value of your service to the local traffic, and estimate that value by the increase in the price, that increase is almost co-incidental, is it not, with the charge you impose upon it for carrying it? Is not that the fact? The value you impart to it by bringing it forward is the amount you charge for bringing it forward, is it not?

A. I do not think we add to the value of the product we transport, by transporting it.

Q. It is worth so much more. Here, for instance, you pick up local traffic at a station north of Mobile, and bring it to Mobile. You charge a dollar for bringing it to Mobile. It is worth a dollar more when you get it here than it was when it was up in the woods, and therefore you say your services in bringing it down are worth a dollar?

A. No sir.

Q. How do you estimate it?

A. In the first place, I think it is worth more here, not because we bring it here. It is worth more here, and therefore it would stand transporting. It might not stand transporting. For instance, bricks won't stand so much of a rate as bacon will. If we could not transport bricks at a price that would enable them to be put on the market, for the difference in the through rate between where they are made and where they are sold, they simply would not come there. If we had to charge as much for bricks as we do for bacon, they certainly would not come.

Q. The bricks at the local stations north of here, would be worth as much there as here, less the cost of bringing them here, would they not?

A. Yes sir.

Q. And then the value up there would be in proportion to what you charged?

A. It would depend upon what it cost to get them to market. Transportation is an element in trade,

By Commissioner Morrison:

Q. Do you remember what you charged for

bringing a barrel of flour from St. Louis to Mobile?

A. No sir; I do not. I am not familiar with the rates. I could only tell by referring to the tariff; but I can do that.

Q. Do you remember at what local point between East St. Louis and Mobile you charge an equal rate to the rate you charge to Mobile?

A. No sir; I could not tell you.

Commissioner Walker. It is on the schedule. It is the fifth station on the list, and it is not one fifth of the way down.

Q. You charge for one fifth the distance the same rate you do for the whole distance. I understand the road was built for the accommodation of the local traffic, and therefore they must pay the Mobile rate.

A. No sir; I don't think the rate there is dependent on the Mobile rate. The Mobile rate is dependent on something else, and the freight could not be carried except at that rate.

Q. I understand you to justify it on that ground; that the road was built for local accommodation, and therefore they could justly and rightly bear an increased tax.

A. A higher rate than for through business; yes sir.

Q. The truth about the history of the matter is that this road was built in exactly the other way, as I remember it. It was a land grant road. Land was granted on condition that the road should go to Mobile. That is my recollection about it. It was to be a through road.

A. It was a land grant railroad. I know that fact.

By Commissioner Walker:

Q. I should like to know, in a word, what you have been talking about when you were talking about through freight and local freight. Through freight, if I understand you, is freight that originates at any of these competing points?

A. Yes sir.

Q. And local freight is freight that originates at local stations?

A. Freight that originates at local stations; yes sir.

Q. So that freight that starts from East St. Louis you call through freight?

A. Yes sir.

Q. Whether it goes to Mobile or whether it stops at Eight Mile?

A. No sir; not necessarily. It is through freight over one division of the road.

Q. How do you treat freight that originates at East St. Louis, in this discrimination you have been talking about making? If it stops at Cairo, what is it?

A. It is through, sent on through trains.

Q. If it stops at Meridian, what is it?

A. Through.

Q. If it stops at Eight Mile, what is it?

A. If it stops eight miles out here at a station, it is through for the upper division. It is through over several divisions. It may be distributed and landed on a local train at the last point.

Q. Then, in making the proportions in the figures that have been submitted, did you divide your road up into divisions?

A. Our divisions are made, necessarily.

Q. You do not answer my question. In
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making these schedules that have been put in here, did you divide your road into divisions?

A. In the rates?

Q. In determining what is through freight and what is local freight?

A. No sir. The through freight on the tariffs is competitive freight.

Q. Freight that could be taken by other roads in competition with the Mobile & Ohio Road?

A. Yes sir. The local is that which is destined to or shipped from a local point.

Q. Freight which is destined to or shipped from a local point?

A. Yes sir.

Q. That is different from what you stated first?

A. That is it.

Q. Wherever it is taken on?

A. Yes sir.

Q. Whether taken on at a junction point or at a local point?

A. Yes sir. It has got to be carried on a local train, in order to be delivered at that local point. The through is practically the competitive business.

By Commissioner Bragg:

Q. What were the cotton receipts of the Port of Mobile last season?

A. The total cotton receipts I do not know, nor could I tell you exactly what they were last season by the Mobile & Ohio, because I have not the figures.

Q. I am not asking exactly to a bale. I am only asking approximately.

A. I suppose somewhere in the neighborhood of two thousand bales. I don't know.

Q. How much would you say approximately there were this season?

A. I should say about the same, sir, as far as I know.

Q. You were speaking of the local stations along this road bearing the fixed charges. Do you not know as a historical fact that the Mobile & Ohio Railroad was largely built by means of a donation of land made by the Congress of the United States, extending along that line of railroad from Mobile, Alabama, to Cairo, on the Ohio?

A. I do sir. My knowledge of that is that the United States Government gave to the several States certain lands which were donated by the States to the Mobile & Ohio Railroad Company to build its road.

Q. And they were on each side of the line of road from Mobile to Cairo?

A. I don't know about that; only in two States, I think; that is my impression. I do not know. I don't find any records of the land.

Q. In Tennessee?

A. In Tennessee or Kentucky. I don't find any records of land grant lands; none whatever.

Q. But a very large quantity of land was donated in Alabama and Mississippi?

A. I know nothing of the lands, except so far as they are now on hand; not very easily got rid of either.

Q. The City of Mobile subscribed very largely to the building of the road, did it not?

A. I know nothing of that.

Q. Don't you know that, as a matter of historical fact?

A. I do not; I have heard so.

Q. And the counties along the line given them did the same thing as the cities, did they not?

A. I don't know, sir.

Q. Don't you know that, as a matter of historical fact?

A. I do not.

Q. You are not very familiar then with the history of this road?

A. No sir; I am not.

Q. What are your cotton rates from Aberdeen to Corinth?

A. I should have to look at the rate sheets to answer that. (Examines rate sheet.) It is the rate made by the Mississippi Commission, \$1.75 per bale.

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Q. It was not the road itself that was furnishing these lands?

A. No sir; as I understand.

Q. It was not the company that was furnishing these bonds that Mobile and other points subscribed for?

A. No sir; of course not. The bonds and the land were in the nature of subscription. I suppose that was the way the railroads were all built at that time; by subscription of stock.

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The Witness. I will read our memorial, which is very short, and then make a short statement. (The witness then read the memorial of the Mobile Chamber of Commerce.) I would simply state, Mr. Chairman, very briefly, that the Mobile Chamber of Commerce was induced to take this action by reason of the fact that up to the present time in the history of the commerce of Mobile, since railroads have been bringing through freights to this city, they have universally recognized the rates of water transportation by way of New Orleans down the Mississippi River, coming down the Ohio River and the Mississippi River, and either coming from New Orleans by

water to the City of Mobile, or coming from New Orleans to Mobile by rail. As far as I know, the rates that prevail to-day are the rates that were regulated by the water routes on flour, provisions of all kinds, and grain. That seems to be the rate. For instance, the total cost on a barrel of flour down the Mississippi River to New Orleans is in the neighborhood of 30 cents and about 20 or 25 cents from there here, making a total of 50 or 55 cents. I believe the present rate from St. Louis to-day, all rail to New Orleans, is 82 or 85 cents; about that proportion. The merchants of Mobile have no apprehension whatever as to the course that may be taken in regard to this Law, as they are getting their freights to Mobile at a reasonable rate, having access to all eastern cities and centers by the ocean, and having access to the western cities by the Mississippi River. They apprehend, however, that if in the enforcement of this Law, so far as Mobile is concerned, not knowing whether that would result in the raising of through rates or the lowering of local rates, they were entirely thrown upon water transportation for their goods, so far as the West is concerned, their interests would be endangered by the long time consumed by water transportation. Indeed, merchants who deal heavily in that class of goods would necessarily be compelled to carry unusually large stocks, anticipating their wants. Prices nowadays of articles of that kind are subject to such sudden and violent fluctuations that that would subject the merchants here to very great losses. For instance, I can recall a year only two or three years back, when, from the beginning of the season, as we term it here in the fall, until late in the spring, those heavy articles of western produce were on a continual decline. Our merchants made nothing. They more generally lost on such articles. Then, again, we feel that in this progressive age we ought to be entitled to the privileges of rapid and quick transportation that are accorded all cities by rail in competition with others. It is a matter of fact that our city is unfortunately situated, in so far as the country immediately contiguous to it is concerned. We have to go over a belt of poor barren pine country nearly 100 miles, to reach those markets to which we are accustomed to sell, and to which we distribute our supplies and our merchandise. If we are not in some way enabled, by reason of the geographical position we have, by reason of the blessings under providence and nature we have by our location, to get our goods here at a low rate, we cannot become a distributing center on railroad lines especially. We have our rivers, a system of rivers perhaps unexcelled by any in the Union; and if we are cut off from railway transportation by reason of being unable to compete, we are left entirely to the rivers. Of course we do not know what course the railroads will pursue as to their local tariffs, and therefore we do not know how imperative it will be for us to lay our goods down here at the lowest possible price. We have irregular lines of steamers from New York to this place. The advantage accruing from that has been evident, from the fact that it has produced a considerable reduction in rail rates from New York to Mobile. A line of steamers from here to New York compels a

recognition on the part of railroads of Mobile as a port. This line has been somewhat irregular, and for that reason, and for the reason that there is scarcely a good excuse why a steamship should charge less from New York to Mobile than from New York to New Orleans, it has put its rates considerably below the rates existing by rail. For instance, if we take the first class rate by rail, say 75 cents a hundred, the steamships put their rates at 50 cents. I doubt whether the business was at all lucrative to the steamship line at that price; but from the fact that it was necessary, in many instances, for merchants to delay the shipment of their goods in order to avail themselves of the opportunity of patronizing this line, it was necessary for them to offer extra inducements. However, if it was a regular line, with a steamer running once a week from New York to Mobile, it would have compelled a reduction of rates by rail on all lines running into Mobile. We then simply, in substance, ask, believing that the letter of the fourth clause of this bill means there are some places that, at the discretion of this Commission, can be omitted, and can have these privileges that they naturally enjoy, we feel that we are not transgressing propriety to ask of you that Mobile shall be numbered among those places.

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water to the City of Mobile, or coming from New Orleans to Mobile by rail. As far as I know, the rates that prevail to-day are the rates that were regulated by the water routes on flour, provisions of all kinds, and grain. That seems to be the rate. For instance, the total cost on a barrel of flour down the Mississippi River to New Orleans is in the neighborhood of 80 cents and about 20 or 25 cents from there here, making a total of 50 or 55 cents. I believe the present rate from St. Louis to-day, all rail to New Orleans, is 82 or 85 cents; about that proportion. The merchants of Mobile have no apprehension whatever as to the course that may be taken in regard to this Law, as they are getting their freights to Mobile at a reasonable rate, having access to all eastern cities and centers by the ocean, and having access to the western cities by the Mississippi River. They apprehend, however, that if in the enforcement of this Law, so far as Mobile is concerned, not knowing whether that would result in the raising of through rates or the lowering of local rates, they were entirely thrown upon water transportation for their goods, so far as the West is concerned, their interests would be endangered by the long time consumed by water transportation. Indeed, merchants who deal heavily in that class of goods would necessarily be compelled to carry unusually large stocks, anticipating their wants. Prices nowadays of articles of that kind are subject to such sudden and violent fluctuations that that would subject the merchants here to very great losses. For instance, I can recall a year only two or three years back, when, from the beginning of the season, as we term it here in the fall, until late in the spring, those heavy articles of western produce were on a continual decline. Our merchants made nothing. They more generally lost on such articles. Then, again, we feel that in this progressive age we ought to be entitled to the privileges of rapid and quick transportation that are accorded all cities by rail in competition with others. It is a matter of fact that our city is unfortunately situated, in so far as the country immediately contiguous to it is concerned. We have to go over a belt of poor barren pine country nearly 100 miles, to reach those markets to which we are accustomed to sell, and to which we distribute our supplies and our merchandise. If we are not in some way enabled, by reason of the geographical position we have, by reason of the blessings under providence and nature we have by our location, to get our goods here at a low rate, we cannot become a distributing center on railroad lines especially. We have our rivers, a system of rivers perhaps unexcelled by any in the Union; and if we are cut off from railway transportation by reason of being unable to compete, we are left entirely to the rivers. Of course we do not know what course the railroads will pursue as to their local tariffs, and therefore we do not know how imperative it will be for us to lay our goods down here at the lowest possible price. We have irregular lines of steamers from New York to this place. The advantage accruing from that has been evident, from the fact that it has produced a considerable reduction in rail rates from New York to Mobile. A line of steamers from here to New York compels a

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A. I think it did, sir.

Q. The Mobile & Ohio?

A. Yes sir.

Q. The Mobile & Montgomery?

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Q. And the Mobile & New Orleans?

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Q. All these roads down here did go through bankruptcy, did they not?

A. Yes sir, all of them.

Q. I mean consequent upon the war?

A. Yes sir.

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Q. Are you interested in any of the railroad property terminating here?

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Q. And the counties along the line given them did the same thing as the cities, did they not?

A. I don't know, sir.

Q. Don't you know that, as a matter of historical fact?

A. I do not.

Q. You are not very familiar then with the history of this road?

A. No sir; I am not.

Q. What are your cotton rates from Aberdeen to Corinth?

A. I should have to look at the rate sheets to answer that. (Examines rate sheet.) It is the rate made by the Mississippi Commission, \$1.75 per bale.

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Samuel Brown appeared before the Commission and was duly sworn.

The Chairman: You may make your own statement.

The Witness. Gentlemen, I am simply here as a member of a committee appointed by the Chamber of Commerce—with Mr. Bush. Mr. Bush has fully represented the ideas I am here to represent. I approve the ideas of Mr. Bush as presented. I don't know that I have anything further to say.

By the Chairman:

Q. You understand the facts as stated by him to be correctly stated, do you?

A. Yes sir.

Q. And that is all you care to say about it?

A. Yes sir.

Q. What is your business?

A. Bagging, ties, grain and naval stores.

A. Proskauer appeared before the Commission and said:

I have a memorial to offer on the part of the Mobile Cotton Exchange.

The Chairman. We had expected and desired, if we could do so, to close the evidence in support of the petitions, before we took up any in opposition. I understand that the evidence now offered tends to the defeat of the petition. That being the case I would inquire, before taking the testimony of this witness, if there are other witnesses here that parties desire to examine in support of the petitions.

Mr. Proskauer. The Mobile Cotton Exchange does not desire to offer any evidence. It is perfectly satisfied with offering to your honorable body the resolutions adopted by the Exchange.

The Chairman. But you wish to put the memorial upon our record.

Mr. Proskauer. Certainly, and only with a view to stating this: If the question is upon relieving the City of Mobile and the Port of Mobile, from the operations of section 4 of the Act we, certainly were under a misapprehension. The Mobile Cotton Exchange understood that the suspension of section 4 was asked along the whole line of railroads leading into and from Mobile. It is against this proposition that this resolution is presented to you. If the Commission desire to have evidence, we will be able to present it.

The Chairman. You will of course exercise your own judgment as to the bringing forward of evidence. You can do that hereafter.

O. R. Hundley of Huntsville, Alabama, appeared before the Commission and said:

I desire to present a memorial from a portion of the State. I do not appear as a witness.

The Chairman. Is it from some organized body?

Mr. Hundley. No sir; only a meeting of citizens from one of the towns in the northern portion of the State, bearing upon this question and upon that side of the question which you called attention to. If it is the desire of the Commission that I should be sworn, I will do so with pleasure.

The Chairman. You may be sworn. You may say as little as you please, in addition to what the paper contains, but we want to know

that in your opinion, such facts as you bring forward here, whatever may be their form, are true.

Mr. Hundley was then duly sworn.

The Chairman. State what your paper is.

The Witness. There was a public meeting called by the citizens of Huntsville, Alabama, in the northern portion of the State, on last Monday, to express their views and their ideas in reference to the question of the suspension of the fourth section of the Interstate Commerce Bill. At that meeting, the following preamble and resolution was adopted by a unanimous vote, and as Chairman of the Committee which is in attendance, I present the paper to the Commission. I will read it. (Reads paper.) In addition to that, Mr. Chairman, I wish to state that the \$40,000 alluded to here which was subscribed to secure a line connecting with the Nashville, Chattanooga & St. Louis Railroad was not a stock subscription, but a direct donation, not expecting any stock, and no stock is to be issued for it. It was a gift to that road to build its line of road, in order that we might have a competing line. In addition to that, as stated in this resolution, we have subscribed recently within the past two or three months \$50,000 to get a road from Birmingham to Huntsville, giving us an outlet in that direction. That road is now being constructed. Our citizens believe, by getting these roads in there, we will get competitive rates to long distances, and have subscribed liberally of their means to secure it. This resolution was adopted at this meeting unanimously. I think I can state that the sentiment of our people in that city and in that county and country contiguous thereto is undivided, and that there is but one sentiment in regard to that section, and that is that they would be glad if it could be suspended indefinitely. It would be to their interest. We have in our town several industries there that are growing up. We have a cotton factory there which makes cotton yarn only. It does not manufacture cloth. They sell these yarns mostly to Philadelphia. They have the largest sale in Philadelphia of anywhere else, and, as a matter of course, they desire to get cheap transportation through to Philadelphia; as cheap as possible. Huntsville is not on the river. It is ten miles from the river, and we have no river connection.

By Commissioner Bragg:

Q. Is Huntsville conceded competitive rates at this time?

A. No sir; not that I know of.

Q. Has it ever been conceded competitive rates that you know of or ever heard of?

A. No sir; it never has. That is the reason we have subscribed this money; in order to secure it.

Q. Have you taken a bond from these railroad companies, that they will give you competitive rates when they build that road?

A. No sir; we have taken no bond.

Commissioner Bragg. I advise you to do that. (Laughter.)

J. P. Walker of Meridian, Mississippi, appeared before the Commission and said:

I desire to present this petition, which is al-

ready sworn to. It is a short paper, and is from the Board of Trade of the City of Meridian. (Reads petition.) If the Commission desire to ask any questions touching the matter set forth in that petition, they may do so of myself or the gentleman who is with me from that city. Perhaps the petition is sufficiently explicit.

By **Commissioner Bragg**:

Q. You have competitive rates at Meridian, have you not?

A. That is true; yes sir.

Q. And have had for how many years?

A. Eight or ten years.

Q. I wish you would state to the Commission what determines those competitive rates and why you get them.

A. We have competing lines of railroad touching at that point.

Q. What lines?

A. We have five lines of railroad touching there, the Mobile & Ohio, the East Tennessee, Virginia & Georgia, the Alabama & Great Southern, the New Orleans & Northeastern, and the Vicksburg & Meridian.

By **Mr. Stahlman**:

Q. Is it not true that you are close to the Mississippi River by one of the routes from the West, and the traffic coming from the river is diverted to you?

A. I don't know that I exactly understand you.

Q. You are close to the Mississippi River in connection with the Vicksburg & Meridian Road?

A. One hundred and forty miles. Meridian is the eastern terminus of the Vicksburg & Meridian Railroad.

J. R. Satterfield, of the Selma, Alabama, Board of Trade, appeared before the Commission and said:

The paper which I wish to present is sworn to and I do not propose to testify to anything. It is not necessary for me to be sworn. (Reads paper.) We have attached to the petition a statement which is sworn to by Messrs. Stewart & Maas; and as it is in Mr. Stewart's handwriting I will ask him to come forward and read it, and he may wish to state something outside of the paper as a witness.

H. H. Stewart, of Selma, Alabama, appeared before the Commission and was duly sworn.

The Witness. We did not know we would have the honor of appearing before you personally, not knowing altogether the form of taking evidence excepting by petition. The gentleman associated with me, and myself, have sworn to this statement and had it written out. I will read it. (Reads paper.) That, sir, was the testimony that we expected to submit in writing, not knowing we would have the honor to appear before you in person.

By **Commissioner Schoonmaker**:

Q. What is your population?

A. It is about 12,000. We are a small town, but a very large distributing center.

Q. How long have you had the benefit of competitive rates?

A. We have gradually been building up for fifteen years.

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Q. You have water competition there?

A. We have, via the Alabama River, affected somewhat by the Mississippi on the west of us.

Q. Is it on account of your water competition that you have competitive rates, or because the city is favored as a distributing center?

A. It is on account of water and rail competition, both. We have two or three lines competing for our freights.

Q. And your people are all anxious to have your competitive rates continued, are they not?

A. Yes sir.

Q. And you oppose the allowance of competitive rates to the cities or towns near you?

A. There are no cities very near us but what already have the competitive rates.

Q. They all have competitive rates?

A. Yes sir.

By **Commissioner Bragg**:

Q. The Alabama River is navigable all the way to Selma?

A. Yes sir.

Q. Selma is 110 miles south of Montgomery by river?

A. Yes sir, about that. I don't know the distance.

Q. You have one line there to the east, the East Tennessee, Virginia & Georgia?

A. We have two.

Q. I am asking if you have that line?

A. Yes sir.

A. It goes to the east by way of Norfolk, Virginia?

A. Yes sir.

Q. Then you have the Western Railroad, of Alabama, that carries you to the ocean by way of Savannah and Charleston?

A. Yes sir.

Q. You have the Selma & Meridian Railroad extending to Meridian and the Mississippi River at Vicksburg?

A. Yes sir. We have those two systems now.

Q. And the Mobile & New Orleans by the same route, that is, by the Selma & Meridian Railroad from Meridian, and then the Queen & Crescent to New Orleans?

A. Known as the Northeastern, I believe.

Q. And then the Mobile & Ohio Railroad to Mobile?

A. Yes sir; we intersect with the Mobile & Ohio.

Commissioner Bragg: I ask you these questions because your petition does not state these facts.

By **Mr. Stahlman**:

Q. On business from the west you have a line down the Mississippi River via Vicksburg, the Vicksburg & Meridian, and the Alabama Central.

A. We frequently get freight that way.

Q. Then you have a line via the Mobile & Ohio, and Lauderdale and the Alabama Central?

A. Yes sir.

Q. Then you have a line via the Louisville & Nashville, and Calera?

A. Yes sir.

Q. And one via the Cincinnati, New Orleans & Texas Pacific and Auburn, have you not?

A. Yes sir.

Q. So that you have practically four competing rail lines, with one rail and water line from the west?

A. I think that is so sir.

Q. Besides the competition by the river up and down the Alabama?

A. Yes sir.

A. C. Danner appeared before the Commission and was duly sworn.

The **Witness**: I have three papers that I wish to lay before you. I have been authorized to do so by the proper parties connected with them, and I think they will give you the opinion of the three trades they relate to. One is the sawmill trade of Mobile, one is the shingle trade of Mobile, which is quite a large industry here, and the other is the coal trade. I will not take up your time in reading them. They all amount to substantially the same thing. They ask that the fourth section be suspended permanently. It is to their interest that it should be so. I would like to say for myself that I am largely interested in shipping lumber, shingles, and coal. As to coal, I believe I am the largest wholesaler on the seaboard in the Gulf. It is a new business here, and we come in competition in handling it with coal from the east and also with coal from Pittsburgh by the Mississippi River. I handle coal in New Orleans, and have received there this year about 15,000 tons of Alabama coal. It is an entirely new business. The railroad has aided us in building it up. They give us a lower rate to New Orleans than they give to some points nearer the mines. We will not be able to remain in New Orleans in the business of Alabama coal if the rate is put up any at all. In fact, it is almost necessary now for us to have a lower rate on account of the cheap transportation down the Mississippi River. I am handling coal in Jacksonville, Florida. They give us a lower rate there than they do other points nearer. We come in competition there with the Cumberland coal and with the anthracite coal from Philadelphia, Pennsylvania and eastern ports. If our rate to Jacksonville is raised, we will have to come out of there. We can't do the business. As to lumber, we are shipping now lumber, and have been shipping lumber by rail—dressed lumber—to points north of the Ohio. Since the operation of this law, all that business has stopped so far as I know and so far as any of us know. We have not been able to ship a car load. The same thing is practically true of shingles. We have a large business from here in shingles. There are eight shingle mills making shingles in and around Mobile. It is a new business and the trade is nearly all north of the Ohio River, very largely. It has all been stopped practically. While we don't know what will be the effect of putting this clause into operation, and don't pretend to know—we were doing very well, we were building up our business and increasing it, and now it is stopped as far as north of the Ohio River is concerned.

By **Mr. Stahlman**:

Q. You do not understand that the stoppage of that business is due to any advance of rates on the part of roads south of the Ohio?

A. No sir; we have the same rates to Cincinnati.

By **Commissioner Schoonmaker**:

Q. How large a body of men have you employed in mining?

A. I sell for several different mines. There are some very large mines up there. I don't know how many men they employ. The Pratt Coal Company I represent here mine in the neighborhood of 3,000 tons a day now. It is one of the largest concerns in the world, I believe, in that line.

W. G. Cochrane, of Tuscaloosa, Alabama, appeared before the Commission and was duly sworn.

The **Chairman**. You may make your statement.

The **Witness**. I come on behalf of Tuscaloosa, Alabama. The City of Tuscaloosa is situated on the Warrior River. They have an idea, and in fact it is, I believe, allowed by the Law, that certain benefits shall accrue to cities and places which have water transportation in competition with the rail. I believe it is left at the option of this Commission to grant that. In pursuance of that idea the citizens of Tuscaloosa held a meeting, the Board of Trade held a meeting, and the Board of Aldermen held a meeting, and appointed a committee consisting of myself, Mr. D. A. Sercy and Mr. T. H. Hayes, who are here with me to meet this Commission and present to you this short petition. This petition is signed by all the citizens and business men of Tuscaloosa. It is rather an unusual document. There are a great many signatures, but the paper is very short and I will read it. (Reads petition.) This paper is signed by the mayor of the city, by the entire Board of Aldermen, and by about one hundred or so citizens, merchants and business men. They also instructed us to ask this Commission that they would name Tuscaloosa among the cities and points mentioned in the order given at Washington.

By **Commissioner Schoonmaker**:

Q. What road are you on?

A. The Alabama & Great Southern, the Queen & Crescent. We have only one road, but we have a river. Our river is not open all the year, but very nearly all the year; long enough to be of great service to us. Mr. Sercy, who is a very large merchant there, is here, and I would like him to make a statement before this body.

Q. How large is your town?

A. We are on both sides of the Warrior River. We estimate the corporate limits, which is small, to be about 5,000 people. We have the State University, the State Asylum, several large mills and a good many other enterprises there, and we are right at this time going into other large enterprises. We want to be placed in a position where we can claim competitive rates by means of our water. We can force them to rates for seven months in the year, but if we are on this list we can probably get the rates the whole year.

Q. Suppose other towns of your size want the same rates; you could get along, could you not?

A. Yes sir.

Q. I do not mean competitive rates, but the

same rates; I refer to other towns that are not competitive centers.

A. No sir. We have been laboring under some disadvantages already. We have a neighbor or two that have two or three railroads very close, and have some advantage over us. We are projecting two other roads, and those roads will be built, doubtless; but it will be some little time. We have this river. Before these roads were built there at all Tuscaloosa did a large trade. It was once the capital of the State, and all our cotton—we have rich bottoms—was carried on the river and all our merchandise was carried back, but owing to the fact that it took so much goods to run through from the latter part of June to the first of October, it was found necessary to get a railroad there to have it come quicker. It doesn't take so much stock, and the railroads are a great advantage, if you can keep them within due bounds.

The Chairman. It may be proper to state to you that the road upon which you are has not asked the Commission to make your rates lower than those to the local points. We have no application before us that would permit us to do what you desire.

The Witness. We merely ask this in this petition: we ask that we may be put upon the list; that this road may, if it should see proper to do so, give us these rates. It claims it cannot give us these rates. We are really on a navigable stream. We are at a point that has always been known as the head of navigation. It is a very important matter to us, and if it is understood Tuscaloosa is in competition with rail by its water way it will place us in a position to help us.

The Chairman. But we have no general power to go through the country and equalize matters, and to make the railroads give certain rates to certain points. We do not fix competitive rates. We do not determine what they shall be. On the application of any particular road that asks permission to have its case made an exception under the Law, at a particular point, we have a right to inquire into it and see whether it is reasonable that there should be such an exception; but they have not asked for any exception at your point at all, and we have nothing before us.

The Witness. Couldn't that town ask for it itself? Would that be outside of the record?

Commissioner Morrison. Not unless it owns the railroad.

The Witness. It doesn't own the railroad, but it is on the railroad.

Commissioner Walker. That is outside of our jurisdiction.

The Chairman. Yes; it would be entirely outside of our jurisdiction, even if we thought it would be just. We cannot interfere when there is no special application before us.

The Witness. We were not aware of that. We took the Law to mean that a point situated as ours is—it would place us entirely in the power of the road; we would have to go to the road and ask it to ask you.

The Chairman. The Law supposes they will so grade their rates as to make them just between all the points on their line, in conformity to the Law itself, unless they think they are unable to do it. If they do think

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they are unable to do it, and there are reasons why an exception should be made at any particular point, then the Law supposes they will come before us and make the application. They have not done it in your case at all. They make no such application, and therefore we suppose they expect to apply the Law strictly according to its terms. They have a perfect right to do that if they see fit.

The Witness. It may be we ought to have met you at New Orleans. That road, I believe, will be before you there.

The Chairman. I mention this fact because, obviously, as matters stand now, we have no jurisdiction to do what you would like to have us do.

Commissioner Walker. I think they are coming to Memphis.

The Witness. I think it is probable they will meet you hereafter. In any case, I would like my application to go on file and be considered.

The Chairman. It shall go on file. This road, I imagine, will come before us. They are not here today, as far as I know.

The Witness. If the road should name points at which they wanted to have competitive rates allowed, and leave out our point, would there be no way by which this Commission could reach that?

The Chairman. I do not know whether we could compel them to ask permission to make an exception. Up to this time they have not asked an exception.

Commissioner Walker. In point of fact they do not ask for any relief except the Vicksburg & New Orleans.

Commissioner Bragg. The Law takes care of people where the railroads do not.

The Chairman. Your papers will go on file, and if there should be any application hereafter, it shall be considered in connection with any such subsequent application.

The Witness. If any question should arise as to the traffic and the water way, we would like to have an opportunity to make proof, if it should be necessary.

C. W. Gibson appeared before the Commission and said:

As Chairman of the Committee on Transportation of the Aberdeen Board of Trade of Aberdeen, Mississippi, I am directed to present this petition to your honorable body. (Reads petition.) It is not necessary for us to elaborate upon this petition. We have tried to make it short and to the point. What we want of the railroads is a tariff for revenue so adjusted as to meet competition. (Laughter.) We respectfully ask a continuance of our hearing at New Orleans, where we will present a petition bearing especially upon the Illinois Central Railroad Company. I presume they will bring evidence there.

The Chairman. You can appear there or anywhere else in support of your petition.

Samuel Brunaugh of Birmingham, Alabama, appeared before the Commission and said:

At a meeting of the merchants of the City of Birmingham, Alabama, the following preamble and resolutions were adopted: (Pre-

amble and resolutions read.) Birmingham is situated at the crossing of a number of railroads, and more are being built every day. It is in fact going to be in a short time the center of a considerable railway system and we haven't any river near us to enable us to get cheap freights. The railroads have always taken neat care of us in the past, and all we ask is to let them do it again.

By **Mr. Stahlman**:

Q. What do you mean by saying the railroads have taken neat care of you?

A. They have always enabled us to sell goods in competition with the points we meet in the territory tributary to Birmingham.

Q. You have had rates equal to those?

A. Yes sir; which have enabled us to meet them in an equal way.

Q. How many railroads have you?

A. We are at the crossing of three railroads, not counting some of the branch roads; but of the trunk lines we are at the crossing of three.

By **Commissioner Bragg**:

Q. What lines are they?

A. The L. & N., the Cincinnati Southern otherwise known as the Alabama Southern, and then we have the Georgia Pacific. We have been the terminus of that road for a number of years.

By **Mr. Stahlman**:

Q. And then the road from Kansas City is being built?

A. It is being built very fast.

Q. Is the Central Railroad of Georgia coming to Birmingham?

A. It is supposed to come there; in fact it is building there now.

Q. You have three lines now?

A. Three trunk lines now.

Q. In six different directions?

A. Yes sir; and they all come into one union depot.

I. J. Pooley of Brewton, Alabama, appeared before the Commission and said:

We are not so fortunately situated as a good many of those that have been speaking before you. We are on one railroad only. We have no water navigation for our lumber. We are lumber men. We are geographically situated far from the markets that use our products and believe the long haul would be injurious to our business. This memorial has been signed by all of our lumber men and all of our merchants except one firm. (Reads memorial.)

By the **Chairman**:

Q. What road are you on?

A. We are on the Louisville & Nashville Road. We have a tariff of rates from the C. B. & Q. that I thought I had brought with me.

By **Commissioner Walker**:

Q. Your trouble is in getting rates north of the Ohio River?

A. Yes sir; we have had an advance of from five to seven cents at many points we have been shipping to north of the Ohio River.

Daniel Smith appeared before the Commission and having been duly sworn was examined as follows:

By the **Chairman**:

Q. Where do you reside?

A. I reside three miles from the city; Mobile is my post office. As president of the Gardeners Association of this county it has been made my duty to present this memorial or petition which I will read. I shall not have much to say afterwards. (Reads petition.) We have been induced to present this petition from the fact that as stated here we find the enforcement of that section will destroy utterly the business in which we are now engaged—and which is carried on to a considerable extent.

By **Commissioner Schoonmaker**:

Q. What are your products?

A. Vegetables principally.

By **Commissioner Walker**:

Q. Where do you ship them?

A. Chicago, Indianapolis, St. Louis, Cincinnati and Cleveland.

Q. You ship from Mobile?

A. Yes sir.

Q. How does this section affect your trade?

A. We fear that by the enforcement of it, the further we go the more freight we will have to pay. That is exactly why we are afraid of it.

By the **Chairman**:

Q. Is there competition in this particular business up the line of the road?

A. Yes sir; there is later on in the season; but at this particular season of the year there is not so much. We have competition from Florida and from Louisiana.

Q. I mean on the line of the road on which you ship?

A. On the line of the road at this particular time there is not, but in a week or two weeks from now there will be, as the season advances in the north.

By **Commissioner Bragg**:

Q. Early spring vegetables are what you are talking about?

A. Yes sir; such as we have to get to market before the 15th of June or we have no market at all. What is left on hand at that time is utter loss. We apprehend that the enforcement of this section will make the freight charges against our products amount to about 84 per cent on the gross sales. That is the estimate we make, taking the local points and the distant points. That of course will destroy any business.

Q. What is the aggregate value of the annual shipments of this class of products here?

A. It approximates now about half a million dollars from this point.

Q. It has been in that neighborhood for several years, has it not?

A. Yes sir; it has been for the last three or four years; but the last three years have not been profitable years, and that is the reason it has remained about stationary. This year we think it will run somewhat ahead of the last three years, which have been very backward, very unfortunate years for us. We are led to this conclusion for the further reason that this industry gives a support to not less than six thousand persons, and nine tenths of them are today unable to support themselves two weeks if deprived of their present employment. I know I am within the bounds of the facts when I say that nine tenths of them are now

unable to support themselves two weeks if they were deprived of the present employment they have.

By *Commissioner Walker*:

Q. What road does this freight go over; the Mobile & Ohio?

A. We ship on the Louisville & Nashville, and on the Mobile & Ohio.

Q. You say you are afraid as it gets up towards Chicago the rates will be increased by the locals?

A. That is what we are afraid of.

Q. Those roads up there have not asked for any suspension of the Law?

A. That is exactly it; we are afraid if the law is enforced against us there the rates will be increased, for instance, in Chicago, the same as they are today—will be higher. They are already as high as we think we can well stand it and live. The freight rate today on a sale made in Cincinnati on today's quotations is 13½ per cent of the gross sales. If it is increased much, of course no business can stand it, in our opinion.

By *Mr. Russell*:

Q. How many car loads a day are you shipping now?

A. I don't know exactly how many car loads are going out from here. I am not shipping many car loads a day.

Q. I inquire about your organization.

A. I think yesterday there went out eight carloads; and a little later on the number will be much larger. I think eight car loads went out.

Q. The Mobile & Ohio has always given you a good rate, has it?

A. Yes sir; we are not complaining much of the rate; only if it gets much higher we will have to complain and quit our business; that is all.

Q. The suspension of the fourth clause for the Louisville & Nashville, and the Mobile & Ohio will give you the Cairo, St. Louis, Louisville and Cincinnati markets?

A. Yes sir, and it would give us Memphis, I suppose. I suppose that suspension would reach all our markets.

Commissioner Walker. Do you claim you want to charge more for truck of this sort from points further north of here than from Mobile?

Mr. Russell. Oh no sir.

Commissioner Walker. Then I don't see what this application has to do with the case.

Mr. Stahlman. The railroads want to apply the same rule to the traffic from here that they would apply to any traffic to and from Mobile.

By *Commissioner Bragg*:

Q. State to the Commission what these vegetables are?

A. I didn't state them particularly, because I supposed everybody knew what vegetables were.

Q. Different kinds of vegetables grow in different parts of the country.

A. I will state what I mean. I mean cabbages, potatoes, beans, peas and onions. I might mention several others, but I think that is about enough to give an idea of what I mean't by vegetables.

Q. You mean strawberries, I suppose.

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A. I don't mean strawberries when I say vegetables.

By *Commissioner Walker*:

Q. Can those things go by water?

A. They go by rail altogether. We can't ship them by water.

By *Mr. Stahlman*:

Q. You have said you cannot stand any higher rates than you are paying. That is true, is it?

A. I think that is very true. We couldn't stand much higher and live.

Q. And it is a large industry that has been built up within the last few years?

A. Yes sir.

Q. And the railroads have done a good deal to help you to build it up?

A. I think they have. We feel satisfied.

Q. They have put on fast trains?

A. Yes sir.

Q. And refrigerator cars?

A. Yes sir; we are very well satisfied.

Q. Everything is moving on well?

A. Yes sir. Our complaint is they don't give us as much time as we want, but they are improving.

Q. Your trouble arises from the apprehension that the law will disarrange the rates?

A. Yes sir.

Q. Some of the rates have been withdrawn from points north of the river?

A. Yes sir; and we are afraid others may be.

Q. As far as you know, the lines south of the river have not withdrawn or advanced any rate?

A. Not that I am aware of. I think to Memphis they remain the same. As we understand it, the suspension is not permanent, and we are afraid when the present suspension expires then we may suffer.

Commissioner Walker. I think you have a wrong idea about the Law.

The *Witness*. If we had known it we would have been much easier.

The *Chairman*. I should like to ask Mr. Stahlman a question right here, under oath.

Mr. E. B. Stahlman was duly sworn.

The *Chairman*. Does your road charge more, upon such products as this gentlemen sends north to Cairo and markets beyond, from local stations than it does from Mobile?

Mr. Stahlman. I am not prepared to answer that. I will get Mr. Culp to answer it for me.

The *Chairman*. Mr. Culp was sworn the other day.

J. M. Culp, who had been previously sworn, was further examined as follows:

By the *Chairman*:

Q. Does your road charge more upon these products from local stations than it does from Mobile?

A. It has done so in the past.

Q. Does it now?

A. I believe at present the rates are higher at points north of Mobile.

Q. Do not those rates, according to the testimony of this witness, operate as rates that are absolutely prohibitory upon the business north of here?

A. No sir; I think not.

Q. Is not this gentleman mistaken in what

he says as to not being able to afford higher rates if the men north of here can afford higher rates against him?

A. Perhaps not. It may cost him more money to raise his crops than it does north of here.

Q. Do you think he cannot raise vegetables as cheap here as at stations north?

A. Possibly not. Rates from Mobile to points this side of distant markets would be higher than to the distant markets.

Q. What I want to know is whether the rates upon the same articles which he sends forward, and which he says will not bear any higher rates, are in point of fact higher from the local stations north of here?

A. I can and will tomorrow get the rates and let you know exactly. I know in the past they have been higher, and I think they are at present.

The **Chairman**. What I want to know is whether the rates that have been made by your road upon market gardening are such rates as are prohibitory; because I judge from this man's evidence they would be.

Mr. Stahlman. If the Chairman will permit me, I will answer under oath what my judgment is concerning it, and what would actuate me in adjusting the rates and in assuming it cost more to produce vegetables near Mobile than it would at an interior point. I would say in the first place that the land upon which the vegetables were raised would cost at least 300 per cent more near Mobile than it would at an interior point 100 miles from Mobile; and the interest on that money is quite a consideration.

Daniel Smith resumed his testimony and said:

I would say in connection with that, by permission, to be successful here we think it necessary to apply and do apply from sixty to seventy-five dollars worth of fertilizer to every acre of ground we cultivate. In this land we think it is necessary, and without it we can't succeed.

By the **Chairman**:

Q. I have no doubt you practice true economy and that it is true economy that you should fertilize your land highly. Are not those fertilizers delivered and spread upon the land here more cheaply than they would be up the road?

A. I am not prepared to answer that.

Q. If you could raise vegetables for the markets of Louisville, St. Louis, Cincinnati, and Chicago more cheaply up the road twenty or fifty miles than you can here, would you not be likely to go there rather than raise them here?

A. I couldn't do it, because my interests are here in such a shape that I couldn't transfer them without a considerable loss, more loss than the difference in the cultivation.

Q. People are very apt to go where they can do business most economically and successfully?

A. Sometimes they do; but sometimes they can't do exactly what they would like to do. I am so situated I couldn't pull up and leave if I wanted to. I am attending to some business that I can't leave or transfer.

Q. Is it your opinion that this business you carry on now can be carried on more profitably

at the same rates at some station up the road than here?

A. I am not prepared to answer that question. We base our calculations, or our fears are based somewhat, upon the fact that on a short haul and a long haul as compared the long haul is the one we are enjoying now; but if the short haul rates are applied, it will result exactly as I say: that about 85 per cent of our gross sales would be freight.

Q. I wanted to see how it would operate in case of a man in your business with whom a short haul was the rule?

A. I don't know how it is applied from Greenville on, but from here to Greenville on a sale made today at the quotations in Cincinnati it would be 15½ per cent of the gross sales at Greenville. Cincinnati is five and a half times as far from Mobile as Greenville, and if it was applied as we are afraid it might be under a strict construction of that section, to Cincinnati, we would there pay five and a half times as much freight as we now pay, or as we pay to Greenville.

By **Commissioner Walker**.

Q. Have the railroad officers said to you that they proposed to put in force any such construction as that?

A. No sir; they have not said so.

Commissioner Bragg. I don't think they ever will.

The **Witness**. I hope they never will.

Commissioner Bragg. I don't think you need worry about that. Cincinnati is a competitive point, and so is every other point.

The **Witness**. I am in hopes they never will. I am not afraid of the railroads unless they are forced to it.

Commissioner Walker. There is nothing that forces them.

By **Commissioner Schoonmaker**:

Q. Were you asked to appear here?

A. Yes sir; my associates requested me to come and present that petition.

Q. Were you requested by any railroad people to come?

A. No sir; I come simply in the interest of our business.

Mr. Stahlman. We never apply any rule calculated to hurt anybody.

The **Witness**. I am not afraid of the railroads. We are none of us afraid of the railroads unless they are forced to do it. We are afraid this Bill is to force them to do it.

Commissioner Bragg. The Interstate Commerce Law does not come within 40,000 miles of it.

The **Witness**. I am very glad to hear it. I will report that to my association.

D. G. Dunklin of Greenville, Ala., appeared before the Commission, and having been duly sworn, said:

I have here a petition from the merchants of the City of Greenville, Ala., and locations between Montgomery on the M. & M. division of the L. & N. Road 135 miles north and about 43 miles south of Montgomery. We have no competitive rates. We have but the one railroad. It has treated us better than the former management; but our community desire that the Interstate Commerce law be enforced in full. We think you did right in suspending it for

90 days for a chance to consider; but we think the Law that was enacted by a wise Congress has certainly a very able Commission, and we desire that it be enforced. That is all we have to say. It is all embodied in our petition. I was authorized to present that petition.

By Mr. Stahlman:

Q. You live on the line of the Louisville & Nashville Road?

A. Yes sir; the M. & M. division.

Q. You say the present management is treating you a good deal better than the former management?

A. It is so stated in the petition.

Q. They have reduced your rates?

A. Yes sir.

Q. You have no special complaints against the road?

A. We have no special complaints against the road. We had a very heavy lawsuit against the former management, which this company compromised when they bought out the franchise.

Q. Your rates compare favorably with the rates of other stations on that line?

A. I couldn't say. We have some complaints. We think in some things it is rather heavy. I was just told by the gentleman who was on the stand before me, so far as shipping vegetables was concerned, it was absolutely prohibitory.

Q. Do you ship any vegetables to your place?

A. I don't; but he remarked to me he shipped some today or yesterday and the freight to Greenville was prohibitory; he couldn't think of shipping there again. Of course we understand that we are not a competitive point; but we claim that we are the largest shipping point from Mobile to Montgomery. We ship from 18,000 to 22,000 bales of cotton annually. We have a large trade there.

Q. There is no town adjacent to you on the line that has any advantages over you?

A. Not that I am aware of.

Q. Where do you ship the cotton now?

A. We formerly shipped to Mobile, but it goes the other way now and your road gets the advantage.

Q. Couldn't our road get the advantage if it came to Mobile?

A. Yes sir, it would; but we can't afford it. Formerly I shipped myself from twelve to fifteen hundred bales of cotton to Mobile. In the last six years I have shipped ten bales.

Q. Where do you ship now?

A. We sell it there. We have buyers from Boston, from Fall River and all those points. They buy our cotton at home. We ship but very little cotton. There are some discriminations of course. We will take for instance sugar, molasses and rice from New Orleans. We pay 46 cents. They frequently ship it around from Meridian, and it don't make any difference which way it goes, we get it at the same rate. They ship it up the Mississippi and around and we get it at the same rate, 46 cents a hundred pounds. Montgomery, 44 miles further, gets it for 24 cents.

Q. What is sugar worth in New Orleans?

A. From 4½ to 5½ cents.

Q. What do you sell it at at Greenville?

A. 7½ and 8 cents for the best.

Q. It costs you five cents delivered at Greenville, and you charge 2½ cents profit?

A. No sir; we charge 1 and 1½ cents profit. We are only 44 miles from Montgomery and we pay nearly twice the freight that they do.

Q. Do you think the Montgomery merchant gets that much margin on his sales?

A. I am not aware how much margin.

Q. Do you think the Mobile merchant does?

A. We frequently buy in Mobile. We usually buy in New Orleans. We buy our bacon and corn and everything of that sort.

Q. Do you buy your grain from the west?

A. Yes sir.

Q. And flour?

A. Yes sir.

Q. What is the rate on flour from the point you buy?

A. It has been 78 cents.

Q. What point?

A. We have been buying from St. Louis and some in Illinois.

Q. At what profit do you sell the flour?

A. From 50 to 75 cents a barrel. We sell it for 25 cents for cash.

Q. Don't you think the Mobile and Montgomery merchants you are complaining of would be glad to have 15 or 20 cents profit per barrel on flour?

A. We are not complaining of the Montgomery merchants.

Q. You want the Montgomery rates as I understand?

A. We think there is too great a discrepancy. We think it is a little too great. We are only 44 miles from Montgomery and our rates are nearly double. At the same time, they would take freight clear through to Michigan for the same rate that they would to Greenville. I think the rate from New Orleans to Atlanta—certainly Atlanta is a very great railroad center—I think they charge 82 cents, and I think to Chattanooga they charge 21 cents.

Q. There are three lines from New Orleans to Atlanta?

A. Yes sir.

Q. And four rail lines and half a dozen steamboat lines at New Orleans?

A. We have shipped frequently our goods by way of Mobile from Baltimore, New York and Boston. We had a transaction last year that was something I couldn't figure out exactly. I wanted very nearly a car of barbed wire for myself and my neighbors. I went to three points, St. Louis, Cincinnati and Louisville, Kentucky, for prices and the rate of freight to Montgomery and the rate of freight from either of those points to Greenville. I got those rates and it was to my interest to buy the barbed wire from Belknap of Louisville.

Q. Still your rates are lower now than they were before we got possession of the road?

A. Yes sir.

Q. And the road is in better condition?

A. Yes sir. Let me get through. The route from Louisville to Greenville is a continuous line without any change. I shipped that barbed wire, about 16,000 pounds I think, to Montgomery and reshipped it and saved I think thirteen or fourteen dollars. I would like for some gentleman to tell me why that road didn't bring that freight to me at the same rate, without unloading it, without a transfer

and without two bills of lading and two freight rates.

Mr. Stahlman. I will say under oath, if necessary, that that was simply a clerical error. I want to state what I state under oath: that in the multiplicity of business, the great volume of business the Louisville & Nashville does, it cannot always be correct in everything.

The Chairman. Do you mean that such a thing could not happen in the regular course of your business according to the regular established rates?

Mr. Stahlman. Not without there was an error on the part of some clerk. It don't stand to reason that the Louisville & Nashville Road would fix a rate to Montgomery and exact a rate to Greenville from Louisville or any other point that would enable the shipper to ship to Montgomery, delay the car and then reship to Greenville at a less rate. Louisville & Nashville interest would be clearly to let that car go right through at the rate to Montgomery plus the rate to Greenville.

The Witness. Here is the gentleman now that paid the freight for me.

Mr. W. F. Vandivier. I will state I do not have any recollection of the matter, and I would also state in justice to the Louisville & Nashville Railroad that I would have to agree with Mr. Stahlman in regard to the matter; that it certainly must have been a clerical error, from the fact that I have recently had occasion to examine every phase of the adjustment of freight rates and I have never found such a discrepancy as that. Yet at the same time if Major Dunklin says that that is a fact—I didn't of course know anything about the matter until I heard Major Dunklin relating it here—I would say it was true. At the same time I would agree with Mr. Stahlman it must be a clerical error.

The Witness. You have no recollection of paying the freight?

Mr. Vandivier. I have; but as to the amount of freight and the adjustment of it I could not state. I think I am safe in stating that there are no such rates in effect as would bring about the result referred to by my friend Major Dunklin.

The Witness. I would say that in our memorial we say nothing against our railroads. We are satisfied they are doing the best they can. We have no competition. They do very well, but sometimes we think they might do better. This Law was framed by a wise body of men. They had it under consideration for quite a number of years, and I want to see what effect it will have.

By Commissioner Schoonmaker:

Q. You said you sold your cotton to agents. Is it sold and delivered on the plantation or at some other point?

A. It is sold and delivered in the city. It is cotton I purchase. I raise cotton and purchase.

Q. Is it usually sold on a plantation and delivered at some other point?

A. If I understand the question, it is brought to the city and placed in warehouses.

Q. By the planters?

A. Yes sir. We purchase that cotton in our

business and we sell when we get 50, 60 or 100 bales.

By Commissioner Bragg:

Q. What is the population of Greenville?

A. About 8,000.

Q. How many stores are there?

A. About 30 to 35.

At this point, 8:15 P. M., the Commission adjourned until tomorrow morning at 9 o'clock.

MOBILE, Alabama, April 30, 1887.

The Commission met according to adjournment, all the members being present.

James Bowron appeared before the Commission having been duly affirmed was examined as follows:

By Mr. Albert S. Marks:

Q. With what business are you connected, and in what way?

A. I am the Secretary and Treasurer of the Tennessee Coal, Iron & Railroad Company.

Q. State its properties and where situated.

A. Its properties consist of about 200,000 acres of coal and iron land in the States of Alabama and Tennessee, of some five blast furnaces in operation, two in Alabama and three in Tennessee; five in construction, four in Alabama and one in Tennessee; of nine coal mines in operation in Alabama, producing 8,000 tons of coal per day; seven in Tennessee, producing 2,000 tons of coal per day; besides iron ore mines, foundries, and connecting lines of private railroads incident and necessary for the development and operation of the business.

Q. How long have you been connected with those properties?

A. I have been connected with the company, either under its present organization or with one of the constituent companies which has been merged into it, ever since I came to America, ten years ago.

Q. How much iron are you producing now?

A. We are producing today an average of 500 tons per day of pig iron.

Q. What is the capacity to be when the furnaces are finished?

A. By the end of this year or the middle of next year our daily capacity will be 1,000 tons of pig iron.

Q. How many employees have you?

A. We employ between three and four thousand men at present.

Q. What will your immediate number be?

A. On the completion of the works which are now building we will employ about six thousand men.

Q. I will ask you to state to the Commission, with respect to the manufacture of iron in the Birmingham district where your company is operating, as to how that business started there, under agreements with the railroads touching the carriage of your pig iron. Give the history of it briefly.

A. Ten or twelve years ago the manufacture of coke pig iron was practically nonexistent. There was but a single furnace in operation in Alabama making coke iron, with a product of not exceeding 40 tons per day. Today that industry has developed into a daily output of 600 tons, with furnaces now in construction which will raise it to 1,600 tons per day within the ensuing eight or nine months. The business

has been based upon and exists by the supply of distant markets. There is no local consumption which would justify the existence of any such business.

Q. What is the local consumption?

A. The local consumption of the States of Alabama and Tennessee, in the aggregate, does not exceed 150 tons per day.

Q. (Handing paper to witness.) Look at that paper and say whether it embraces the markets to which you ship your iron North, East and West?

A. Yes sir. I have seen this paper before, and recognize it as a list of the points.

Q. Into how many of the States and Territories are you making shipments?

A. I notice from our order book that last year we shipped iron into thirty-eight different States and Territories.

Q. State to the Commission upon what basis the capital was invested there with the companies.

A. It has been based in each case, where we have constructed furnaces and located mines, upon formal contracts entered into with the railroad companies for periods of years, by which low rates of transportation have been guaranteed to us for these heavy products; we in many cases guaranteeing that we would ship a given quantity, either of coal or iron, so as to insure to them a large, regular and continuous business.

Q. Look at the paper I now hand you and state what has been the increase of the business at Birmingham in the last two or three years.

A. This paper exhibits the tonnage received and forwarded by the Louisville & Nashville Railroad alone, and shows an increase from 38,000 tons in the fiscal year ending June 30, 1878, to 748,000 tons in the fiscal year last ended, and to an approximate amount of about 950,000 tons in the fiscal year which is now elapsing.

Q. That is a statement made by the Louisville & Nashville Railroad?

A. Yes sir; an increase of about twenty-five fold.

Q. I wish you would explain to the Commission what the condition of the import and export transportation was into Alabama and Tennessee from the North; I mean as to the weight and bulk of the freight coming South and the condition of the cars returning.

A. There was then and still is a large surplus of cars coming south loaded over those returning to the north. That statement shows a preponderance in 1878 of 4,000 tons of tonnage received over and above that forwarded. The last fiscal year shows a surplus of 107,000 tons of receipts over those forwarded.

Q. That is at Birmingham. How would that be with reference to the remainder of the State? How much was the per cent, say half a dozen years ago, of the surplus—of the unloaded cars returning north?

A. In tonnage it was probably ranging from 30 to 40 per cent; but in bulk, on account of the goods received from the North being more bulky than those shipped to the North, the volume of cars coming inward, and which would have returned empty but for southern loads, was probably as high as 75 per cent.

Q. State whether the fact that they had the empty cars returning was the inducement for the development of the industry and commerce there in that iron production?

A. Decidedly so. It was made quite a prominent point by railroad men when we were negotiating our contracts for freight with them.

Q. State to the Commission what has happened with respect to your shipments since the passage of the Interstate Commerce Law, and explain to them how it affects the iron producers of the South.

A. Our sales are entirely stopped. We cannot sell anything anywhere. In the last forty days, instead of selling 500 tons of iron per day, we have not been able to sell over an average of 50 tons per day, and the sales we have made have been to points which are reached mainly by water transportation. In other words, instead of making sales almost daily of from 500 to 5,000 tons of round lots for interior cities, the only sales that we have made over 100 tons since the passage of the Interstate Commerce Act have been for New York City, reached, of course, mainly by sea, via Savannah.

Q. I will ask you to state whether or not, under your original contracts with the roads, they have found these markets for you at the rates that they agreed they would accept, and whether your business has been built up in that way.

A. Yes sir; they have in every case adhered to the contracts we have made with them; and inasmuch as our contracts have always embraced clauses giving us the benefit of the most favored customer, and as from time to time the cost of transportation has been reduced, the railroads carrying our products to distant markets have given us the benefit, and have improved upon the original contracts.

Q. I want you to state whether your contract with the railroad was, that, whether they could carry the freight at a profit or not, they were still to carry it?

A. There is no stipulation as to any profit at all.

Q. As your profit went down were they to reduce their rates?

A. That was not the case in the original contracts.

Q. Was it the case in the subsequent contracts?

A. We have made subsequent contracts, by which the rates of transportation upon the iron itself have been made contingent upon the realized profits of the iron, working upon a sliding scale, up and down.

Q. In what quantities as to train loads do you offer the iron to the railroad at Birmingham?

A. Frequently in lots from half a train to a train at a time, making up half a train load of ten cars or twenty cars, or a full train load, in our own furnace yards, so that the switch engine could just take it out, have it billed, and have it shipped right straight off.

Q. How do the rates of transportation to Columbia, Tennessee, as charged by the railroad compare with your through rates beyond to the other points in that State, and so through Kentucky?

A. Of course the local points like Columbia

have rates that would be decidedly higher than to any such competitive points as Louisville, Cincinnati, Chicago or St. Louis.

Q. As to the rates that the railroad chooses to charge to Columbia, that is a matter over which you have no control?

A. None whatever.

Q. Is that true throughout Kentucky, and through the different States of the North that you pass through to reach your markets?

A. Yes sir; our through rates in all cases, so far as I have personal knowledge of local rates, are lower than the local rates to intermediate points.

Q. State whether, in view of the small amount you have named, there is any market in the South for the production of the iron industries of the South?

A. Certainly not. The entire consumption of pig iron in the Southern States would not keep one half of our own works running, let alone those of all the other gentlemen engaged in the business.

Q. You say this paralysis has existed from the time of passage of the Law?

A. Yes sir.

Q. Tell the Commission what it is that the iron men desire for their protection.

A. We want relief in such form as the Commission feels itself able to give. If the maintenance of the fourth section of the Act prohibits the railroads from maintaining the low through rates that we want, then we want the temporary suspension of the fourth section made permanent. If it does not affect the railroads in carrying out the old contracts upon the faith of which we built our works and invested our capital, then we want an authoritative declaration to that effect, so that they may know it and govern themselves in their action toward us accordingly.

Q. As I understand you, all of you are now suffering seriously, and it is not a matter of any consequence whether it is a real or an imaginary trouble.

A. I am sorry to say there is nothing imaginary about it. The trouble as far as we are concerned is very real.

By the Chairman:

Q. Have you with you any of the contracts about which you have spoken?

A. I have not, sir, but I can furnish them. I came here unexpectedly, being away at another point, or would have brought them with me.

Q. Those contracts are in writing, as I understand you?

A. Yes sir.

Q. If you please you may forward them to us as soon as you get home.

A. Do you prefer the originals?

Q. Oh no; if you will give us copies of them that will answer.

A. I will do so.

Q. What capital is invested in these enterprises of which you have spoken?

A. The enterprise under which I serve is an aggregation of six, and the entire capital stock is \$10,000,000, and the bonded debt is \$6,000,000, representing \$16,000,000 of money which is really being used in the business.

Q. Do you mean that \$10,000,000 has been

put in as actual capital in addition to the sum that represents the indebtedness?

A. As far as I am able to judge, I do. Some of the stock, at different times during the entire history of the various companies, has been sold at a discount to persons who have bought it. Against that, however, for a period of many years the money which has been earned in the business has been appropriated to capital account and improvements; and I believe the one will fairly offset the other.

Q. Will you tell us who these parties are that formed the companies; I do not mean the names, but from whence they came, whether they were parties residing in the vicinity, or residing elsewhere; and if so, where?

A. The company which I first served in this country was composed entirely of Englishmen and represented the investments of some two hundred gentlemen from the coal and iron regions of the north of England. That company was the Southern States Coal, Iron & Land Company. The Sewanee Furnace Company was composed of gentlemen resident entirely in Tennessee. The Pratt Coal & Iron Company, or the Pratt Coal & Coke Company as it was originally, was composed chiefly of gentlemen resident in Tennessee and partly in New York. The Ellis Furnace Company represented Alabama, Tennessee and Kentucky capital. The Lynn Iron Works represented Alabama capital. The original parent company into which the others have merged, which was originally the Tennessee Coal & Railroad Company, embraced originally New York capital exclusively, but after several changes, during which time the control of it has passed into Tennessee and out again, it is now owned chiefly in New York.

Q. The operations of this consolidated company, as I understand you, are at Birmingham and vicinity?

A. Birmingham and the vicinity constitute the largest individual point out of several.

Q. About what is the population of Birmingham?

A. I am not a resident of the city and I would not like to do it injustice in the hearing of some of my friends. It was I think about 40,000 at the last census; but if I said it was less than 60,000 they would mob me when I get outside, so I would like to be taken as answering 60,000, with a mental qualification. (Laughter.)

The Chairman. We will see you are protected in that statement.

The Witness. It is fair to say and it is due to Birmingham, I should say this: that the business which Birmingham represents is in no sense identical with its municipal boundaries. For example, one of our own works, our chief works, is outside of the municipal boundary of the city and will involve a population of between ten and fifteen thousand people, which could not be counted at all as part of the city population proper, and still the business is essentially the business of Birmingham.

Q. Do you know the quantity of the coal land owned by this organization?

A. Yes sir; we own about 108,000 acres of coal land.

Q. Can you tell something near what the investment of this company has been, in buildings and machinery?

A. I would say not less than 5,000,000.

Q. Do I understand you to say in your opinion, the sum of \$16,000,000 has been actually invested in the lands, and in the buildings and works of this company?

A. That is my judgment sir.

Q. And its capital represents an actual investment of money to the full extent?

A. Yes sir; I think it does.

Q. Has the stock been very much the subject of sale in the market?

A. Yes sir; it is listed on the New York Stock Exchange, and subject to daily transactions. Last December the stock reached as high a point as 116. To day it is not more than 44 or 45.

Q. When did this decline begin?

A. My statement is open to be misleading, unintentionally so. A readjustment of internal working, in new works and adding both to the bonded debt, and the capital stock took place since it was at 116, and the highest quotation that the stock has had on its present basis is 54½.

Q. When was that?

A. That was about February last.

Q. Since then it has continued to decline?

A. Since then it has continued to decline.

Q. Is there any special cause for the decline?

A. I do not know of any other than the general stagnation of the iron trade, within the past few days and weeks.

By Mr. Marks:

Q. Tell the Commission how many acres of iron ore land your company owns?

A. As I said at the beginning, we own about 200,000 acres of land, of which 108,000 are coal lands and the remainder practically all ore land. We do not buy land unless it is either coal or ore land.

By the Chairman:

Q. You spoke a moment ago of the number of men in your employ. Has the number of men employed by you diminished in consequence of the stagnation of business?

A. We have not yet shut down any department or work, because we believe, we hope and believe no such consequences are going to follow the administration of this Act as will continue to paralyze our business.

Q. Is the fear of the operations of this Act, the sole cause of the stagnation of business?

A. Most emphatically; I believe it to be so.

Q. You express the opinion, do you, that that is the sole cause?

A. I do, most emphatically.

Q. But up to this time you have not dismissed any of your men. You are continuing them in your employ?

A. We have heavy contracts upon our books, which will carry us on for probably ninety days to come.

Q. And you are proceeding in the fulfillment of those contracts?

A. Yes sir.

By Mr. Marks:

Q. I want to ask you with reference to your contracts. Do you have to make them for a long time in advance?

INTER 8.

A. Yes sir; it is necessary to make them so. The largest individual consumers of pig iron are the manufacturers of gas and water pipe. They, in their turn, make their contracts chiefly with municipalities; and as only certain times of the year, especially in the North, are available for laying gas and water pipe, the ground being frozen in the winter, contracts for such work are usually made considerably in advance; and in our company we contract three, six, nine and sometimes twelve months for deliveries of round lots of iron to these pipe makers, and it is necessary for us to be in a position both to guarantee our own price at the furnace and to guarantee the rate of freight.

By the Chairman:

Q. Then you do not accumulate a stock on hand?

A. We could not afford to, in the magnitude of our business.

Q. You do a business upon contracts for performance in the future?

A. Yes sir.

Q. That is the course of your business generally?

A. Yes sir; the value of our pig iron amounting to about \$10,000 per day, we cannot afford to accumulate stock very long.

Q. Has there been, or has there not been, an over production in your line of business through the country in general?

A. Not within the past eighteen months. On the contrary, within the last eighteen months the consumption has been greater, and is greater to day than the production; and the stock of coke made pig iron is diminishing month by month. The stock of iron such as we make west of the Alleghany Mountains is at least sixty to seventy thousand tons less to day than it was six months ago.

Q. Then you expect the demand in the line of your business to keep up; not to diminish but to increase; and the question as I understand from your testimony is whether, in respect to your own business, you are to be crippled by this Act?

A. Yes sir.

Q. And not whether there is, in consequence of an over production anywhere, to be a diminished demand for your productions?

A. I am sufficiently familiar with the business to know that there is no lethargy in the trade, because of over production today; and I am satisfied and know perfectly well that if I could say today, to our customers in St. Louis, Milwaukee, Chicago, Pullman and Detroit that we would deliver iron to them three months or six months from today and fix the prices upon the same freight rates that we have been enjoying for years past, we could sell twenty, thirty or fifty thousand tons of iron inside of twenty days.

Q. Who are your competitors in this business?

A. We have varying competitors in almost every district. Take first the New York and New England district where we deliver. Our chief competitors there are the Anthracite Manufacturers of the Lehigh Valley; and in Philadelphia the Eastern Pennsylvania men and above all the Scotchmen. Take for instance the City of Providence. We have some

large customers in Providence. Our competition with them is exclusively with the Scotch manufacturers who can send iron as ballast in tramp steamers from Glasgow that expect to load back again with grain or anything else they could pick up. Take the Lake District, Buffalo, Cleveland, Chicago and Detroit, which are very important markets to us—the last three more than the first one—and we have to compete with Western New York, Ohio, Western Pennsylvania and the furnaces of the Lake District drawing their ore from Lake Superior by water, and bringing their coke a comparatively short distance from Connellsville. We come down to St. Louis, which is an extremely important market to us, being the distributing point for the west, and we find there furnaces on the spot, drawing their ore in the immediate locality from Pilot Knob, and drawing their supplies of fuel down the Ohio River from Pittsburgh.

Q. You have the coal and iron right together at present?

A. We have.

Q. While locating your work at Birmingham, was it your opinion that the cost of production would probably be less there than almost anywhere else in the country?

A. It was.

Q. Has that been made good by the result of experience?

A. I think it has. I think the extension eleven fold within the past ten years of the business is sufficient proof.

Q. Is it your opinion now, that you manufacture more tonnage than the iron manufacturers of Pennsylvania do?

A. It is.

Q. And of Michigan?

A. If it were not so, we would not be able to pay even the low rates of freight which the railroads charge us and still get there.

Q. And of Missouri; you manufacture more tonnage than they do, in this part of the country?

A. Yes sir.

Q. Is it because of these contracts which you have with the railroad companies for very low rates that you are enabled to deliver the output of your works to the markets you have spoken of, the Ohio market, the Michigan market and the Missouri market, in competition with the works right upon the ground?

A. Yes sir; we couldn't begin to do it if we had no special rates and had to pay local rates.

Q. Is it your opinion that the manufacturers in Pennsylvania, Michigan, Missouri, would regard that as just on the part of the railroad companies; that by reason of these very low rates they should have manufactures laid down at their doors, manufactures that were made at a distant point, but more cheaply than they could make them? Is not the tendency of that to drive them out of the business where they are?

A. I have always supposed that legislation was intended to imply the greatest good to the greatest number, and that whatever might be their opinion on the subject, the consumers of pig iron throughout the North and West, who number fifty for every producer, would hold up their hands and invoke blessings upon the head of the Commission if you enable us to

continue to furnish them with that cheaper pig iron which enters into the foundation of every important manufacturing industry, for the construction of its machinery in every direction.

Q. But are not these advantages which you obtain in your business advantages for which somebody else pays?

A. No sir; I think not; and I will show why I think so, if you will permit me to trespass thus far upon your time. The life of an industrial plant, such as that which is involved in the production of pig iron, is limited. Given that any plant was in existence in the north ten or twelve years ago, its life to-day is ended. Every work which has been established, every modern work in existence and in operation in the North today, has been established in view of the existence of works in the South which could and do produce more cheaply, and has been established taking the risk; and I venture to submit for your consideration whether the subjection of the southern producers to local rates of freight would not be in effect to rival the French system of Octroi, and build up a cordon wall of local protection for each State, which might with equal justice be carried out into each individual county and each civil district, instead of giving the whole inhabitants of the United States the benefit of unrestricted and free competition, one with another.

The **Chairman**. Of course we do not propose to enter into any argument of the question with you. That is not our purpose.

The **Witness**. I did not venture to offer it in that sense.

The **Chairman**. What we want is to draw out from you the reasons upon which you think the railroad companies should be permitted to make rates for the advantage of works where the manufacture is cheaper than it is elsewhere in the country, that will enable those works to compete at the very doors of those other manufacturers that have not the same advantage of very cheap production, but must, nevertheless, contend for existence as against you.

The **Witness**. Will it be necessary for me to offer any further reason than the sanctity of contract upon which we came here?

The **Chairman**. When you submit your contracts we will examine them.

The **Witness**. That shall be done.

By **Mr. Marks**:

Q. State to the Commission whether or not the hay, grain, flour and manufactured goods of the North and West are shipped here, and whether or not those cars in the main were returning empty, and that was the reason why you availed yourselves and could avail yourselves of the cheap rates you did obtain?

A. Yes sir.

Q. Because the bulk of the commerce was in their favor?

A. Yes sir.

Q. Is it not still in their favor?

A. That is so. We never require to ask the Louisville & Nashville Road once in fifty times for a car to load pig iron to an internal point in Illinois, because the Illinois Central cars coming down here with produce can be loaded direct back.

Q. You can load pig iron on any sort of cars?

A. We can load pig iron on any sort of cars. It is the best kind of freight that the railroads can handle.

Q. I will ask you as a question of fact. Is it not simply a question whether the cars shall go back empty or whether they shall go back loaded with pig iron?

A. Decidedly so.

Q. And that is the reason you got those rates?

A. It was, and is still.

By the **Chairman**:

Q. Do you mean that nothing goes back in that direction from this section?

A. I mean there is a surplus of cars coming South more than those which go back loaded.

Q. Is not the tobacco very largely manufactured, in fact mainly manufactured at the North?

A. But after giving credit for all the cars which go back to the North with the southern products, this is still true.

Q. The cotton is very largely sent that way; and is not the fruit business now a very large business from the South?

A. Surely; but permit me to draw this point very especially to your attention: That the southern products are, owing to the climate, simply a season class of freights. There is a time, I frankly admit, for two or three months, when the handling of cotton, the corn, the tobacco, the sugar, and also (for local and domestic use) the coal, in the Southern States brings a pressure upon the railroads for cars that they have great difficulty in meeting; but we give them freight every day in the year.

Q. I understand that; but you spoke in such a way as to lead to the inference that almost nothing went in one direction and a great deal in the other.

A. Practically there would be scarcely anything to go back in the dull summer months.

By **Mr. Marks**:

Q. What is the difference between the value of a train load of cotton and a train load of corn?

A. That is out of my element. I would rather some other witness would say.

Q. Is it not true of the southern products that for bulk and weight they are much higher in value than the products of the West and North, so as to make the exchanges unequal in bulk and weight, as a rule?

A. I think so, generally; but I cannot speak as an expert upon a question of that kind.

Q. Outside of lumber and wood and iron we ship no manufactured products North and West, do we, or but very little?

A. Very little indeed; very little. The great preponderance is coming South.

Q. The whole of our supplies come from the North and West?

A. The great preponderance comes to us over what we ship.

By **Commissioner Morrison**:

Q. Beside the competitors that you meet in New York City, you meet a competition from the State of New York also?

A. Yes sir.

Q. I do not want to inquire into your business affairs, but have you any open sales made

of your product locally? What do you sell your products for here—say for the last few months?

A. An average of about \$14 a ton at the furnaces.

Q. What does it cost you to get a ton to New York?

A. About \$3.75 via Savannah.

Q. That would make it cost nearly \$18 there?

A. Yes sir.

Q. Do you know anything about the local rate of sales in Pennsylvania?

A. I don't know very much. I only know it by the prices that we ourselves realize there. We sell a little in Philadelphia, but not so much as in New York.

Q. I do not know that it belonged to this investigation, and so you need not state it if you have any objection. It is stated in the newspaper accounts of your wonderful feats down here in producing iron products, that you make tons of iron as low as nine or ten dollars?

A. I am afraid Mr. Watterson is responsible for that.

Q. No sir; such an intelligent gentleman as Mr. Hewitt, who makes iron himself, thinks it can be made for as low a figure as ten dollars.

A. Occasionally, undoubtedly, it can; but the difficulty is that very few people, in desiring to put the most favorable construction on the resources of any section, give allowance for the series of expenses in the manufacture which are incident to every second or third year, in the relining and practical renewal of the plant. From every two to three years it is necessary in the case of each individual furnace to spend, according to circumstances and according to the good fortune and good management of the plant, from seven or eight up to as high as thirty thousand dollars in repairs.

Q. In that respect you are like the railroads; you have to be renewing all the time?

A. Yes sir. Making allowance for that, I would say that we have not yet attained that point; or year in and year out no furnace has reached the ten dollar limit.

Q. How much exactly do you say you pay to New York?

A. Three dollars and seventy-five cents is my recollection.

Q. How much does your Scotch or English competitor pay?

A. I have been, and still am, interested in shipping myself, having been interested in the business in England; and I have known iron to be handled from Glasgow to New York for twenty-five cents a ton. The habitual, usual freight, however, that at which I would undertake personally, if it were necessary to have twenty thousand tons brought inside of the next three months, is \$1.75. That is a standing rate.

Q. Then it costs you two dollars more to get to New York from here than it does from Glasgow?

A. Yes sir.

Q. And then if the foreign iron pays six dollars duty you have four dollars the advantage?

A. Supposing our case is the same.

Thomas A. Mack appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Marks**:

Q. State your connection with the iron industry at Birmingham.

A. I am the Superintendent of the Eureka Furnace Company. I am also a director in the company, and have been for four or five years.

Q. How many companies have you engaged there in the production of iron?

A. We have in Birmingham district the Tennessee Coal, Iron & Railroad Company, the Sloss Steel & Iron Company, the Debareleben Iron & Steel Company, the Eureka Company, the Woodward Iron Company, the Pioneer Mining & Manufacturing Company, the Williamson Iron Company, the Mary Pratt Furnace Company, the Birmingham Rolling Mill Company, and the Birmingham Iron Works. There is in addition the Gadsden Furnace, that might be called in the Birmingham district, and two or three within thirty miles of Birmingham besides. Those are in the immediate locality.

Q. How long do you say you have been engaged there in the iron business?

A. About five or six years.

Q. Tell the Commission about the history of your organization there, your arrangement and development, and how it was brought about.

A. The history will go back to the war. It was built, I believe, under the patronage of the Confederate Government in 1863, and was run by them, I believe, until it was destroyed by the United States cavalry in 1865. It was started up in 1866 or 1867, and failed. It was started up again in 1878 or 1874, and failed again. It was started up under its present organization in 1876, and is now running.

Q. State the conditions under which you reorganized it in 1876, and why it is that you succeeded with it?

A. In the first instance there was no railroad when run by the Confederate Government. It afterwards had railroad transportation, but the railroad was a new one, poorly built, costly managed, and with high rates of freight which taxed us out of existence. The second failure was largely due to the same cause, with the additional cause that there was not a thorough and sufficient knowledge of the district as an iron manufacturing district. The third and present attempt was organized with a specific understanding with the railroad company. Heretofore our freights were from \$4 to \$6 a ton to reach Louisville, as a minimum. The present rates of freight as a minimum are \$2.50 per ton. Those rates have enabled us to succeed, and we entered into a specific agreement with them for ninety-nine years.

Q. State particularly what your agreements were with respect to freights, as to how the freights were to be regulated.

A. Our rates of freight were based—at that time there was a long discussion between the railroad company and ourselves. The railroad company at that time considered three quarters of a cent per ton per mile was the minimum at which they could haul freight

and live. The furnace company conceded that \$12.50 a ton for making pig iron was as low as they could make pig iron and live. Both started as the basis of the minimum cost in each case at those figures, and then advanced. For every dollar we advanced in price they advanced so much in freight, until it went up to what we considered a maximum price of \$30 per ton for pig iron, and it only reached that one time.

Q. I will ask you to state whether the railroad, when the price is depressed, takes your iron without any real profit?

A. I am not enough of a railroad man to answer that. They say so.

Q. What is the capacity of your furnaces?

A. Our two furnaces will make about 60,000 tons a year.

Q. You sell your product over the North, West and East?

A. Everywhere North, West and East.

Q. What has happened to you since this Law was passed? What has been the effect upon your business?

A. In the first place, it has created a great deal of uncertainty, first in our own minds, and secondly, in that of the consumers. That has been the first effect. The direct monetary effect is this: We have made an agreement with quite a number of companies, some in Chicago and some in Pittsburgh, agreeing to deliver them so much iron running through the various months of the year, and agreeing to deliver it there at those points at a fixed rate of freight, netting to us so much money. We agreed with the railroads to deliver it at that rate of freight, and so we sold it to the parties at that price. The railroads come back and say they cannot haul it. They say they are not charging any more, but the roads north of the Ohio River are charging more. The result is that we are held to our contract and they are let loose from theirs, and we lose from three to five or twelve thousand dollars, as the case happens to be, according to the amount of the contracts. That is one of the effects. There is another effect. We have to sell iron for future delivery. It is the custom of the iron trade everywhere, in America and everywhere else, to sell for future delivery on long contracts. That is, we sell to a rolling mill say five hundred tons a month, delivered six, eight and ten months ahead. We sell to pipe works, to large car works, and various manufacturing trades. Unless we have a fixed rate of freight we cannot do that; and on the other hand, they cannot buy unless they know how long the contract price will continue, because they themselves are under contract. They must have a contract from us or they cannot make a contract with their people; and so the whole thing is tied up with a chain of contracts going from the last consumer to ourselves, the first producer.

Q. Have you the statement from the railroad association with you?

A. I have here a tariff in which they give us rates of freight that are nearly like those given last month when this Interstate Law was not in effect, and a little bit higher than they were a month before that, but they say at the foot of it "The rates to numerous points heretofore published are omitted from this circular on ac-

count of inability to obtain rates beyond the Ohio River" and "The rates named are subject to change before June." This takes the place of the list for the first of May. They issue it every month. It says "The rates named are subject to change before June, if changes are rendered necessary by an advance in rates beyond the river." When the Interstate Commerce Law takes effect, if there are any changes made they make changes. In other words, we can't make a contract and know what to deliver at, and our business is practically crippled. We can't make an offer to any man of what we can do. We are crippled now. This law has been suspended here, I understand, for ninety days, but that ninety days' suspension does not do us much good. What we want now is something we can go to work on, to carry on our business, and make our contracts under.

Q. You want the privilege of making them as best you can?

A. Yes sir. Today we cannot make a contract, and we cannot carry on our business.

By *Commissioner Morrison*:

Q. Because you do not know what it will cost you to fulfill it?

A. Because we don't know what it will cost us to fulfill it. What we want is a settled policy.

By *Mr. Marks*:

Q. All you want is to get the cheapest rate you can to all the points to which you ship?

A. Yes sir; we want to do the best we can.

Q. You live at Birmingham. Tell the Commission about Birmingham, its population, business and growth.

A. The population of Birmingham is about 40,000 people, I understand; that is the immediate neighborhood of Birmingham. The census may cut it down somewhat.

Q. What has been the increase there?

A. It is pretty hard to tell. I was first there in 1874. I came there with Mr. Bell, a celebrated British iron master, and there were then a few tenement houses, old rattletraps, and a saloon. There really wasn't anything. Today I don't know a more thriving town than Birmingham, and I have been pretty much all over the United States. It is a good place to joke at, but I only wish we could have got this Commission to come and see it. They would have been more fully impressed with it than anything we can say now.

Commissioner Morrison. We have no doubt about its being as you state; not at all. I was not intending to joke. I was laughing because I did not think Mr. Marks would succeed in improving the statement of the other gentleman. I think he will have to stand on that as far as the population is concerned.

The Witness. It is a subject of comment and joke by everyone; but I don't believe you gentlemen can fully appreciate the importance of Birmingham until you have seen it. You may conceive in an intellectual sort of way, as you do about pain, what the situation is; but you ought to wait until you have the toothache. You can't appreciate it unless you see it. There are coming there every day from four to five miles of freight cars for distribution. It is a marvel to most men that go there. It has grown up in a very short time.

By *Commissioner Schoonmaker*:

INTER 8.

Q. What other industries are there besides the coal and iron industries?

A. They are the basis of everything that is there.

By *Mr. Marks*:

Q. How does its shipping compare with the other cities of the South?

A. I believe it is the largest shipping point in the South, by a good deal.

By *Commissioner Schoonmaker*:

Q. Do you mean interior point or sea coast point?

A. Sea coast or interior. It was for that reason we urged the Commission to come personally to Birmingham as the largest shipping point in the South. It should have been visited by the Interstate Commerce Commission; that is if they want to collect personal evidence.

By *the Chairman*:

Q. You say four or five miles of freight cars come there every day for distribution. Do those cars come there loaded?

A. Not all the cars. A great many of them are South bound. Some are North bound. The South bound freights are always loaded, I believe.

Q. The South bound cars are always loaded?

A. Yes sir; going through with provisions, grain and manufactured products from the North.

Q. How is it with those that come to your place and stop there?

A. Those that stop there we just unload and load with pig iron, and send them back.

Q. The question was whether they all come there loaded?

A. The South bound trains; yes. The South bound freight is nearly always loaded.

Q. I mean those that come to Birmingham and stop there, loaded with supplies to be unloaded there.

A. Yes; I understand. Not being a railroad man, I cannot answer with certainty.

Q. I refer to those that stop and do not go any further. I ask in regard to those that come to Birmingham, stop there and take loads from there, back. Do they always come there loaded?

A. There are a great many of them that come from the south, may be—

Q. I am asking about those that come from the north?

A. I think so; but not being a railroad man, I can't answer you definitely, on that point. I can only say that those that come from the north, as a rule, are loaded.

Q. They are loaded?

A. They come there loaded; yes sir.

Q. Have you any idea of the number of cars loaded at Birmingham per day to go North?

A. I do not know that. There must be a great many.

Q. You think at least an equal number come from the North loaded, and deliver their loads at Birmingham. Is that it?

A. An equal number to what?

Q. To those that go back North?

A. I don't quite appreciate your question.

The Chairman. Never mind then. If you are the proper person, I should be glad to have you make and forward to us, at Washington, a statement of the shipments from Birmingham and to Birmingham.

The Witness. I should be pleased to do that.

The Chairman. Let it cover some definite period of time.

The Witness. Say from 1875.

Commissioner Schoonmaker. That is longer than necessary.

The Witness. I only want to show the growth since the policy of these roads has been adopted and carried out.

Commissioner Schoonmaker. That is all right, if it does not involve too much labor.

The Witness. Oh no sir; I would be glad to do it.

Mr. Stahlman. We will show that the volume of traffic to Birmingham, and the volume of traffic out of Birmingham, and also the volume of traffic for points south of Birmingham, are so largely in excess of the northward movement that the empties going North are put off at Birmingham with a view of getting loads that we could not get at points South.

The Witness. That is where we get nearly all our empty cars; northbound empties.

Mr. Stahlman. The rates on pig iron from Birmingham have conformed to the rates from other iron districts in Alabama; no doubt that this bill will alter the value of not less than two to three hundred million dollars' worth of property. I mean to say that if it should put it into the hands of the roads, to destroy the industries there, it would affect the values of not less than three hundred million dollars.

Commissioner Walker. They had it in their hands before the bill was passed.

The Witness. They had it in their hands, and the result was they brought it from nothing to what it is. If it is taken out of their hands, where will it go?

Q. Is your plant embraced within the system of the other gentleman?

A. No sir.

Q. How much capital is invested in yours?
A. About \$1,200,000; that is, our capital stock and our indebtedness. We think our property worth a little more than that, as the stock is above par. Ours is not nearly as large as theirs, and it does not employ as many men; but all of us are increasing and looking forward to further increase.

By the Chairman:

Q. What area is embraced within this iron and coal region?

A. Properly speaking the whole belt extends from Tuscaloosa, in this State, right to the shores of Lake Ontario. There is a steady iron belt. The part comprised in this property is in the States of Tennessee and Alabama; about a hundred and fifty miles in Alabama, and about, I think, an equal number of miles in Tennessee. That contains ore and coal. The greater part of it is yet undeveloped territory. It is being developed as fast as men and money can get at it. Of course the products are the crude, raw products, because there is not any market for refined goods, and there are no means to work them if we have the markets. We have to send them off.

By Mr. Marks:

Q. Can you state what is the amount of capital invested in these industries there? Or if you cannot now state, will you give a written statement of it and hand it to the Commission?

A. I can make out such a statement. I can only approximate it orally now, roughly. I couldn't give you any correct statement.

C. P. Williamson appeared before the Commission, and having been duly sworn was examined as follows:

By Mr. Marks:

Q. State what connection you have with the industry at Birmingham and vicinity.

A. I am President of the Williamson Iron Company.

Q. State how long you have been engaged in that industry at Birmingham?

A. In manufacturing, that is, foundry, machine and boiler works for twelve years; and for the last two years, a blast furnace in addition.

Q. What is the name of your association?

A. The Williamson Iron Company.

Q. State to the Commission upon what conditions it was that you entered into the manufacture of pig iron, with the railroad company, as to rates of transportation and delivery of iron to points North?

A. Being to a certain extent conversant with the arrangements made with the older furnace companies that had been in existence and operation for some time, and knowing that they were reasonably satisfactory, I approached the chief officer of the railroads connecting with our place, and had the assurance that we should have the same rates and protection given to the other furnace companies, if we entered into the manufacture of pig iron.

By Commissioner Schoonmaker:

Q. Are you all on the same basis as to rates?

A. Yes sir.

By Mr. Marks:

Q. I want you to state to the Commission what has been the effect upon your industry of the operation of this Interstate Commerce Law.

A. In the pig iron part of our business it has been a serious damage to us. Indeed it has suspended almost entirely the sales of pig iron north of the river. We have made no sales since the passage of the Act, north of the river.

Q. You heard the other gentlemen examined about the general details of the freights, the empty cars and matters of that sort. Do you concur in their statements?

A. Yes sir.

Commissioner Schoonmaker. Will you let one of your witnesses tell us something about the approximate extent of the resources?

Mr. Marks. Yes sir.

Q. What is the extent of the iron and coal fields there?

A. I do not know sir. I am not well enough conversant with that. Some of the other witnesses can tell.

Q. What is the depth of the best veins of ore there?

A. I should prefer to leave that statement to Mr. Mack or Mr. Bowron.

Thomas A. Mack was recalled and further examined as follows

By Mr. Marks:

Q. What are the thickest veins of iron ore at Birmingham?

A. About thirty feet.

Q. What are the thickest of your veins of coal?

A. About twelve feet. We use about five feet.

Q. What is the extent of the territory that embraces the iron and coal fields?

A. The coal fields are about 12,000 square miles; that is, the Warrior, the Coosa and the Cahaba coal fields and their tributaries.

Thomas Ward appeared before the Commission, and having been duly sworn was examined as follows

By **Mr. Marks**:

Q. State your connection with the iron industry?

A. I am the general manager of the Birmingham Rolling Mill Company.

Q. What is the extent of your business?

A. We manufacture about 25,000 tons of finished iron per annum.

Q. Tell the Commission what has been the effect upon your business of the operations of the Interstate Commerce Law.

A. It has simply paralyzed the business everywhere; in fact, to such an extent that we have already closed down one of our departments, and are stopping the improvements of upwards of \$100,000 we are about completing. We can't see our way clear to put it in operation, from the present phase of the Act.

Q. Before this period did you have your rates of transportation fixed with the railroad companies, and at such rates as you could deliver at a profit in the northern markets?

A. Certainly. It was on the same basis as the furnaces.

Q. State to the Commission what effect it has had any way, and the particulars of the effect?

A. We have found it entirely impossible to make quotations in patterns, and in consequence they could not give us any orders. We have been unable to get rates from the railroads, and hence our business has been positively paralyzed.

Q. State to the Commission what it is you wish; that is to say, do you want simply to be left free as you were before to make the best rates you can for your traffic with the railroads?

A. Entirely so.

By **Mr. Stahlman**:

Q. Are you familiar with the organization of your company?

A. Yes sir; I have been in the company since it was first organized.

Q. As a matter of fact, has it not been necessary for the railroads to make lower rates than the contract called for?

A. The railroads have on various occasions modified their contract to enable us to compete with other mills at competing points.

Q. Your competition is largely at river points?

A. It is largely at river points, and also at interior points in the West.

Q. And with New Orleans?

A. With New Orleans, Texas and the Pacific Slope. I might say, in connection with the Pacific Slope, that the present interpretation

tion of the Act has increased the rates 865 per cent.

Q. The railroads carry iron produced by rolling mills in the South, from other points also?

A. Yes sir.

Q. As far as your observation goes you do not know that they have discriminated in your favor to the detriment of others?

A. I do not think they have. In fact we have very frequently thought the reverse.

B. B. McKenzie, representing lumber interests of Alabama and Mississippi, appeared before the Commission and said:

I desire to file a petition in support of the pending application. We are not able to ship any lumber now on the rates in force north of the Ohio River. We have been compelled to cancel contracts.

The **Chairman**. Are you willing to make oath to the facts stated in this memorial?

The **Witness**. Yes sir; I will do so.

Mr. McKenzie was then duly sworn and examined as follows:

By **Commissioner Schoonmaker**:

Q. Do you intend to include with the memorial the telegram attached, which relates to the cancellation of contracts since the Law went into effect?

A. Yes sir. I can show other cancellation of contracts for the same reason.

Mr. Stahlman. I will state that this is a telegram that was sent by a large firm, indicating that there has been a number of contracts canceled by reason of the withdrawal of the rates north of the Ohio River.

The **Witness**. The experience of all the lumber men is the same as Mr. Flower's. He couldn't be here and merely telegraphed his evidence.

By **Mr. Stahlman**:

Q. Your general trouble is the uncertainty and the withdrawal of rates?

A. Yes sir. We can't ship any lumber North. We have no trouble where the fourth section has been suspended.

Q. You do a fair business up in that country?

A. Yes sir.

Q. It is a large industry in Alabama is it not?

A. About \$20,000,000 in Alabama.

Q. In many parts of the State it is a source of income and wealth to the population?

A. Yes sir; it has developed part of the State that was worthless before.

Q. It furnishes employment to numbers of people?

A. Yes sir.

Q. There are like industries in Mississippi and Georgia?

A. Yes sir. We represent Mississippi and Alabama. We had a meeting of the mill men of Mississippi.

Q. So far as your observation extends you have no complaint to make against the railroads prior to the enforcement of this Law?

A. We ask in our memorial that the basis of making the rates be returned to where it was before the first of April.

Q. You do not feel that you have had any

special privileges over anybody else?

A. No sir.

Q. Engaged in like business, in the same business, in this Southern country?

A. No sir.

By *Commissioner Morrison*:

Q. Your trouble seem to be that you can't get any through rates.

A. We get through rates, but it is a combination of locals.

Q. Are they higher than they were?

A. Considerably higher north of the Ohio. They are not higher south. We get the same rates to Cincinnati, Louisville, Henderson, Evansville and St. Louis that we got before.

Q. The local rate that they charge north of that added to the through rate south makes more than you paid before?

A. Yes sir; it is the through rate south added to local rate North. It is a through rate to Louisville. For instance, to Indianapolis we pay the old through rate to Louisville and then a local rate from Louisville to Indianapolis. I believe we have a through rate to Indianapolis now. There was two or three weeks that we didn't have.

Q. Do you know from what points North to what other points they charge more than they did before the passage of the Law—points to which you have been in the habit of shipping?

A. To Kansas City and to Omaha.

Q. From where?

A. From St. Louis and Springfield, Ohio, and to all those smaller towns like Springfield, Illinois.

Q. From St. Louis to Kansas City?

A. Yes sir. The increase is beyond St. Louis.

Q. Do you know what line you ship over from St. Louis to Kansas City?

A. No sir.

Q. Do you know that the main line from St. Louis to Kansas City is all in the State of Missouri, and this Law has nothing to do with it?

A. I do not know that. It is freight that originates in Alabama.

Q. You said they were local rates. Your Alabama rates are all right. The trouble is beyond St. Louis, between St. Louis and Kansas City. If that is true, this Bill has nothing to do with it, because that local rate from St. Louis to Kansas City on the main line is all in the State of Missouri, and this Bill has nothing to do with it at all. It does not apply to it.

A. I suppose the rates have been advanced on account of the fear of the operations of this Bill.

Q. As it does not operate on them at all, it would seem that that fear was borrowed for the occasion.

A. I understand this freight originates in Alabama, and is a part of a through rate. It is interstate commerce.

Q. What you complain about is the rate beyond St. Louis, and between St. Louis and Kansas City?

A. It is the same to Omaha. Take Omaha.

Q. Let us take the place you begin with. Let us not shift your ground. I am trying to show you it is probably true that you are

talking of something you do not exactly understand.

A. I don't claim to understand it.

Mr. Stahlman. I will try to make it clear and I think I can. While the line from St. Louis to Kansas City is purely a state line, there are others that are not purely state lines. The strongest competitor in this section of the country for that trade is via Memphis, and the Kansas City, Memphis & Springfield Railroad. That line is an interstate road, and cannot participate because it has not been relieved; and hence it puts the other line in a position to localize if it desires, or to say it will not participate in the interstate business, because it interferes with the business between intermediate points on the line between St. Louis and Kansas City. That is the trouble.

Commissioner Morrison. He has got to St. Louis without any trouble. You have treated him so kindly he has no fault to find with you. Probably you jump him off into the Mississippi River and he gets to St. Louis on one of these rival waterways, and don't complain until he gets to St. Louis. When he is at St. Louis he has passed the point where any of these other conflicting roads will come in competition with him. He is away beyond that point. There is a rival road to the Missouri Pacific, which has a direct line from St. Louis to Kansas City. This rival, I presume is the Chicago & Alton Road, that goes back over to East St. Louis, goes up the river and back again. They have not increased their rates.

Mr. Stahlman. That is the information. Those lines have for prudence withdrawn their prorating arrangements or their special rates on this interstate business. There is a large proportion of the business to which Mr. McKenzie alludes that does not go by way of St. Louis. While he may think it all depends upon St. Louis it does not depend on St. Louis, because a large proportion of it goes by way of Memphis—the Mississippi business.

Commissioner Morrison. There are a great many things about which we are all a little mistaken. It is true of Mr. McKenzie, and it is probably true of the rest of us. I have no doubt he wanted to state it as he understands it.

The Witness. The Omaha rate is in the same condition as Kansas City. I have to put them all together. I don't know of any difference. I supposed the freight all went by St. Louis, as it looks like the most direct route.

The Chairman. I will ask you, Mr. Stahlman, to explain how he would be relieved by the granting of your petition, in respect to these rates north of the Ohio or west of the Mississippi, when we have no application from north of the Ohio or west of the Mississippi that would affect any of these rates.

Mr. Stahlman. I beg to say in response to that, that the application of the Louisville & Nashville Road—and this fact has been overlooked—is for relief on business from St. Louis and from points beyond St. Louis. We ask relief on business to St. Louis and points north. Now the point is this: If this relief is granted to us, although the railroad itself over which we propose to transport this traffic may not have applied for it, the relief having been

granted to us in that way, the road will feel at liberty to take our business. Further, I do not understand the Interstate Commerce Act to require that the railroad which participates in the relief from the operations of the fourth section shall necessarily ask for that relief; that it may be applied for by a connecting road, by an individual shipper, or by a community; and having obtained the relief through that source, it may avail itself of it or decline, leaving it free with that railroad company to do so or not; that is my understanding. The application of the Louisville & Nashville Railroad clearly states what we ask in that respect; and in view of the relief which we have obtained, we have been able to restore the existing condition of things with several of the lines north of the Ohio River. Others have stood back and said: "We will wait the result of further investigation, and let you know later on what we will do."

The Chairman. You are precisely in the position now that you will be if this order is made permanent, so far as that question is concerned.

Mr. Stahlman. Except this: that inasmuch as it is only a temporary relief, and inasmuch as there may be some little doubts surrounding the question, the lines which have assumed to carry out strictly the provisions of the fourth section have said to us, or have intimated—I don't know that any of them have said it—"We will abide the result of the investigation of this question, and then we will give you the rates." You understand that although we have had friendly relations existing with all of our connections, we have never been in a position to demand that they should take our business on the basis of a pro rate, or on the basis of a special arbitrary rate, and it has all been done by mutual agreement generally mutually beneficial. This is a question that just occurred to me last evening, after our Tuscaloosa friend had come forward and been told that the road itself must apply. I began to look into it, and I began to look into our application, and I found that our application covered it, and that it was not absolutely necessary, on my construction of the Law, although I may be mistaken about it, that the road terminating or passing through a point should necessarily be required to ask for the relief; that anyone else might ask for it.

The Chairman. But they have asked for it, and it has been granted upon the face of the petitions. Will you state to the Commission what roads north of the Ohio or west of the Mississippi have declined, since this order was granted in your favor, to receive property from you on the old terms?

Mr. Stahlman. I am afraid I can't do that. Perhaps Mr. Culp can.

Mr. Culp. The Evansville & Terre Haute Road for Chicago business, and for points on its own line; the Cincinnati, Hamilton & Dayton Road for pig iron to points on its own line; the C. C. C. & I. Railway on pig iron to Cleveland. Other roads have declined to restore the former status to points on their own lines.

The Chairman. Name any road.

Mr. Culp. I will name some of them. I can't name them all. I will name the Pitts-

burgh, Cincinnati & St. Louis; the Cincinnati, Washington & Baltimore, the Cincinnati, Chicago, St. Louis & Indianapolis—I believe they told us we might use the former basis to Chicago, and therefore we have put it down as one of the roads on Chicago business to restore the former status. On all other business than Chicago, the C. I. St. L. & C. On all other business than Cleveland, the C. C. C. & I. Railroad.

The Chairman. In Cleveland, as I understand, it is limited to iron.

Mr. Culp. Yes sir. The Louisville, New Albany & Chicago and the J. M. & I.

The Chairman. On what?

Mr. Culp. I am now speaking of the roads which have declined.

The Chairman. They have declined in respect to all freights?

Mr. Culp. The Louisville, New Albany & Chicago Road, I am advised by Mr. Welch, has, since I left home, advised that on iron to Chicago they will accept the old basis. Mr. Welch now informs me that the statement is rather too broad, and I withdraw it.

Mr. Stahlman. How is it with the Ohio & Mississippi?

Mr. Culp. The Ohio & Mississippi does not interchange.

Mr. Stahlman. How about the Peoria, Decatur & Evansville?

Mr. Culp. It does to points on its own line, according to my recollection. The Louisville, Evansville & St. Louis Railroad does.

Mr. Stahlman. Of those named there is the Evansville & Terre Haute, the Cincinnati, Hamilton & Dayton, and the Louisville, Evansville & St. Louis that have come in since the relief was obtained?

Mr. Culp. Yes sir.

Mr. Stahlman. The others have so far declined?

Mr. Culp. Yes sir.

The Chairman. Can you name any others?

Mr. Culp. Those are all our connections. I believe I have named all. As the others withdrew the rates and notified us that they would not allow those rates, although I have communicated with them all, I cannot tell you whether they have definitely answered or not. After the suspension of the fourth section, I communicated by telegraph with nearly all of our connections, and by letter with a few. I cannot now tell you whether all of them replied or not, but I believe I have given you all of those that did. Some of them answered that they would not, and others may not have answered at all.

Mr. Stahlman. On all those that refuse to consent the result has been an advance of rates north of the Ohio River?

Mr. Culp. Yes sir.

John T. Milner appeared before the Commission, and having been duly sworn said:

I have a paper which is too long to read.

The Chairman. State the point of it, and we will take it and read it by ourselves, if you desire that course adopted.

The Witness. I will read the substance of it. I don't know as I could state it very well.

The Chairman. From whom is it?

The Witness. From the coal companies I represent.

us, and to New Orleans the same things holds good. We commenced as soon as the Louisville & Nashville brought to New Orleans, making an enormous business in New Orleans in connection with the Pittsburgh people, who raised prices up. We furnished from the same district about 100,000 tons of coal in 1882 and 1883. The exact figures cannot be given by Mr. Anderson in New Orleans. He did it all. Now we don't furnish more than 20,000 tons, owing to competition of the Pittsburgh people.

Stahlman:

Is there a contest between Pittsburgh and New Orleans, or is it not?

Air: at New Orleans. When we commenced business at New Orleans the price of coal was at least a dollar more than it is now to the consumer; but the competition brought there when we commenced business in New Orleans reduced it so low that the low freight that we have, which is only half a cent a ton a mile to New Orleans, had the effect to do as I have said—our annual shipments there of 100,000 tons are less than 20,000 tons. The exact figures cannot be had in New Orleans.

Do your Alabama mines have Pittsburgh competition to meet at Vicksburg also?

Air: yes sir; we have the Pittsburgh com-

We have it at Nashville; we have it at Memphis; we have it at Vicksburg; we have it at New Orleans, and we have it sometimes even at Mobile.

This difference in respect to coal from Pittsburgh to New Orleans and from our mines some 425 miles, when a barge and carry it 2,000 miles, is not abraded or broken up into dust. Bituminous coal from our place and

New Orleans, and it seems to me it has gone to dust just from the shaking of the cars. At New Orleans the Pittsburgh coal always goes to market in a far better condition than ours does. That is one thing we have to contend with in addition to the cost of freight.

Stahlman. I want to say I have a feeling that I don't exactly know how I got it, but I am on our side of the house. It is then, Alabama.

Airman. We will take it.

Sher, of Cullman, Alabama, appeared before the Commission and said:

I have a memorial from the merchants of this place praying you kindly to suspend the operation of the Railroad Act. I am a dealer in furniture in that locality, and I am shipping goods all through the south. I have anted rates from the Louisville & Nashville Company all over their lines and

and so. If the long haul was enforced I am afraid I would be debarred out of my sales, for instance Memphis, New Orleans, Mobile, Pensacola and other points.

It works very injuriously with me.

Commissioner Morrison:

When you say if the long haul is enforced, you mean by that if the rates are raised?

A. Yes sir. My rates are very low, gentlemen. The company has been kind enough to give me competitive rates to all points.

By the **Chairman**:

Q. Do you have written contracts?

A. Yes sir.

Q. Have you them with you here?

A. No; I have no written contract. I simply get rates from the company.

Q. You have no written contracts?

A. No sir; but the rates are guaranteed to me and I guarantee them to my customers, and have done so for eight or ten years. Our country is a grape and fruit growing country. We have nothing else. That is the main stay of our farmers. They generally go North in car load lots. Through the Louisville & Nashville Company they get very low rates to New York, Chicago, Cincinnati, Louisville, Nashville and also St. Louis. If the rates of freight were increased on our farmers it would be ruinous to them. Our country is rather a poor country. We colonized it about twelve years ago. It is a hard way of making a living, but we are satisfied—particularly so with the conduct of the Louisville & Nashville Company towards our people and our merchants. That is all I have to say.

By **Mr. Stahlman**:

Q. You meet competition in your furniture business at Memphis?

A. Memphis and New Orleans.

Q. From St. Louis and Cincinnati?

A. And Mobile, Pensacola and also other points.

Q. And the railroad has made you rates so as to enable you to build up a business at that place?

A. Yes sir. I can compete with any manufacturer on this point and also other points. I am well pleased with the rates given.

By **Commissioner Schoonmaker**:

Q. What furniture do you make?

A. Cheap furniture such as is used in the south by poor people; bedsteads, sofas, wardrobes, bureaus etc.

Q. You don't make any fine furniture?

A. No sir.

By **Mr. Stahlman**:

Q. The rates are necessarily obliged to be low to enable you to do business?

A. Yes sir.

By **Commissioner Schoonmaker**:

Q. You make a good profit on your furniture, do you?

A. My furniture is very cheap, and I make a mighty small profit. If I made a big profit I would have grown rich in ten years.

J. C. Haas of Montgomery, Alabama, appeared before the Commission and presented a memorial from citizens of Montgomery, stating under oath that he had read the memorial, and understood the statements therein contained to be the truth.

The **Chairman**. We have received quite a number of similar papers from other sources this morning, which we have taken for examination. I have not stated them in detail, but with one exception they are in the same general direction. Of course they will all receive our attention.

Mr. Marks. I have here a statement of INTER S.

the per cent of empty cars North, which I will file.

A. Proskauer, who had been previously sworn, appeared before the Commission and said:

As I stated yesterday, the Mobile Cotton Exchange had no desire to submit any evidence; but as it was suggested to me yesterday that some of the statistics of the Cotton Trade of Mobile should be submitted, in order to show in which way and in which manner the trade of the port had been violently diverted. I merely desire to state a few facts in connection with the decline of the trade of Mobile, and the causes, which we believe not to have been the mismanagement of the railroads alone, but the management and discrimination against Mobile. The Cotton Exchange, in adopting the resolutions which I had the honor to present to you yesterday, has taken the position that the competitive rate, or the through rate, as it was called by these gentlemen representing the railroads, in order to meet competition by water routes, should at first be fixed by the railroad, and then submitted to your honorable Commission for approval, which is, I assume, a suspension of the long and short haul clause in special cases. Starting out from this proposition, the Mobile Cotton Exchange takes it for granted that Mobile, having splendid water routes, will certainly have the benefit of those rates, provided the railroads see fit to compete with the water routes. To judge from past history, the railroads have not only seen fit to compete with the legitimate water routes, but they have seen fit to destroy them; and no sooner have they destroyed the water routes than they return immediately to their first love, and raise the rates in such a way as to absolutely ruin some of the enterprises connected with the cotton trade. We have, from time to time, competitive rates established along the different railroads, that is, at such seasons of the year when we have high water. Then we have exceedingly cheap rates, with unlimited promises on the part of the railroads that these rates will be maintained, provided we give them the preference; and frequently these rates are made even lower than the boats will make them: especially so, of course, when it affects coast-wise trade. No sooner is the water low in the river and navigation is stopped than these rates are put back to their original rates. At times there is a difference of 200 per cent and more. Then, of course, we are at the mercy of the roads. The Mobile Cotton Exchange take the Interstate Commerce Act to mean that the railroads will not be able under the new Law to repeat this offense; that they have the privilege to reduce the rates after you have given them the rate—to establish competitive rates with water routes under certain conditions and in certain cases, and to suspend the long and short haul clause of section four. Of course they have the right to reduce the rate of freight, but they will not have the right to advance it again without giving ten days' notice, so that all the parties interested in the matter can be heard before you.

The Interstate Commerce Bill, I take it, has

been the result of the cry of anguish that had gone out from a large number of people, in fact from the masses of this country. I think the bill is very satisfactory to the railroads; that in fact every clause contained in that Act is of great benefit to the railroads. It protects them in a great many things and in a great many acts for which they have spent vast amounts of money, in order to keep peace among themselves. But there is one little clause in there, section four, which attempts to relieve the people somewhat. Whether it is all the people have a right to demand, it is not for the Mobile Cotton Exchange to say, but for a higher tribunal. No doubt you gentlemen will have seen that this Law should either be strengthened or weakened in its force, and the next Congress will heed your suggestions in that respect. But before all of your conferences so far no one has been heard except the side of the railroads. You have not heard from the complaining interests, from the mercantile interests proper, but you have heard only from the interests which have been scared from time to time into the fear that the railroads are going to ruin their trade utterly.

You have heard yesterday from the vegetable trade and the coal trade and the iron trade, all of which has not a particle of competition; while we here at the Port of Mobile complain that the coal is not landed any cheaper here than it is at New Orleans, and we may justly complain, because Mobile, by reason of its position, is certainly entitled to have its nearest neighbors as their best customers. As to coal, it ought to have the entire South American trade and it ought to have the entire trade of the West Indies. But the railroads take great pains to compete with our brothers in the West, to compete with Pittsburgh at New Orleans, in order to reduce the rate a few cents, but they don't take any pains to compete with our brethren on the other side of the Atlantic, who ship their coal very cheap to these ports. It seems to me further that if we were to submit the rates our roads charge to the opinion of the coal combination of Pennsylvania, I am satisfied they would lift up their hands in astonishment at the very mild rates that are obtained by our roads here, as compared with the roads in Pennsylvania.

By Commissioner Schoonmaker:

Q. Why do you think Mobile ought to have a monopoly of the coal trade?

A. It ought not to have a monopoly.

Q. That is just what you said.

A. It ought to have the preference before New Orleans, that the coal should not pass through Mobile at the same rate as it goes to New Orleans. New Orleans is 186 miles further than Mobile, I believe.

Mr. Stahlman. Do you know the rates to New Orleans?

The Witness. I will talk to you after I get through, Mr. Stahlman. I don't want to answer any questions now.

Commissioner Walker. I have here a paper which shows the Mobile rate is 66 cents, and the New Orleans rate 47 cents.

Mr. Stahlman. That is not the total rate. That is only the rate per mile.

The Witness. If you will simply add up

the aggregate of the mileage you will find 44 is considerable less than 66.

Mr. Stahlman. I want to say that that is only designed to show the per mile rate that the Alabama Road receives to Montgomery on that business; and the rate from the mines to New Orleans is higher than to Mobile.

The Witness. I am perfectly willing to accept any statement the railroads have to make, but I think the Commission ought by this time to have sufficient of the railroad statements.

The Chairman. Go right to the facts and state them.

The Witness. In 1860 the two roads leading out of Mobile east had been built mainly by Mobile capital and largely with the assistance of the City of Mobile. The roads had been finished as far as Montgomery on one side and as far as the Ohio River on the other. For the year ending the first of September, 1860, the receipts of cotton at Mobile and our exports direct from Mobile were 842,729 bales, or $\frac{1}{2}$ of the entire cotton crop of that year. In the year ending the first of September, 1867, I estimate the receipts of Mobile at about 225,000 bales. We have now 210,000 bales. Of those the railroads brought, the Mobile & Ohio 49,000, the Louisville and Nashville 63,000; and of the 63,000 brought by the Louisville & Nashville, 53,000 went right through to New Orleans. Of the 49,000 brought by the Mobile & Ohio Railroad, 11,000 went through to New Orleans. I take it to be that the arbitrary allowed by the connecting roads—of course you will make allowance that we are not in a position to see their books or any of the transactions, or any of the private rates or public rates that are made by the railroads. It is impossible for us to present the facts and figures that the railroads are able to present to you. For that reason we can only suppose that the rate of freight from Mobile to New Orleans when added to the rate of freight made by the Mobile & Ohio Railroad is about twenty-five cents a bale. We take it for granted that the Louisville & Nashville Railroad charges to us that ship from Mobile to New Orleans at an extra expense to the company of probably one cent to five cents a bale for extra handling, sixty-five cents a bale; and charges to the parties from other parts of the road at the rate of probably twenty-five cents a bale more added to the rates they obtain. These rates have changed so frequently that of course we are not able to trace them; but that is the general disposition, and it has at times been admitted by some of the officers of the company; at other times it has been denied. The Mobile & Ohio Railroad exported by steamers chartered by themselves this year 29,000 bales. We have received by boats from the rivers 98,000 bales of cotton, or more than twice as much as from the combined system of railroads. When you take into consideration that violent means are resorted to by the railroads to divert even that little cotton, such as putting boats on the river and carrying it up the river at hardly any price, in order simply to put it on board of their trains at through rates for the East or for other points, it is certainly remarkable that we, a port which ranks on an equality with the high-

ast cotton port in the United States—that is, actual cotton ports; I don't speak of the eastern ports like New York, but New Orleans, Mobile and Galveston—that the receipts should be reduced from one sixth of the entire crop to one sixteenth part of the entire crop. The receipts of 210,000 bales we have had left us 116,000 bales actually handled in Mobile. Of this the rivers have brought 98,000 bales, and the remainder is to be placed to the credit of the railroads. Of the river cotton I suppose there was probably from 5,000 to 8,000 bales that went through by reshipment from here to New Orleans. There certainly must be something wrong somewhere. If you remember, I asked a question of my friend Major Dunklin from Greenville in regard to the causes that led him to divert his trade from Greenville instead of bringing it to Mobile where the market was $\frac{1}{2}$ of a cent higher, placing it in Montgomery, for instance. The rate to Montgomery in those days I believe was about \$1.80 a bale and Mobile about \$2.40 a bale. The difference in price would certainly repay these gentlemen for shipping here; but it was a customary thing with the railroads to leave the natural traffic which couldn't run away from Mobile, which wants to get to Mobile—to carry that simply at their convenience, leave it three or four weeks at the depots, or until such times when cars were most convenient to them; but the other way it was certainly always very convenient for them to carry it. It is perfectly plain when they carried cotton from Greenville to Montgomery at \$1.80, that at Montgomery they had a chance to carry the same cotton again in some direction or other; but at Mobile they came in competition with other points. Then again it is a well known fact that for years we were not able to obtain any shipments of cotton by boat for Montgomery on the Alabama River and Selma on the Alabama River, and at other points where the railroad touches, because the railroads put on boats on these rivers in order to interfere with the traffic; and where the legitimate rate from Montgomery to Mobile was about fifty cents, the regular rate by rail, the boats refusing to take it for some reason or other, pooling with the roads, put it up as high as \$1.50 a bale. The direct exports from Mobile have been reduced from over 850,000 bales of cotton in 1880, so that in the year 1887 we are reduced to the respectable amount of 46,800 bales for foreign, which includes 29,000 bales exported by the Mobile & Ohio Railroad by steamers which they chartered for their benefit, and of course for the benefit of the port—I must say right here that the Mobile & Ohio Railroad, having its only terminus at this port, is certainly determined to encourage exports from this point, when not interfered with by other roads, and forced to divert the legitimate trade of Mobile in other channels. This is of course my opinion individually and I have no facts to present; but this is the general disposition of the people. Our exports during the present year to domestic coast-wise ports north of Hatteras were 18,971 bales. I don't think this needs any further comment. The only cotton that we can rely upon as coming to Mobile is from the Mobile & Ohio Railroad this side of Enterprise, say from about Shubuta, say a distance probably

ENTER 8.

of about eighty miles above here. The only thing we have to rely upon is the river trade. From the Louisville & Nashville we get virtually nothing; and if the only thing that the law provides for the protection of the people is that little clause in section four and that is to be enforced, then I am satisfied in a few more years from now Mobile will cease to be a port in name. I do not think the other ports are in any worse position. They have only been struck later by the same cyclone. When you reach New Orleans I am satisfied the same thing will be brought to you and probably a little more embellished, because their misfortunes have not been quite as great as ours. They have been very sudden in late years. Galveston is the same way. When it is taken into consideration that these are the highest markets, the question is why is the producer gouged and oppressed by some force to ship at a less freight rate to artificial trade centers, in order to destroy the natural trade centers? What I mean by artificial trade centers are those towns, waste places or other villages that have been created by the interests of converging and competing lines of railroad, by the same policy that has from time to time been seen in every neighboring road, and did not care either for the interests of the neighboring road, and certainly not for the interests of the towns or cities, but only to produce such artificial values as would best subserve their interests.

Mr. Bragg asked yesterday in regard to the amount of assistance that these roads had received from Mobile, but the time was so short I was unable to obtain the data. One thing I can distinctly remember is that in 1869 the Mobile & Montgomery Railroad asked the endorsement from the state of two and a half millions in bonds for the purpose of building the bridge at Tensas, and the State granted that aid to the road. In 1869 that was granted. It was the most remarkable thing that this road stood in the highest credit, because it had no bonded debt. It was the first mortgage bonds of the road; and the members of the Legislature who were opposed to everything in the way of internal improvement voted for the measure; but the road stood in such high credit that when they took to the New York market the bonds indorsed by the State of Alabama, the capitalists of New York and England said "Gentlemen, we are willing to take those bonds, but in fact we prefer to take your own bonds in the place of them from the State." They returned the bonds indorsed by the State, because the capitalists said the State of Alabama was indorsing too many doubtful bonds. That road only a few years afterwards was wrecked, and the City of Mobile I believe owns today somewhere in the neighborhood of \$650,000 of the preferred stock of that road. The road was wrecked by a number of capitalists representing what was termed the Louisville & Nashville system. The Louisville & Nashville system obtained possession of the road, and I believe the very depot facilities which they sold the other day to the Mobile & Birmingham Company, or what used to be the Grand Trunk Railroad Company—I don't believe they have ever been paid for by the Louisville & Nashville system. This shows you how little time it takes to wreck railroads under the

management that has undertaken to destroy the natural centers at the expense of artificial centers.

We believe, Mr. Chairman, that the question of competing lines ought to be solved by the enforcement of this Bill. The enforcement of this Bill will certainly enforce competing lines to have reasonable rates, as well as the lines that claim and demand now unreasonable rates in order to compete with other unreasonable rates. We believe that a strict enforcement of the Law at this time will probably be the most advantageous to this part of the country. A strict enforcement of the Law will teach the people who have been scared into violent measures and into deceptive and imaginary ideas by the railroad authorities, the effect that the Law will have upon trade generally; and it will teach also the railroads who have never respected any Law, to cease kicking but to go and put their shoulders to the wheel and attempt at least to get a just construction on the Law, and attempt to carry out the Law as far as they are able. I am satisfied the Law was not made in order to injure the railroads. The Law was intended that the people should not be permitted further to be injured. It is simply to call a halt to the system that has been in vogue so far. I doubt exceedingly whether the wisest and the most profound students of political economy would for one moment undertake to predict the result that would follow to any branch of the business by the enforcement of the Law. Whether injurious or beneficial, it is simply a question that is to be tried. It is to be enforced and the people will have to be educated to it, as well as the railroads.

By *Commissioner Schoonmaker*:

Q. How do the prices of cotton to the producer compare with the prices of cotton some years ago?

A. They are the lowest we have ever had, with the exception of one period. We have had for the past two weeks the lowest average prices since the close of the war.

Q. How long have they been so low?

A. They have been gradually declining. If you will permit me, I can turn to the facts.

Q. How do the prices to the producer compare with the prices of the past?

A. That will require two different replies. Do you mean to ask whether the net price to the producer has been comparatively lower?

Q. Lower or higher as the case may be.

A. The actual price of cotton; the average price, is the lowest we have had for thirty years or more; but cotton has since the close of the war been comparatively high. At times for instance when a bale of cotton cannot be carried from Corinth to Mobile for less than five dollars, the producer was better off, for that would be $2\frac{1}{2}$ per cent on the price of the cotton or $8\frac{1}{2}$ on the price of the cotton. Finally when a bale of cotton was worth \$100 it was 5 per cent on the price of the cotton. But a bale of cotton now is worth only an average of say \$40 on a 500 lb bale. When you attach to that the price of \$2.75 for carrying it, the percentage remains the same; but when you carry it for the producer to the nearest market, or rather, to the market nearest tide water, which is to the producer the highest, the producer is better off. But if you force it directly

in another direction the producer loses the difference between the price that he would have obtained in the Mobile market, and the price he obtains there. In Ocala, for instance, the buyer don't pay to the purchaser the actual net value he would obtain for the same cotton coming to New York via Mobile; but the advantage is entirely to the manufacturer or to the manufacturer's agent, or to the new railroad routes.

Q. You mean then the planters realize less for their cotton now than they did in the past?

A. Yes sir; proportionately. The planter realizes less actually and realized less proportionately also. Another thing that must be mentioned is that the port charges of Mobile are the lowest of any port in the United States, and the conveniences for storing and handling here is the largest of any port in the United States. I have said we believe an enforcement of the Bill at this moment would be of the least disturbance to trade in this section. The trade at this season of the year is very light, if any at all. If you permit the railroads to continue under the old plan during the summer, the disturbance during the opening of the season, when the crop ought to be moved very rapidly, would be very great. I don't want to accuse these gentlemen of attempting it, but the cry from the producer and from the parties interested, on account of the disturbance of the trade, will be very great, and it would probably amount simply to a wholesale request to wipe out the Law, or to suspend it, because it would be a cry of despair. Therefore we believe an enforcement at this time is the most opportune and would be the least disturbance to this part of the country. The other interest that Mobile has had in former years, which is the shipping interest—I need not point out to you that every boat that lands at our wharves from the river, distributes on an average of from 800 to 1000 dollars, and every vessel of 1,000 tons' capacity distributes from 5,000 to 8,000 dollars, and if you permit the railroads to go on as they have been doing, and allow them to continue under a suspension of section four, you will simply give them the continued power to keep on destroying, if they have not entirely destroyed, a languishing interest in this country. This is not an interest that is a local interest to Mobile, but it is a national interest. It is the shipbuilding interest. If you permit the railroads to destroy all your southern ports, and simply retain one or two of your more favored northern ports to do the business of this country, then of course it does not remain a question of political economy why the shipping interest of the United States is declining.

By *Commissioner Bragg*:

Q. Does it not occur to you that iron and coal and all these other interests have about as much right to complain now as cotton has to complain in the fall?

A. Certainly; but iron and coal are not competing with any rates that go out from this city. We have only got one iron and coal region. The difference in distance on those roads is so small that there really should be no fight among them. As to the iron or coal from these regions nearest tide water point, I was told this morning that a gentleman ships

from Birmingham via Savannah to New York or to Europe for \$3.75 a ton. They take iron from Birmingham via Savannah, where it is reshipped on a vessel. It don't go by rail from Savannah to New York, but it is reshipped on a vessel.

Q. What difference does it make to the coal and iron interest if they encounter this active competition, such as the witnesses have testified to here, whether the competition comes from Alabama or from Pittsburgh?

A. I want to explain to you. If these gentlemen find competition via Savannah in order to oblige the lines of the southern system, why not let the same stuff come to Mobile at a dollar a ton, or say at 75 cents a ton, if these roads are so very anxious to help the iron and coal interest? They certainly are able to bring it to Mobile at a dollar or at 75 cents a ton. There is no competition on that route from the Birmingham region to Mobile. There is no long and short haul there. There is no shorter haul than that. At Mobile they can find plenty of vessels that will take it to New York at the same rates as Savannah.

Q. The transportation of cotton occupies only a few months here, does it not?

A. This year it has occupied only a few months.

Q. I mean from the interior to the sea ports.

A. It lasts generally from September until late in March, and then in small dribblets during the summer.

Q. On the contrary, the coal and iron interests last the whole year round?

A. Certainly; but you see if they would seek, and if the roads would give, the coal and iron interest the nearest route to tidewater, then they would be benefited, and we would have no occasion to grumble at these gentlemen.

Q. Don't you suppose they send it to where they can get the most for it?

A. They don't sell it in Savannah.

Q. Do you suppose it is a matter of sentiment with the coal and iron men to be sending it up to northern points? Don't you suppose they send it to where they can get the best prices for it?

A. I take it for granted; but I only alluded to the rate to New York of \$3.75 per ton, and I am satisfied it could go from Mobile or via Mobile at the same rate, and probably a little cheaper.

By **Mr. Russell**:

Q. I understood you to say that the Mobile & Ohio brought all the cotton it could to this port, except what competition forced it to carry to other markets?

A. Yes sir; at least that is our impression.

By **Mr. Stahlman**:

Q. You are a cotton shipper here?

A. Yes sir.

Q. How much cotton did you ship during the last year?

A. I have been able to ship very little; but I have shipped some seasons as high as 42,000 bales direct from Mobile.

Q. How long since?

A. About seven or eight years since.

Theodore Welch appeared before the Commission and, having been duly sworn, was examined as follows:

INTER 8.

By **Mr. Stahlman**:

Q. What is your position and where do you reside?

A. I live in Montgomery. I am the General Freight Agent of the Louisville & Nashville Railroad from Decatur south.

Q. You heard yesterday the gentleman who preceded you say that the rates from stations on the Louisville & Nashville Railroad or Mobile & Montgomery Road to New Orleans, were only about 25 cents per bale higher than to Mobile. How is that?

A. The rates from stations on the South and North Alabama Railroad from Decatur to Montgomery and from Montgomery to Mobile are 75 cents per bale higher to New Orleans than to Mobile.

Q. What is the rate from Mobile to New Orleans on New Orleans shipments?

A. From depot to depot 65 cents per bale.

Q. How are the rates adjusted on the Mobile & Montgomery Road as between Montgomery and Mobile?

A. Upon the same general basis as Montgomery and other terminal points. In other words, the same distance would pay the same rate to Mobile as to Montgomery. These rates were approved by the Alabama State Commission some years ago.

Q. There is no discrimination, then, in favor of Montgomery as against Mobile?

A. On the contrary, if it is possible to show a discrimination I will say that the rates fixed by the Commission of Alabama, of which Captain Bragg was President, have not been charged beyond the limit of \$2. In other words, when the \$2 limit under this scale provided by the Commission was reached, then we charged but the \$2. That would be true in either direction, but it does not benefit Montgomery, because there is no cotton raised south of the point where the \$2 rate will take effect. There is a good deal of cotton raised north of the point where the \$2 rate will take effect which might go to Mobile on a less rate than that fixed by the Commission.

Q. I will ask you to state what the rates are now, and what the average rate is from Montgomery to New York on cotton. What is the difference between the two rates generally? How much higher is the rate from Montgomery to New York than from Mobile?

A. From 20 to 35 cents per hundred pounds.

Q. That is, Mobile has an advantage in the rate to New York over Montgomery of about a dollar?

A. I will give the figures exactly as they stand. The rate from Mobile to New York is 45 cents on compressed cotton.

By the **Chairman**:

Q. That is the rail rate?

A. Yes sir. The rate from Montgomery to New York on uncompressed cotton is 75 cents.

By **Mr. Stahlman**:

Q. How much do you pay for compressing?

A. Ten cents at Montgomery.

Q. The rate from Montgomery to New York is 65 cents?

A. Yes sir.

Q. And the rate from Mobile to New York is 45 cents on the same class of freight?

A. Yes sir; a difference of 20 cents. I will add that the rate from Mobile to what we call

the New England points prior to the 5th of April was 50 cents on compressed cotton. To many points it is continued by agreement since the 5th of April. From Montgomery to Boston points the rate is 85 cents on uncompressed cotton, 10 cents off, making 75 cents.

Q. Really, then, if anybody should complain it would be for Montgomery?

A. Naturally.

Q. I will ask you to look at the paper I now hand you and state to the Commission what amount in bales was exported from Mobile via New Orleans?

A. Are you speaking of rail cotton or all cotton?

Q. Rail cotton; cotton shipped from Mobile that went via New Orleans, either for sale or for export.

A. Via the Mobile & Ohio Railroad, all rail, 8,881; via the M. & M., that is, the Louisville & Nashville, 6,807; by water to New Orleans, 4,936; by rail, Louisville & Nashville, to New Orleans, 68,485.

Q. The total is about three quarters of all the business that has gone by New Orleans, is it not?

A. Yes sir; quite that. I have not figured it up exactly. By the Mobile & Ohio Railroad to New Orleans, 1,692 bales. This is the movement down to and including April 22, for the year commencing September 1, 1886.

By Commissioner Bragg:

Q. You have been the general freight agent of the Louisville & Nashville Railroad Company from Decatur south for several years?

A. Since 1880.

Q. During that time you have resided at Montgomery, Alabama, I believe?

A. I have sir.

Q. Have you been during that period familiar with the competitive rates of Montgomery, Alabama?

A. Quite so.

Q. About what have been the cotton receipts of Montgomery, Alabama, along during that time?

A. They have ranged from 100,000 to 132,000 bales.

Q. Regularly?

A. Yes sir. This year will barely touch 100,000 bales.

Q. I will ask you this question: Whether the competition at Montgomery, Alabama during all that time has not been such between the Louisville & Nashville system and the Georgia railroad system to the Alabama River that it has been exceedingly difficult for the railroads to maintain their rates there; in other words that they keep coming down a little lower?

A. There have been times when the rates were reduced; yes sir.

Q. When Montgomery would run lower than Atlanta from the cause I have mentioned?

A. There have been such times.

Q. Merely from the sheer force of competition?

A. Yes sir.

Q. The rates have been lower than Atlanta and Columbus?

A. Yes sir; that has been the case at times.

Q. Although Atlanta and Columbus were

much nearer to eastern points than Montgomery?

A. I cannot answer so much for the Atlanta rates. Our own rates have been subject to changes growing out of competition.

Q. Of the kind I mentioned?

A. Yes sir.

By Mr. Stahlman.

Q. Does not the same competition exist at Selma, practically, with the river?

A. A little more so, since the river is navigable all the year up to Selma. It frequently is not up to Montgomery.

By Commissioner Bragg:

Q. How much of the year does it lack being navigable to Montgomery?

A. Last year there were some weeks. We had a very long dry spell when I think no boats went to Montgomery.

Q. That was a most unusual thing, was it not?

A. I think it was; but there is always good water to Selma; that is, fairly good water.

Q. And generally year after year it is to Montgomery?

A. I don't know that I recall more than two or three years during the last nine when there has been any sand floating on top of the water.

Q. That is in the middle of the summer when there is no cotton being shipped and no business being done at all?

A. Yes sir.

T. M. R. Talcott who had been previously sworn and examined again appeared before the Commission.

The Chairman. You intended to prepare a statement to submit here?

The Witness. It is not ready. I thought it would be with these papers, but I find it is not. It is being prepared.

Commissioner Morrison. I will state again to you what I want. I want to know, if you please, what your charges are on a barrel of flour from St. Louis to Mobile; then the distance from St. Louis to Mobile; and then what is the first local point south of St. Louis to which you charge the same rate that you charge on the same article shipped through; and the distance from St. Louis to that point.

The Witness. I will have the statement made.

The witness subsequently submitted the following:

The rate on flour from East St. Louis to Mobile is 50 cents; and the nearest point to East St. Louis at which this rate is charged is Moscow, 184 miles from East St. Louis. The rate named is per barrel, and the distance to Mobile from East St. Louis is 644 miles.

E. L. Russell, solicitor of the Mobile & Ohio Railroad, appeared before the Commission and having been duly sworn said:

On yesterday Captain Bragg cross examined Colonel Talcott somewhat about the history of the Mobile & Ohio Railroad. He has only been in the service about two years, and is not acquainted with it. I wish to state about its being a land grant road. Congress donated

some public lands to the Mobile & Ohio Railroad Company, or conveyed it by an act of the States of Mississippi and Alabama.

The Chairman. If you will embody that in your argument we will take it as testimony.

J. M. Culp who had been previously sworn and examined again appeared before the Commission and gave the following evidence:

The rates on potatoes and cabbage and other vegetables comprising the shipments from here are from Mobile to Cincinnati, car loads 84 cents per hundred pounds, less than car loads 84 cents per hundred pounds. From local stations on the Mobile & Montgomery Railroad, car loads 40 cents per hundred; less than car loads 55 cents per hundred pounds. From Mobile to Louisville, car loads 30 cents per hundred pounds; less than car loads 30 cents per hundred pounds. From local stations on the Mobile & Montgomery division, car loads 30 cents per hundred pounds; less than car loads 40 cents per hundred pounds. From Mobile to Evansville car loads 28 cents per hundred pounds, less than car loads 40 cents per hundred pounds. From local stations on the Mobile & Montgomery division, car loads 33 cents per hundred pounds; less than car loads 48 cents per hundred pounds. From Mobile to Nashville, car loads 24 cents per hundred pounds; less than car loads 24 cents per hundred pounds. From local stations on the Mobile & Montgomery division to Nashville, car loads 25 per hundred pounds; less than car loads 35 cents per hundred pounds.

Mr. Russell. The Commission manifested some desire to know the movement of commerce to and from Mobile. Mr. Duncan, President of our company will furnish a full statement to the Commission.

Mr. Proskauer. I wish to call Mr. W. T. West as a witness.

Mr. West. I have no statement to make, and no idea of coming before the Commission. This is all new to me.

Mr. Proskauer. The facts simply are that up to several years ago the naval stores trade of Mobile has been flourishing and large direct exports have been made. For the last few years there has been nothing doing in that line of business. I thought Mr. West would be able to tell us how it is the naval stores are carried now forcibly by rail, east and west.

The Chairman. Are you in that trade?

Mr. West. Yes sir.

The Chairman. Do you wish to make any statement respecting it?

Mr. West. No; I have no statement to make respecting it.

Mr. Proskauer. If he is not a willing witness—

Mr. West. I am a willing witness, but I have no desire to come before the Commission in the matter.

Mr. Proskauer. Please give us your information, or what information you have in regard to the decline of the naval stores trade and the causes.

Mr. West. It would take some time to do that; perhaps more time than could be given me before this Commission. There are many causes and many opinions on the subject. I

would hardly be willing to venture an opinion at such short notice.

Mr. Proskauer. Perhaps Mr. West may be permitted to reduce it to writing and hand it in.

The Chairman. Certainly. We shall be pleased to have it.

Mr. West. I can do that at my leisure.

The Chairman. Suppose at the same time you send a copy of it to Washington, you send a copy also to Mr. Stahlman and show a copy to Mr. Russell. If you want to send us any further statement you may do so, but with the understanding that you show it to Mr. Russell before it comes to us.

The Chairman. Does anyone desire to make any statement to us under oath? If not, we shall declare the taking of the testimony at Mobile closed. I will say, and am happy to say, that I think the Commission feel they have gained a good deal of valuable information here, and that they have been pleased with the manifest fairness of the witnesses in bringing forward their statements of fact and their conclusions from them. Mr. Russell desires to submit an argument, and will do so in print and send it to us hereafter. I will add that we should be gratified to receive arguments from any other source, from those who favor these petitions, or from those who oppose them. Such arguments may be sent to us at Washington, and should be forwarded as speedily as possible that we may have them before us when we enter upon our final examination of the evidence. The investigation at Mobile will now be declared closed. We shall resume it at New Orleans on Monday.

The Commission thereupon at 12.15 adjourned as above stated.

PROCEEDINGS AT NEW ORLEANS.

Names of Witnesses, in Order of Examination, etc.

W. W. Finley, Gen. Freight Agt. Texas & Pacific R. R.

Nathan Gregg, Wholesale Groceries and Cotton, Shreveport, La.

James Crangle, Broker, Shreveport, La.

Isalah Hardy, Asst. Gen. Freight and Pass. Agt. V. S. & P. R. R.

L. Lipman, Banker, Yazoo City, Miss.

J. C. Haskell, American Salt Company.

H. C. Waite, of Minnesota.

R. L. Saunders, Jackson, Mississippi.

William Oliver, Mississippi Mills, Wesson, Miss.

A. W. Houston, San Antonio & Aransas Pass. R. R.

John J. Gragard, Chamber of Commerce, N. O.

Ashton Phelps, N. O. Cotton Exchange.

Sidney Bernhimer, Port Gibson, Miss.

Hon. N. D. Wallace, representing N. O. Produce Exchange, Sugar Exchange, Mechanics & Lumber Dealers' Exchange, and Merchants and Manufacturers' Association.

William Campbell, New Orleans, La.

E. M. Howe, New Orleans, La.

E. L. Ranlett, Manufacturer, New Orleans, La.

Hugh McCloskey, Commission Merchant,
New Orleans, La.

Edwin Belknap, New Orleans, La.

John W. Bryant, National Board Steam
Navigation.

M. L. Scovell, Gen. Freight Agt. Red River
& Coast Line Steamboats, Shreveport, Louisi-
ana.

E. C. Carroll, Agent Anchor Line Steam-
boats, Vicksburg, Miss.

A. M. Halliday, Steamboating, New Or-
leans, La.

NEW ORLEANS, LA., May 2, 1887.

THE COMMISSION met at 10 A. M. in the
room of the United States Court, all the
members being present.

The Chairman. Gentlemen, in the course
of certain investigations which the Commis-
sion appointed under the Act to Regulate Com-
merce is pursuing, we find ourselves now in
the City of New Orleans. We are here for the
purpose of continuing these investigations. It
may not be necessary to do so, but to guard
against possible misapprehension, misappre-
hension which we have seen has prevailed to
some extent in other quarters, it may be well
to say at the outset that the scope of our au-
thority in the premises is very much limited,
and that we do not propose to go beyond it.
Our investigations are under the Act which I
have mentioned, but they are not for any pur-
pose of questioning the propriety, the justice
or the expediency of that legislation. All that
has been settled for us. We are here simply
to determine the question whether, in pursu-
ance of that legislation, we shall, in certain
specified cases that have been brought to our
attention, make exceptional orders, orders
that shall relieve certain exceptional cases
from the ordinary operation of the legislation.
That is all we propose to do, and that is all we
have any authority to do. Therefore, any
testimony that might be offered on behalf
of any parties that should seem to question the
propriety or the justice of the legislation,
would be altogether out of place, and we trust
will not be offered. The parties applying for
these exceptional orders are certain railroad
companies. They have put in their petitions.
We shall receive the evidence that may be of-
fered on their behalf; but we shall receive
equally any evidence that may be offered on
behalf of other parties who may think their
interests or the interests of the communities
that they may come forward to represent,
would be subverted by the granting of the
petition. We shall also receive any evidence
that may be offered on the part of other parties
or other communities tending to disprove the
applications that have been made. To pro-
ceed orderly we shall take up first the evidence
offered in support of the petitions. When
that has been done we shall take up the evi-
dence that may be presented in opposition to
the petitions. We trust that it will all be pre-
pared for us in such a way that the taking of
it may proceed regularly, promptly and ex-
pediently, so that we may conclude the in-
vestigation as speedily as possible.

With these brief remarks we shall proceed
at once to the taking of testimony. The only

names of witnesses that have been handed to
us so far are those of the committee from
Shreveport, who are ready, I believe, to sub-
mit their testimony now. I will call for it at
once.

Hon. N. C. Blanchard, of Shreveport.
Myself and five other gentlemen, appointed a
committee by a meeting of business men and
merchants of Shreveport, are here for the pur-
pose of presenting the case of Shreveport with
reference to the fourth section of the Act, ask-
ing its permanent suspension as to the rail-
roads centering at Shreveport. We have pre-
pared our petition, which is verified by the
oath of the committee, but upon consultation
this morning among ourselves, and with one
of the receivers of the Texas & Pacific Rail-
way, which is one of the railroads centering
at Shreveport, we have concluded it would be
better, perhaps, to present our case in connec-
tion with the case of the Texas & Pacific Rail-
way, as it will save the time of the Commis-
sion to do so. We are prepared to go into this
matter now if the Texas & Pacific Railway
are likewise prepared.

Hon. L. A. Sheldon, one of the receivers of
the Texas & Pacific. I was about to say that
the construction which I give the statute is
that an application for suspension under the
fourth section cannot be granted, except upon
the application of the carrier; and, therefore,
we have prepared a petition stating facts, and
that petition will be presented to the Commis-
sion.

The Chairman. We will consider it be-
fore us, and these gentlemen may present their
evidence.

Mr. Sheldon. I call upon Mr. Blanchard
and his associates on the committee to make
their statement in regard to it.

Mr. Blanchard. The City of Shreveport,
through its committee, has presented its views
in writing, which are sworn to. If the Com-
mission will permit I will read the application,
and perhaps the Commission may conclude
that no testimony going into details in these
matters is necessary. As we cannot tell ex-
actly what evidence the Commission may want
in support of the application, perhaps it would
be best for us to read the paper itself.

The Chairman. You may do so.

The paper was read.

Mr. Blanchard. If it is the will of the
Commission that we should go into this mat-
ter more in detail, we have the witnesses here
to put on the stand and take their testimony
on these points.

The Chairman. Until something appears
to question the statements we shall undoubt-
edly regard them as proved.

Mr. Sheldon. This memorial is made a
part of our application.

The Chairman. It will be taken as evi-
dence.

Mr. Blanchard. We understand then
that until these statements are questioned from
some quarter no further evidence on our be-
half is necessary?

The Chairman. We do not undertake to
decide each question by itself as we go along.
The parties must put in such evidence as they
deem important. We have no cause to ques-
tion the sufficiency of your evidence, but we

do not want to say you can stop right here and need not put in any more. That is for you to determine, not for us.

Mr. Sheldon. I propose then to put Mr. Finley on the stand. He is the general freight agent of the Texas & Pacific, and familiar with all its business.

W. W. Finley appeared before the Commission and, having been duly sworn, was examined as follows:

By Mr. Sheldon:

Q. You may state your occupation.

A. I am general freight agent of the Texas & Pacific Railroad.

Q. How long have you been employed in that capacity?

A. Since July, 1886.

Q. What was your occupation prior to that time?

A. I was assistant general freight agent for a considerable period.

Q. State to the Commission how long you have been connected with the freight department of the Texas & Pacific Railway?

A. Since March, 1883.

Q. State to the Commission whether you are familiar with the business of Shreveport and the facilities for transportation.

A. I am. People of Shreveport are dependent upon the Texas & Pacific Railway, the Shreveport & Houston Railway, and the Vicksburg, Shreveport & Pacific Railway.

Q. Point out to the Commission the location upon the map of Shreveport in connection with the various lines of transportation.

A. This (indicating on map) is the City of Shreveport. Here (indicating) is the Texas & Pacific Railway. Here (indicating) is the Vicksburg, Shreveport & Pacific. Here (indicating) is the Houston & Shreveport. Here (indicating) is the Red River coming down and paralleling the Texas & Pacific Railway. The Texas & Pacific Railway lines are deeply marked. Here (indicating) is the Missouri Pacific system reaching points in the west, diverging from the Texas & Pacific Road.

Q. You may state at what point it has a substantial or large business and over what lines.

A. I do not understand that.

Q. State to the Commission from what points, and to what points Shreveport does business; from what points it derives its supplies, and over what lines of transportation?

A. It derives its supplies in a very large degree from the Missouri River Territory and the States of Kansas, Missouri and Nebraska; and also derives a large quantity of its supplies from St. Louis, Cincinnati, Louisville, Nashville and points in that territory; also from the seaboard by rail and by steamships to New Orleans.

Q. State to the Commission what lines of transportation are so employed.

A. The Missouri Pacific Railway in connection with the Texas & Pacific Railway drains a very large territory. From the immediate western country it draws its supplies through the Missouri Pacific system in conjunction with the Texas & Pacific Railway; also by means of the St. Louis, Arkansas & Texas Railway in connection with the Texas & Pacific Railway.

INTER S.

The same country ships into Shreveport by way of Memphis & Vicksburg. The supplies from the territory east of the Mississippi River are distributed between the lines leading from that section through Vicksburg and through St. Louis, Columbus, Kentucky, Memphis, Tennessee and New Orleans.

Q. I will ask you to state what rail lines connect it with St. Louis?

A. The Texas & Pacific Railway, the St. Louis Iron Mountain & Southern Railroad, the Texas Pacific Railway, and the St. Louis, Arkansas & Texas Railroad. There are also rail lines from St. Louis to Shreveport that come down on the east side of the river, and come into Shreveport by way of Vicksburg, in conjunction with the Vicksburg, Shreveport & Pacific Railway.

Q. You may state to what points Shreveport ships cotton.

A. The cotton shipped this season has amounted to over 100,000 bales and has been shipped abroad and to eastern milling points. The largest proportion of the cotton goes to foreign markets. Shreveport, being in the midst of a cotton country where the largest percentage of production is cotton, is forced to go to long distances to get its supplies in the shape of grain and western produce.

Q. You may state to the Commission what effect the fourth section of the Interstate Commerce Law has on that traffic, especially that part of it which prohibits the charging of more for the longer than the shorter haul in the same connection.

A. The enforcement of the long and short haul clause has practically paralyzed the railroad interests at Shreveport. Since the Law took effect we have done nothing there in the shape of carrying western produce into that country. A suspension of it would enable us to meet at fair reasonable figures the competition which is offered by the water routes.

Q. You may state to the Commission what is the magnitude of the traffic of the Texas & Pacific between St. Louis and points on the Missouri River and St. Louis and the adjacent points, from the Atlantic Coast by way of New Orleans?

A. For reasons that I stated just now, Shreveport has to go abroad for its supplies of every kind; and the traffic is very large, as the fact of Shreveport shipping 100,000 bales of cotton, enabling it to draw that amount of cotton to its market, will indicate. I haven't got the exact figures, but I suppose 75 per cent of the business that goes into Shreveport is drawn from St. Louis and the Missouri River country, or points in Nebraska, Kansas and Missouri.

Q. What I particularly asked you about was as to the business at intermediate points from Shreveport. How much is there, and can that freight be sacrificed; can the company afford to sacrifice it?

A. In order to reach Shreveport from Kansas City we pass through the most populous part of Texas. We go through what are our largest points of supply in Texas, where the conditions are wholly dissimilar from those surrounding Shreveport. In order to do the Shreveport business on the enforcement of the long and short haul clause, we would have to reduce our rate to that territory, which would

involve the sacrifice of very large revenue, a revenue which we could not afford to sacrifice in order to engage in this Shreveport traffic. We pass through part of the same territory in hauling our freight from St. Louis to Shreveport.

Q. How about the business between the Atlantic Coast and Shreveport by way of New Orleans?

A. The question involved in that is not so grave as in the case of the business from the west, because our haul in connection with that business is not as important to us as the other.

By Commissioner Bragg.

Q. What is the population of Shreveport?

A. I couldn't state in exact figures. I think the memorial presents the fact.

Q. About what is it?

A. I should say Shreveport had about fifteen or twenty thousand people.

Q. Is the competition between the railroads at Shreveport sharp?

A. It has been very sharp.

Q. Between what railroads?

A. Between the Texas & Pacific Railway and the Vicksburg, Shreveport & Pacific in connection with the other lines in their system.

Q. Upon what lines of freight is the competition sharp?

A. It has been in the peculiar products of the West and the freight usually shipped from points along the river, such as Cincinnati & Louisville—whiskeys.

Q. About how long has that competition existed?

A. Since the construction of the Vicksburg, Shreveport & Pacific Road; in 1884 I think it was completed.

Q. Is there any competition at Shreveport between the Texas & Pacific Railway and the Red River?

A. Yes, sir; the present situation there demonstrates that. The business which has heretofore reached Shreveport in a very large degree by the Texas & Pacific Railway has been reaching there by water.

Q. Give us the facts as to how that competition manifests itself and has manifested itself.

A. In the fact that we have been forced ever since we have been running to Shreveport to accept to Shreveport considerably less than we could afford to make or have made to our intermediate territories in Texas.

Q. Give us some of the figures.

A. We have been getting on flour and meal, for instance, from Kansas City or milling points in that territory to intermediate Texas territory, \$1.10 per barrel. We have never within my recollection been able to obtain to Shreveport a higher rate than seventy-five cents a barrel on flour.

Q. That is caused by the steamboat, is it?

A. That was caused by the steamboat competition prior to the time when the Vicksburg, Shreveport & Pacific Road was completed to that point.

Q. Since the Vicksburg, Shreveport & Pacific Road has been completed to that point has there been any change at all in the rates?

A. The competition in the western product has resolved itself into competition between the railroads, from the fact that they immedi-

ately reach the territory, and there has been no inducement to ship by water, from the fact that we have been in a position, unrestrained by the law, to meet the competition.

Q. How many railroads meet at Shreveport, and from what points?

A. There are three railroads; the Texas & Pacific Railroad, the Houston & Shreveport Railroad, and the Vicksburg, Shreveport & Pacific Railroad.

Q. Is there any competition between the Houston & Shreveport Road, and the Texas & Pacific at Shreveport?

A. The competition up to this time has not been felt very sharply; they are in a position, though, in that location to create competition. They come from the South, and their principal competition would come in seaboard business by the way of the Gulf of Galveston and rail line thence.

Q. What is the general direction of the Texas & Pacific Railway from the City of New Orleans to Shreveport?

A. It runs in a northwesterly direction.

Q. Parallel with the Red River?

A. Yes sir. It touches the Red River first at Alexandria and again at Boyce twelve to fourteen miles above, and again at Shreveport. The country between the Texas & Pacific Railway and Red River from Alexandria above is competitive as between the river and the rail lines in a very large degree.

Q. Is there any competition between the river and the Texas & Pacific Railway south of Alexandria?

A. There is no competition below a point we call Cheyneyville, which is twenty-four miles south of Alexandria. We find low rates by river to Alexandria, inducing the people living between Alexandria and Cheyneyville to haul their freight across the country within a radius of twenty-four miles of Alexandria. After we leave Cheyneyville we commence to feel the effect of the Atchafalaya River and the bayous leading into it; and when we leave the Atchafalaya River we touch the Mississippi River.

Q. Where do you touch the Mississippi River?

A. At West Baton Rouge, about ninety-eight miles from New Orleans, and from West Baton Rouge to New Orleans we run within a quarter to half a mile of the Mississippi River.

Q. Nearly all the way?

A. Nearly all the way.

Q. Is there any competition between your road and the Mississippi River from West Baton Rouge to New Orleans at any point?

A. The competition is purely within the State of Louisiana, but it is very sharp.

Q. About what percentage of the business would you say your road does at Shreveport?

A. I should say we do at Shreveport from 60 to 65 per cent of interstate business.

Q. Do you mean of the entire business?

A. Of the entire interstate business.

Q. Do steamboats run all the year round from New Orleans to Shreveport?

A. They do not run through; that is, they may start a larger boat from New Orleans and make a transfer to the smaller boat at some intermediate point; but the season when they

cannot do it is inconsiderable; the condition is such that we may say we feel the water competition all the year round.

Q. They run small boats all the year around?

A. Practically by transfer, as far as I know of.

Q. Do you know about how many steamboats are engaged in the Red River trade to Shreveport?

A. The Red River Coast Line, as I understand it, is a consolidation of various interests. They are not running more than from three to four boats I believe at this time, but they have a very large fleet which is moored across the river here, and which they can call on at any time.

Q. Take the one item of cotton. Does your road bring any considerable amount of cotton from Shreveport to New Orleans?

A. From Shreveport this season out of 100,000 bales we have carried from forty-three to forty-five thousand bales. That cotton has been distributed between New Orleans, the foreign countries and eastern milling points. The cotton which we have brought to New Orleans is compressed cotton purchased by foreign buyers located in the City of New Orleans. It does not come here as a local consignment, but it is reshipped on their own ocean arrangements. In regard to other cotton we issue through bills of lading.

Q. About what percentage of the cotton from Shreveport was brought to New Orleans by steamboats last season?

A. I think the steamboats this year have taken to this point—the railroad business in cotton from Shreveport has amounted I believe to from eight to ten thousand bales this season.

Q. The balance of the cotton from Shreveport that was not brought to New Orleans either by boat or the Texas & Pacific Railway went where?

A. It sought the same markets by other routes. The Vicksburg, Shreveport & Pacific Road was in the market for New Orleans business and also for foreign and eastern business.

Q. In a general way about what amount of the cotton would you say went over the Vicksburg & Shreveport Road?

A. The Vicksburg, Shreveport & Pacific Road carried out of Shreveport last season, from the last statement I saw, about 89,000 bales of cotton. The difference between the shipments of the two routes, the Texas & Pacific and the Vicksburg, Shreveport & Pacific, has been very small this season.

Q. Are there any large towns on your road between New Orleans and Shreveport?

A. No sir; not as supply points. A great many of them are points of shipment; forwarding points for interior traffic.

Q. Give us the names of some of those places?

A. There is Alexandria, Mansfield, Robeline, Provencal and a great many of them are new towns located since the construction of the Texas & Pacific Railway in 1882.

Q. What are the physical characteristics of your railroad between New Orleans and Shreveport? Over what sort of country does it run, what kind of grades has it, are there many bridges, trestles, etc.?

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A. The grades are inconsiderable for the greater portion of the line between New Orleans and Shreveport. On that portion of the line between New Orleans and Alexandria where we cross these rivers and cross the smaller bayous leading into them, there is a great deal of bridging.

Q. Is there any bridging between New Orleans and West Baton Rouge?

A. No bridging to amount to anything. There is considerable trestle as we cross the swamps back of the sugar plantations.

Q. How is it in regard to bridges and trestles between West Baton Rouge and Alexandria?

A. We have there in that section of the line a bridge that is one of the most difficult to build in this country, I expect, across the Atchafalaya River. They were some two or three years in building it.

Q. What is the length of that bridge?

A. I couldn't give the figures.

Q. I do not mean exactly; but about how long is it?

A. I have never given it any investigation. I think you can ascertain elsewhere

Nathan Gregg appeared before the Commission, having been duly sworn, and was examined as follows

By **Mr. Blanchard**:

Q. You are a resident of Shreveport

A. Yes sir.

Q. And are in business there?

A. Yes sir.

Q. What is your business?

A. Wholesale grocer and cotton business, buying.

Q. How long have you been in business in Shreveport?

A. I have been there since 1866.

Q. How much cotton do you handle in the course of a year?

A. From twelve to eighteen thousand bales.

Q. What are your gross sales in your grocery business?

A. It averages about \$500,000.

Q. Annually?

A. Yes sir; about half a million dollars.

Q. What are Shreveport's cotton receipts annually?

A. They vary from eighty to one hundred thousand bales.

Q. What are they this year?

A. They amount this year to about one hundred and five or six thousand bales.

Q. Where does that cotton come from?

A. It comes from the States of Texas, Arkansas and North Louisiana.

Q. Where does that cotton go when it leaves Shreveport?

A. It goes to Europe, and to the northern millers.

Q. Is it compressed at Shreveport and shipped north, and across the Atlantic?

A. Almost entirely.

Q. What proportion of that 100,000 bales annually goes to New Orleans?

A. I can't answer that question.

Q. Very little of it?

A. I cannot answer that. After I sell the cotton I don't know where it goes.

Q. As a matter of general notoriety, very little of it goes south to New Orleans?

A. I can't advise you on that subject. I don't know where it goes after I sell it.

Q. How many people are there at Shreveport?

A. From twelve to fifteen thousand people.

Q. Shreveport is the center of supply of about how many people?

A. It is a very large population. It goes largely into Arkansas.

Q. Would it be several hundred thousand people?

A. Yes sir; it would be several hundred thousand people.

Q. In what States?

A. Texas, Louisiana and Arkansas.

Q. Shreveport then is near the Texas and Arkansas line?

A. Yes sir; it is about twenty miles from the Texas line at the nearest point, and about thirty-five miles from Arkansas.

Q. What are Shreveport's lines of transportation?

A. It has the Red River first, the Texas & Pacific, the Vicksburg, Shreveport & Pacific, and the Houston, Eastern Texas & Western Road. I believe those are all.

Q. Shreveport has rail connections, has it not, with the north, east and western country, over two lines of roads?

A. Yes sir.

Q. What water ways compete at Shreveport with the Railways?

A. There is the Red River mainly, and the Mississippi River by way of the Red River.

Q. Do steamboats run on the Red River and the Mississippi to New Orleans?

A. Yes sir.

Q. To St. Louis?

A. Yes sir.

Q. And sometimes to Cincinnati?

A. Yes sir; we have had boats from Cincinnati direct to Shreveport.

Q. Is not the Mississippi River a competing point with the railroads at Shreveport by bringing freight to Delta, opposite Vicksburg, and from that point to Shreveport by rail?

A. Yes sir.

Q. The V., S. & P. Road being altogether within the limits of the State of Louisiana?

A. Yes sir; we understand it is not subject to the Interstate Commerce Act.

Q. What was the effect of the Interstate Commerce Act upon the transportation business of Shreveport? Were rates advanced any?

A. They were advanced from 50 to 100 per cent. It has caused almost a complete suspension of our business so far.

By **Commissioner Schoonmaker:**

Q. You mean your railroad business?

A. Yes sir.

By **Mr. Blanchard:**

Q. Would the rigid enforcement of the fourth section of this Act have the effect of shutting out the railroads as competitors with the water routes?

A. I should think it would; yes sir; it certainly would.

Q. Would it be an interference with competition on the part of the railroads between each other?

A. It certainly would; yes sir.

Q. Can you mention any particular article of freight where the rates were advanced, say 100 per cent, on the going into effect of the Interstate Commerce Act?

A. I can.

Q. Name one.

A. The article of bacon, that is very largely consumed in our market. Our previous rate was 37½ cents per hundred pounds and it was advanced, I think, to sixty-seven cents; either sixty-four or sixty-seven cents; and the rate on flour also was advanced 100 per cent or more by rail.

By **Commissioner Schoonmaker:**

Q. Can't you give the figures?

A. Yes sir. It was advanced from about fifty-five cents to \$1.10 cents.

Q. From what points?

A. From St. Louis and all points west of St. Louis that we got our supplies from.

By **Mr. Blanchard:**

Q. I would ask you if Shreveport is not entirely and peculiarly affected by what is called the long haul?

A. It is peculiarly affected by it; yes sir.

Q. Is it not a fact that everything that we buy comes to us over a long haul, from a long distance?

A. Yes sir.

Q. And everything that we sell, that is to say, our cotton, is transported a long distance?

A. Yes sir; generally a long distance.

Q. Is not our traffic nearly altogether interstate traffic?

A. Yes sir; it is almost entirely affected by the Interstate Commerce Law.

Q. I will ask you with reference to the Texas & Pacific Railway as a competitor of the Vicksburg, Shreveport & Pacific which is a part of the Queen and Crescent route. The Texas & Pacific Railway from Shreveport to New Orleans is entirely, I believe, within the limits of the State of Louisiana.

A. Yes sir.

Q. Shreveport, I believe, is the western terminus of the V. S. & P. Railroad, is it not?

A. Yes sir.

Q. Does it not compete from Shreveport to New Orleans for passenger and freight traffic with the Texas & Pacific?

A. It does.

Q. Is it not a fact that the V. S. & P. with its connections form an interstate road; that is to say, to get to New Orleans they go through another State?

A. Yes sir.

Q. Take the case of a passenger. Can you mention how that competition would affect the V. S. & P. Railroad with its connections to New Orleans? I will ask you first, What is the passenger rate from Shreveport to New Orleans over the Texas & Pacific?

A. It is about \$11.50, I think.

Have you heard from the agent at Shreveport of the V. S. & P. road what is the least charge they can make for a passenger over their Interstate line to New Orleans?

A. He told me it would be \$14.10, I think.

Q. That was the least charge he could make for a passenger under the operation of the fourth section of this Act on his railroad?

A. Yes sir.

Q. What is the sentiment of that community, with reference to the fourth section of this Act?

The **Chairman**. It is hardly worth while to go into that.

Q. In order to induce some of these railroads to come to Shreveport its citizens have to some extent subsidized one or two railroads that have come there, have they not?

A. Yes sir; they have.

Q. And Shreveport has been enabled to get cheap through rates by reason of competition?

A. Yes sir; they have.

Q. Resulting from these rival railways and the river?

A. Yes sir.

By **Commissioner Bragg**:

Q. When freight was put off by the boats at Delta to be shipped to Shreveport was it on through bills of lading?

A. Not until lately, sir.

Q. How long since?

A. That order was made, I believe, last Thursday or Friday, sir, for through bills of lading.

Q. Prior to that time?

A. It was consigned to Delta and from there to Shreveport.

By the **Chairman**:

Q. When you speak of through bills of lading, what do you mean?

A. From St. Louis over the steamboat line to Shreveport by way of the Vicksburg Road.

Q. Between Shreveport and St. Louis?

A. Yes sir.

By **Commissioner Bragg**:

Q. Before the Interstate Commerce Law went into effect what was the freight rate from Shreveport to New Orleans by way of Vicksburg over the Vicksburg & Shreveport Road?

A. From New Orleans to Shreveport?

Q. Yes; or from Shreveport to New Orleans, the other way?

A. The shipments from Shreveport being exclusively cotton I have no knowledge of what the rates were coming this way; but from New Orleans to Shreveport goods are sold almost exclusively for delivery, delivery price; and in that way we were not aware of the rates.

Q. Is it or not a fact that before the Interstate Commerce Law went into effect the cotton from Shreveport went to New Orleans or went south and east generally either by the river or the Texas & Pacific Railroad, and did not go by Vicksburg and then down the river to New Orleans from Shreveport?

A. My understanding was that most of the cotton shipments for the East went by the Vicksburg & Shreveport Road and its connection east of there.

Q. But it did not go to New Orleans?

A. I don't know about that. I can't tell what became of the cotton after I sold it. I was not aware of what direction the shipments took.

Q. What day was it that these rates were put up by the Texas & Pacific Railway?

A. It was about the first of the month, I think; the first of April.

Q. Were they put up at the same time by the Vicksburg & Shreveport Road?

A. Yes sir; I think they were all posted at the same time.

INTER S.

Q. On the same day?

A. About the same time. I am not aware of the exact time.

Q. When they did that was the steamboat rate affected at all?

A. It affected the rate from St. Louis to Vicksburg.

Q. How?

A. By an advance. On the line the advance I have been told was about 15 to 20 per cent, and I know it was to Vicksburg.

Q. When your railroads went up in their charges the steamboats went up from 15 to 20 per cent?

A. At some points they went up a hundred per cent.

Q. But generally they went up 15 to 20 per cent?

A. At Vicksburg I have been told it was 15 to 20 per cent.

By **Commissioner Walker**:

Q. What route does that business take to New Orleans that goes by way of Vicksburg?

A. I think when it reaches Vicksburg it goes by the Mississippi Valley Road.

Q. Is that the Louisville, New Orleans & Texas?

A. Yes sir.

Q. It does not go east to the Queen & Crescent line?

A. A great deal of it does go that way. The cotton takes that direction east. It goes by way of Meridian and through by Chattanooga to Cincinnati.

Q. But not to New Orleans?

A. In going to New Orleans it takes the Mississippi Valley; and at Vicksburg it takes the V. S. & P.

Q. What did you say the passenger tariff was from Shreveport to New Orleans by the Texas Pacific?

A. \$11.50.

Q. And you say the line from Shreveport to New Orleans by Vicksburg claim they cannot make that tariff?

A. They cannot make that tariff? Their rate is \$14.10. That is what they are compelled to charge, they say.

By **Commissioner Schoonmaker**:

Q. Do I understand you to say the cotton at Shreveport is all sold to agents of foreign purchasers and mill men?

A. Yes sir; almost exclusively.

Q. What is the average price per bale?

A. It varies by the weight. The price we get per pound when the cotton is sold by the pound—it is worth today about nine and one-half cents. It varies according to the season. It brings from \$45 to \$48 per bale.

By **Commissioner Walker**:

Q. You spoke of boats running from Cincinnati to Shreveport. What do they carry?

A. We have not had those boats for awhile. Since the building of the road the boats can hardly come in there and compete with them from Cincinnati, though we have had boats from Cincinnati direct to Shreveport.

Q. Not this year?

A. Not this year; not within the last two or three or four years.

By **Commissioner Schoonmaker**:

Q. You spoke of flour. What will a barrel of flour sell for at Shreveport?

A. Before the present law took effect a barrel of flour of ordinary grade sold for about \$4.75.

Q. What difference, if any, is there now?

A. The same flour is worth \$5.25 today.

Q. There is half a dollar's difference?

A. Yes sir.

Q. What would the same barrel of flour sell for thirty, forty or fifty miles from Shreveport?

A. You would simply have to add the freight.

Q. The local rate?

A. The local rate and the merchant's profit. It would probably be seventy-five cents on an average to our distributing points.

By the **Chairman**:

Q. You say the business of Shreveport is largely affected by the long and short haul clause?

A. Yes sir.

Q. Is it affected any differently from what the business of the towns is from which Shreveport receives its supplies or transmits its products; St. Louis, for instance?

A. I couldn't answer that distinctly.

Q. What would benefit Shreveport in respect to the supplies received from St. Louis would benefit St. Louis also, would it not?

A. Most assuredly; yes sir.

Q. And the same as to Kansas City?

A. The same as to Kansas City.

Q. And the same as to any city to which the cotton sent from Shreveport should be sent?

A. Yes sir.

Q. In other words, these towns are affected in the same way that Shreveport is by this long and short haul clause?

A. Yes sir. If you will examine our peculiar situation, in the corner of three States, you will see very easily how it is.

Q. In respect to all these cities, which are considerable centers of traffic, the effect upon their business is the same, is it not?

A. Most assuredly it is. Take all Kansas points where we draw our grain from, and the Missouri River points, and St. Louis and all the points where we draw our provisions from.

Q. That would be the same as to all the points where there was competition between water and rail?

A. Yes sir.

Q. Would it be the same also where there was sharp competition between the rail lines?

A. Yes sir; it would be the same thing.

Q. Did I understand you correctly that the business by water has diminished since the completion of the last railroad to Shreveport?

A. Oh yes sir.

By **Commissioner Schoonmaker**:

Q. Your business is groceries?

A. Exclusively groceries. I am a wholesale grocery merchant and cotton buyer.

Q. From what point do you procure your supplies?

A. From St. Louis, Kansas City, New York, Philadelphia, Baltimore, and from the entire United States. We are just as much independent of the market as anyone. Our country is an agricultural country. It produces nothing but cotton. Our provisions all come from a long haul. Our sales are exclusively cotton, which

is long haul stuff. Therefore, we are peculiarly affected by it.

Q. All your business, both that received, and that sent out, is long haul business?

A. It is all long haul business.

By **Mr. Blanchard**:

Q. With reference to the point suggested by Judge Cooley as to the trade of Shreveport with St. Louis and Kansas City; is it not a fact that Shreveport is the consuming point; that is to say, we consume everything we bring from St. Louis and Kansas City, and that they are the producing points?

A. We are the distributing point and consuming point.

Q. And they are producing points?

A. Yes sir. We have the largest distributing point west of the Mississippi River.

James Crangle appeared before the Commission and having been duly sworn was examined as follows:

By **Mr. Blanchard**:

Q. You live at Shreveport?

A. Yes sir.

Q. And are in business there?

A. Yes sir.

Q. What business?

A. Brokerage.

Q. Western produce?

A. Yes sir.

Q. What is the gross volume of Shreveport's business with reference to western produce, speaking by the year?

A. You mean taking the leading articles separately?

The **Chairman**. That is hardly worth while.

A. Generally speaking; western produce.

Q. What do you mean by that? Do you mean flour and meal?

A. Flour, meal, pork and bacon. The aggregate amount received there of meal, I should say, was about—

The **Chairman**. You need not give the particulars. State generally.

Q. How many car loads?

A. About 50,000 barrels of meal. The car loads vary. I can't estimate it by them; about 50,000 barrels of flour. Of bacon and all sorts of meat it would be between four and five hundred car loads per year. Of grain the amount will vary. It runs from one hundred to two hundred cars per month. It depends greatly upon the crops that are made in the surrounding country.

Q. With reference to Shreveport's being a point of distribution: I will ask you if it is not the second or third largest distributing point west of the Mississippi River?

A. I think it is about the second.

Q. I wish you would explain the operations of the fourth section of this Act upon the transportation of Shreveport. What has been its effect and how?

A. Its effect has been to shut us out from certain territories that we have been getting our supplies from heretofore.

Q. Name those territories.

A. They would be all points on the M. K. & T., or on the Missouri Pacific system of roads. I don't suppose it is necessary to name the points.

Q. I will ask you to name the principal points?

A. Kansas City and St. Louis, by rail, so far as the Iron Mountain Road is concerned, and its connections, and the interior points in Kansas and Missouri and also the river points.

Q. Shreveport has heretofore been getting cheap through rates on the long haul on those articles?

A. Yes sir.

Q. Those rates have been increased about how much since this law went into effect?

A. They increased on those articles I have mentioned, with the exception of grain, about 100 per cent.

Q. Would the rigid enforcement of that section result in serious injury to the town and that section of the country of which Shreveport is the distributing center?

A. Yes sir; it would shut it out entirely from certain sections.

Q. Do you believe the city would decline if that section is enforced?

A. It would.

By *Commissioner Morrison*:

Q. Do you mean by the enforcement of this Act the increased cost of carrying from these through points?

A. It has become so.

Q. Do you mean the rates have been increased?

A. Yes sir.

Q. I suppose you know there is nothing in the law increasing the rates, do you not?

A. Yes sir; I understand that.

Q. Does it cost any more to ship from St. Louis and Kansas City and these through points down to you, than it did before the law was passed?

A. Well, as I understand the law, it is this: That they cannot make a rate there unless all the other rates are made in proportion. That is a matter for the railroads to answer rather than me in that way. They claim this, as I understand: that they cannot reduce all their rates so as to meet the competition that they have by river and otherwise at Shreveport. For instance, the Missouri Pacific Railroad and the Texas & Pacific has not brought a single car of western produce of any kind to Shreveport since this law went into effect. They cannot do it now against the Mississippi River and the V. S. & P. Road; so that we are practically shut out over that route from reaching our sources of supply.

Q. When you say "the effect" you mean that result has followed it?

A. Yes sir.

Q. You heard the gentleman say here that one of the results was that the freight had also been increased on the Mississippi River from St. Louis to Vicksburg?

A. It was; yes sir.

Q. How did that come about?

A. Simply because the competition of the railroad they thought was killed and therefore they could raise their rates and derive greater revenue from the freight.

Q. Then it came of their own action. The Interstate Commerce Bill had nothing to do with the increase?

A. Indirectly it had; yes sir; because it prohibited the railroads from meeting the compe-

tion that they had met by river, and allowed the river to meet rates just enough below to bring the freight in.

Q. What do you mean by prohibiting? The law does not say the roads shall not carry freight for any less than they did before?

A. No; but its effect, whether intended or not, has been this: that it has raised all the low rates and it has not decreased a single high rate on any of the roads.

Q. You mean that after its passage the railroad people raised the rates?

A. The through rates; yes sir; while they did not change their locals.

Q. They raised the through rates without lowering the locals?

A. Yes sir.

By *Commissioner Bragg*:

Q. You have said that the effect of the Interstate Commerce Law had been to increase the freights, as I understood you, upon all other articles except grain?

A. No; 100 per cent on the others. I gave it on the others because 100 per cent about covers those, while grain is not so much.

Q. About what is it on grain?

A. It is about 25 to 80 per cent.

Isaiah Hardy appeared before the Commission, and having been duly sworn was examined as follows:

By *Mr. Blanchard*:

Q. What position do you now fill?

A. The position of assistant general freight and passenger agent of the Vicksburg, Shreveport & Pacific, and the Vicksburg & Meridian Railroad Companies.

Q. How long have you held that position?

A. Some five years.

Q. Are you familiar with the freight rates to and from Shreveport?

A. Yes sir.

Q. What was the effect of the going into effect of the Interstate Commerce Act upon those freight rates?

A. The effect was a very material advance in our freight rates from all points into Shreveport.

Q. What was the effect of the going into effect of the Interstate Commerce Act upon the transportation of freight from St. Louis south by the St. Louis & New Orleans Anchor Line of Steamboats?

A. There was quite an advance in rates from St. Louis to Memphis and river points south.

Q. How much?

A. From St. Louis to Memphis on some articles as much as 100 per cent.

Q. And from St. Louis to Vicksburg?

A. About 15 per cent on the same line of goods.

Q. Was that advance in the rates of freight on that line of steamers made immediately upon the going into effect of this law?

A. On the same day.

Q. The 5th of April?

A. Yes sir.

By the *Chairman*:

Q. Was it before the railroads put up their rates?

A. The rail tariffs had been adjusted, and were prepared to be in effect on the 5th of April.

Q. And this followed the posting of railroad rates, which were largely in advance of what they had been before?

A. Yes sir.

By **Mr. Blanchard**:

Q. It is a fact, is it not, that the Commission suspended temporarily the operations of the fourth section upon the lines of railroad included within the Southern Railway & Steamship Association?

A. Yes sir.

Q. When that suspending order went into effect what did the Anchor Line of Steamers do?

A. They reduced the rates to the figures that were in effect prior to the 5th of April.

Q. They reduced them immediately?

A. Yes sir.

Q. What is the distance from Vicksburg to Shreveport by rail?

A. It is 170 miles from Delta, right opposite Vicksburg, to Shreveport.

Q. Then the Mississippi River at Vicksburg would be a competing line to Shreveport, would it not?

A. It would be a competing line against our line by way of New Orleans and Red River.

Q. And against the Texas & Pacific Line?

A. Yes sir.

By **the Chairman**:

Q. When the railroads obtained the order of suspension they put down their long haul rates, did they not?

A. To the same figures that were in effect.

Q. And the steamboats put down their figures, following the railroads, just as they followed them when the railroads went up?

A. Yes sir.

By **Commissioner Bragg**:

Q. When the railroads raised their rates at competing points after the Interstate Commerce Law went into effect, did they lower their rates at local points?

A. To some extent, yes sir; not very materially. They did not lower them excepting where the rates that they desired to operate at the junction points forced a reduction to comply with the terms of the law.

By **Mr. Blanchard**:

Q. Has the fourth section been temporarily suspended on the V. S. & P.?

A. Yes sir.

Q. Has it been on the Texas & Pacific?

A. Not that I am aware of.

By **Commissioner Walker**:

Q. Have you been in the habit of charging less from Vicksburg to Shreveport than from Vicksburg to other points on your line between Shreveport to Vicksburg?

A. Yes sir.

Q. How much did you charge for flour from Vicksburg to Shreveport?

A. I couldn't tell you exactly unless I had the rate sheets.

Q. I am not talking about the joint tariff. I am talking about your local tariff?

A. I think the rates to Shreveport were on an average about 50 per cent less than they were to local stations intermediate.

Mr. Sheldon. Some time since I filed an application for a suspension of the fourth section as to business from New Orleans to the Missouri River. I have received a letter in reply,

signed by **Mr. Commissioner Walker**, saying that the matter would be taken under hearing. Allow me to inquire now as to when it will be convenient for the Commission to take it up?

The Chairman. Now; at this time.

Mr. Sheldon. I presume the Commission has the petition here. I have a transcript.

The Chairman. Yes sir; we have it here. You may proceed at once.

The Chairman. In order to avoid any misapprehension, I will say this: we will receive evidence in regard to any of these propositions separately, or will receive it all together. When you have a witness who will speak to several petitions, you may examine him fully as to all. It will save a good deal of repetition, probably.

W. W. Finley, who had been previously sworn and examined, was recalled and further examined as follows

By **Mr. Sheldon**:

Q. Will you please state what lines of transportation there are from New Orleans to Kansas City, Atchison, Leavenworth, and adjacent points in the State of Kansas and St. Joseph, in the State of Missouri, to Omaha, in the State of Nebraska, and Council Bluffs, in the State of Iowa, and points adjacent thereto, or those points which are considered in traffic circles as Missouri River points?

A. The rail lines that have immediately competed for that business from New Orleans are the Texas & Pacific Railway, the Illinois Central Railroad, and the L. N. O. & T. Railway. Neither of these lines run directly to that territory, but are dependent upon their various connections to get there. There are also water and rail routes to the same territory, through Memphis and through St. Louis, by boats to those points, and rail thence.

Q. You may state to the Commission over what lines the Texas & Pacific reaches those points?

A. The Texas & Pacific Railway, in that business, connects with the Missouri Pacific system; with the Missouri, Kansas & Texas road of the Missouri Pacific system, connecting with that line at Mineola, Texas.

Q. State if the Missouri, Kansas & Texas Railroad reaches Kansas City directly?

A. They do not. They reach Kansas City over the Missouri Pacific main stem.

Q. How do they reach the places northward?

A. The Missouri Pacific Railroad extends to Council Bluffs, which they reach by crossing the Missouri River, from Omaha, on the bridge.

Q. State to the Commission through what States and Territories the transportation lines by rail pass in reaching those Missouri River points?

A. They pass through Louisiana, Texas, Indian Territory, Arkansas, Missouri, Kansas, Nebraska, and into Iowa to get to Council Bluffs.

Q. I wish you would state to the Commission the extent of business between New Orleans and the Missouri River points during the months of October, November and December last, on the line of the Texas & Pacific, including return freights?

A. The business from New Orleans to that

Territory is very large in the peculiar products of Louisiana, sugar, rice and molasses. The Texas & Pacific Railroad carried in the months of October, November and December to that territory about 250 car loads—I am mistaken about that; that number includes the freight which has passed through New Orleans and over the Texas & Pacific Railroad, imported from abroad, such as tin, plate, earthen ware and Liverpool salt. The amount of business south bound from Kansas City has not been what we think we can develop it to, because we have been somewhat restricted, owing to lack of facilities for handling the goods.

Q. You may state what the character of return freight is from those points to New Orleans?

A. It is western produce.

Q. Name the articles?

A. Bacon, principally, and grain.

Q. You may state to the Commission whether the road, as a rule, gets return freight when it carries freight into that territory?

A. Yes sir; as a rule it gets return freight.

Q. So it is carried both ways?

A. Yes sir; there is a large field for return freight.

Q. State to the Commission the extent and character of the business between New Orleans and Missouri River points, particularly in Texas?

A. Texas, like Shreveport, draws a great deal of western produce from that territory, particularly during the seasons like the last in Texas, where they have had a severe drought, and been unable to raise anything, in any large degree, at home. The same causes which would prevent our engaging in business from Kansas City to New Orleans, exists as in the case of Shreveport. It would force a reduction in our intermediate business to a larger percent than we would have to make, even if engaged in Shreveport traffic.

Q. How does the volume of business from New Orleans to Texas points compare with that from New Orleans to Missouri River points?

A. From a rough estimate, I should say it is five to one in favor of Texas.

Q. Can the Texas & Pacific afford to sacrifice its Texas revenue?

A. No sir.

Q. You may state what has happened in relation to the business to and from Missouri River points?

A. The effect has been a total suspension, so far as the Texas & Pacific Railway is concerned.

Q. Why has it suspended business?

A. From the fact that it was absolutely necessary that we should preserve our intermediate business.

Q. What has been the action of competing lines in that connection?

A. Competing lines have engaged in the traffic between Kansas City and New Orleans.

Q. State how they could do it while we could not?

A. My understanding is that one of the lines, a competitor of ours, running between New Orleans and Memphis—the Mississippi Valley route—found that the largest percentage of its business was through business. Its line parallels the Mississippi River. Its local rates were

consequently low, and they found it to their advantage to reduce the intermediate territory sufficiently to admit of their engaging in Missouri River traffic. Since then, it is my understanding that those roads are engaging in this traffic under a suspension by the Commission of the fourth section.

Q. That is to say, they are engaging in the traffic because the law has been suspended?

A. Yes sir.

Q. Will you state to the Commission how the line of the Texas & Pacific and its connecting lines to Missouri River points compares in length with other lines?

A. It is somewhat longer.

Q. How much?

A. About 200 miles.

Q. What is the character of the track, so far as grades and bridges are concerned?

A. They are heavier, and it is more costly to operate.

Q. How much business is there in the Indian Territory this side of the Missouri River?

A. The local business in the Indian Territory does not amount to much.

Q. But the local business in Texas is very large?

A. Yes sir.

Q. Can you estimate to what extent there would be a loss to the revenue of the Texas & Pacific Railway, if it should sacrifice its local rates in order to move the through business to the Missouri River points?

A. It couldn't pay its operating expenses if it did.

L. Lipman, President of the First National Bank of Yazoo City, appeared before the Commission and was duly sworn.

The **Chairman**. You may proceed to make your statement in your own way.

The **Witness**. I wish to state, in accordance with the petition which I have had the honor to present to you, that article four of the Interstate Commerce Bill deprives us of the benefits arising from the competition between the railroad and the river. Since the new tariff of the railroad has gone into effect, we have virtually lost all communication of freight with the interior or from other States. That is really for the present the effect of this Bill and the rates that have been established since under it. In addition to this petition I have a comparative schedule of rates attached thereto for your kind consideration.

By **Commissioner Bragg**:

Q. Yazoo City is situated on the Yazoo River, is it not?

A. Yes sir.

Q. How far from the Mississippi River?

A. About 100 miles.

Q. Is the Yazoo River navigable all the year to Yazoo City?

A. It is.

Q. By boat?

A. Yes sir.

Q. What is the competition now at Yazoo City between rail and boat?

A. The difference at present is in many instances about 8 to 10 per cent in favor of the river.

Q. You mean the river charges about that

much lower than the boats, or gets that much more of the business?

A. No sir; the river charges at present probably from 8 to 10 per cent less than the railroad to many points.

Q. What effect does that have upon the railroad transportation?

A. The railroad heretofore on account of its rapid transportation probably has secured from 80 to 85 per cent of the traffic from and to Yazoo City.

Q. About what amount of business do you do at Yazoo City?

A. I should estimate we do a business aggregating about five or six million dollars.

Q. What is your population?

A. Aggregating thirty-five or thirty-eight hundred.

Q. About what amount of cotton does Yazoo City ship?

A. About 80,000 bales.

Q. Any other products besides cotton?

A. None shipped from there.

Q. Do you do much business from the Northwest in the way of meat and grain?

A. We do. We are excluded for the present from doing business with Chicago or Kansas City, our former places of supply for meat and grain. The rates have advanced as much as 200 per cent or about that. It is stated in the petition.

J. C. Haskell appeared before the Commission and having been duly sworn, said:

Mr. Chairman and Gentleman: I was requested by the agent of the Illinois Central Railroad, to appear here in behalf of the American Salt Company and present their petition in support of the request of that road that they be relieved from the action of the fourth clause of the Bill regulating commerce in so far as the hauling of salt produced by the American Salt Company, and shipped from their mines to Chicago is concerned.

(The witness then submitted a statement in writing, after which he proceeded).

In support of the statement which I have made, with regard to the quality of the salt, I simply beg leave to submit a sample of our product. (Presents sample).

By **Commissioner Walker**:

Q. Where is your establishment?

A. New Iberia, Parish of Iberia, State of Louisiana.

Q. How far from New Orleans?

A. One hundred and twenty-five miles from New Orleans.

By **Commissioner Schoonmaker**:

Q. What is the peculiarity of your salt?

A. Simply, it is a rock salt which can be crushed and is suitable for heading mess pork. It comes in competition with the Turk's Island and Mediterranean salt. No other salt of that kind is produced in the United States. It is the only rock salt mine of the kind operated in the United States.

Q. Are there not salt mines in western New York?

A. There is one that is partially open and from which I got a sample within the last few days. It is not the same quality as this salt, and is not suitable for the same purposes, as

stated to me by Mr. Armour, Washington Butcher and other prominent packers at Chicago, owing to the fact of there being foreign substances mixed through the salt.

By **Commissioner Morrison**:

Q. At what price do you sell your salt?

A. \$2.25 f. o. b. on the cars.

Q. For how much?

A. For a ton sir.

Q. How much would a bushel be?

A. I don't know exactly. We always deal in tons. We always sell large quantities. Divide 40 into 225 and it will give you about the price.

By the **Chairman**:

Q. At what points does your salt come into competition with foreign salt?

A. At Chicago. We ship exclusively this grade and only to the large packers of Chicago. We don't pretend to compete with any other grade of salt. We are only able to supply the Chicago packers because they have to get their other supplies from Europe.

By **Commissioner Morrison**:

Q. It would cost about five and a half cents a bushel?

A. About that sir.

Q. Do you know the relative cost of their salt?

A. They have to take it to New York, tariff as their basis, via rail, but what they can do by the lakes I don't know. I have a statement from Jay Martin, who is the agent of the Michigan Salt Association, that they can reach Chicago with foreign salt through the lakes and sell at an even price with us. The packers, though, give the preference to our salt over foreign salt, believing it to be a superior quality.

By **Commissioner Walker**:

Q. How do you ship?

A. In bulk. The cars of the Illinois Central Railroad are backed into the mine and loaded there, and bulk is not broken until they are delivered at the stock yards at Chicago.

H. C. Waite of the State of Minnesota, temporarily in New Orleans, appeared before the Commission and was duly sworn.

The **Chairman**: Is your statement a statement of facts?

The **Witness**. Partially facts and partially argument.

The **Chairman**. If it is a statement of argument you had better file it with the clerk. We are simply taking evidence now.

The **Witness**. It is partially argumentative, but it is very short.

The **Chairman**. You may go on. (After the witness had read a part of his paper). As I understand your paper, it is an argument against the law?

The **Witness**. Yes sir.

The **Chairman**. We have nothing to do with that. The propriety and justice of the law has been settled. If you have any facts to show there are special and exceptional reasons why an order should be made, exempting any of these petitioners, or upon another line from the effect of this law generally, which we take to be just and proper, you may present those facts, and we will be glad to have them; but the argument is entirely out of place before us.

quantities as we do. In nine cases out of ten the places tributary to us wouldn't be able to buy in carload quantities as we do to get the better rate. The margin in selling the goods is very low indeed.

Q. If the rates were reduced to them, it would not hurt them, would it?

A. If they were buying the same quantities, I presume it would not hurt them at all.

By **Commissioner Bragg**:

Q. What competitive lines have you at Jackson?

A. The Illinois Central Railroad crosses us north and south, and Queen & Crescent crosses us east and west. We have a local railroad running from Natchez, Mississippi, to Jackson. We have also a local road under the auspices of the Illinois Central Road that runs from our town to the Yazoo delta.

Q. What road is that?

A. The Yazoo Valley Road.

Q. Then you have a road from Jackson to Vicksburg?

A. That is the Vicksburg & Meridian Road. It crosses us east and west.

Q. Is the Pearl River navigable at all at Jackson?

A. No sir. Some effort has been made to have it made so.

Q. They give you competitive rates at Jackson?

A. Yes sir.

Q. How does your rate compare with the Meridian rate?

A. I don't know the Meridian rate, but the Meridian rate is less than our rate.

Q. Do you know about how much?

A. No sir, I do not; but a gentleman from our town whose business it is can give you exactly that.

Q. How does your rate compare with the Vicksburg rate?

A. The Vicksburg rate is very much less than ours.

Q. You then have not the same low through rate that Vicksburg and Meridian have, but still you have a through rate that is allowed you that is less than that of other local points along the road. That I understand to be your situation?

A. Yes sir.

Q. What is the population of Jackson?

A. About seven to nine thousand; perhaps nine thousand.

Q. Have you any factories there?

A. Our cotton mills have been destroyed. We haven't had any since.

Q. Have you any other industries there?

A. We have the largest compress perhaps that is anywhere. There is no larger. We have cotton seed oil mills, and then we have two plough factories.

Q. Do they do any considerable business?

A. Oh, yes sir; they supply most of the ploughs that are sold in our country, with the exception of what Avery, from Louisville, sells.

By **Mr. Stahlman**:

Q. You stated that freights from the West going to Goodman, passed through Goodman to Jackson, and were then returned. Is that true?

A. That may be true with reference to the Illinois Central Railroad.

Q. Is it not true that the rate to Goodman is based on Jackson, and freight coming from the West to Goodman would stop at Goodman?

A. I think not sir. I don't know.

William Oliver, Secretary, Treasurer and General Manager of the Mississippi Mills, Wesson, Mississippi, appeared before the Commission and said:

I had the honor to address the Commission at Washington City, on the 11th of April; on the subject that I beg to be heard on this morning, and that is with reference to special rates for our mills; or rather, for permission for the road upon which we are located, the Illinois Central, to grant us special rates, as has been the custom with us since we first established our mills there. I have a statement to make with reference to it.

The **Chairman**. If it is a statement of facts, you may read it.

The **Witness**. (After having read the statement.) This letter has reference to a former letter, a copy of which has been placed with this communication, and also a statement in connection therewith. There may be something about the statement that may need explanation.

Commissioner Schoonmaker. Explain anything you wish.

The **Witness**. This statement, gentlemen, shows that our mills shipped in manufactured goods 1,840,464 pounds of goods manufactured out of cotton and wool. We also manufacture a great many goods in the way of jean pants that we ship from here to New Orleans for their manufacture, and pay the freight on them, and then ship them back to the mills, and they are sold. The sum total is 2,143,454 pounds of goods, and the casing in which they are placed. The average rate of freight on them is about \$12,860 that we pay. We receive in addition to that a large amount of supplies in the way of drugs, etc., from the East. Some come over the railroads, but the bulk of them come by the Morgan Line and up to the mills by the Illinois Central Railroad. We receive in that way 520,859 pounds. The freight on that averages from sixty to seventy-five cents per hundred. The freight on our goods is sixty. The total freight amounts to some \$25,000, and that embraces also 520,859 pounds of wool we pay the freight on, getting it from Texas, California and other points. The sum total of our freights paid out under the special arrangement we have with the road, and have had since we first went into operation, is \$25,000. When this Interstate Law went into effect on the 5th of April, and up to date, the rates of freight were increased upon us from 100 to 150 per cent. For instance, we had a rate of freight to Chicago of fifty-five cents, and it was increased to \$1.57; to St. Louis fifty-four cents, and it was increased to \$1.45. Nashville and Louisville and all the other points are in the same proportion.

By **Commissioner Bragg**:

Q. Fifty-five cents per hundred pounds?

A. Yes sir. Our special rate to Chicago is fifty-five, and the reason we have to get those

rates is this: We are manufacturing goods in competition with other manufacturers of the United States. We ship our goods all the way from New York to San Francisco. About the first of April we shipped two car loads of sewing twine to San Francisco. We make a great deal of it; have machinery especially for it.

By **Commissioner Schoonmaker**:

Q. What do you manufacture generally?

A. The work of our manufactory is fine jeans, gingham plaids, checks, cotton, cotton edging, sheeting, etc. It is a cotton and woolen mill combined. We have rising a million of dollars invested there; and I can tell you if we have got to pay the rates it seems to me we would have to pay under the operation of this law, I don't see but we would have to move our enterprise. We have built up a town there of some 8,500 people. We work 800 hands. We have built up quite a large town in the interior. The mill supports the whole thing, and the country is built up by it. That is our condition. I was handed some other papers here from lumber men and the like. (Submits papers to Commission.) If there is any question you would like to ask me, I will be glad to answer.

By **Commissioner Bragg**:

Q. The railroads give you special rates on your manufactured goods and on the materials you use in manufacturing them?

A. Yes sir; that was the arrangement made with them when we first went there.

Q. Those special rates are a good deal lower than the general rates of freight, are they not?

A. Yes sir.

Q. On similar goods?

A. On similar goods; yes sir.

Q. Do you know whether it is true as a matter of fact that the railroads of the United States pursue the same course in regard to manufacturers in the Eastern States, the Northern States, and the Western States that they pursue towards you in giving special rates?

A. That is my understanding; that these rates are given us to enable us to compete with our competitors from the East, West, and North.

Q. And because the railroads in those States give special rates there. Is that true?

A. I do not know whether it is true or not. I suppose it is true.

Q. I ask what you know about it?

A. I do not know. I can say this, in explanation, and perhaps it will lead you to understand what I know about it. Here is Columbus, Georgia, for instance. The Eagle and Phoenix are competitors of ours. They will have a rate to Cincinnati, or a rate to St. Louis or any other point. This road will give us the same rate. Wherever they have got rates they will give us the same rate. They give us the same rate to Columbus, Georgia, to Atlanta, to Augusta, to Macon, Savannah and Charleston, and we sell goods to all those places. We have rates going through to those points. But for that we couldn't compete with our competitors at those points. At Louisville, for instance, we sell a great many goods in the same way, and St. Louis and Chicago. Manufactured goods are sold on a very close margin.

A. W. Houston, Attorney for the San An-

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tonio & Aransas Pass Railway, appeared before the Commission and presented a petition on behalf of that railway, asking for a suspension of the fourth section of the Act, and said:

That petition is verified by the treasurer and traffic manager of the railroad company, as is also the exhibit of freight rates attached. The exhibit of freight rates attached shows the comparative rate between water and rail. The rates between New York and Boston and Corpus Christi by water on 1st, 2d, 3d, and 4th class freight are \$1.26, \$1.11, \$1.01, and 86 cents. By rail they are \$1.50, \$1.35, \$1.22, and \$1.09; showing the difference between the rates now by rail and the rates at present established by water. The water rates the railroad company must meet, in order to compete for freights to and from Corpus Christi and those points to which Corpus Christi has water routes. Take the item of wool from Corpus Christi to New York. There is a very large shipment of wool at this particular season of the year. It is just the clipping season, when the shipments of wool are made. They will all be made inside of the next ninety days for the wool season. The rate by water is seventy-five cents from Corpus Christi to the eastern markets. The rate by rail is \$1.45. In order to meet that water rate the wool will have to be permitted to come down to at most seventy-five cents. It is the same way with all other freights.

By **Commissioner Walker**:

Q. When it goes by water you bring it down to Corpus Christi from the interior?

A. Corpus Christi is a local market for wool. The wool is brought in there by the wool grower and it is marketed there to the dealer or shipper; and when they get ready to ship it to the competitive markets they ship it by water of course, as long as they can get it for about half rates; and the railroad company cannot compete for that freight for the reason that the line only extends from San Antonio to Corpus Christi, and being really only a local road and having no through connections except over these other roads, and the rates for its through traffic being more or less dependent upon the rates which the other roads establish to San Antonio, they will establish a rate to San Antonio, and this road being only tributary to them in a measure must maintain that rate. Under the enforcement of section four they can't go below. If they did, they would be charging more for a short haul than for a long. I will state also that the petition is accompanied by an exhibit signed by all the shippers, merchants and dealers in Corpus Christi.

Q. You want to carry it for less from Corpus Christi to New York than they do from San Antonio to New York?

A. We don't ship from San Antonio direct to New York, but that is the idea. We want to charge less from Corpus Christi to New York than we charge from an intermediate point to New York. We want to charge less for the long haul than for the shorter haul, for the reason that at the long haul we meet with this water competition. I will state to the Commission that I have the traffic manager of the San Antonio & Aransas Pass

Road present. It is a new road and a very small one. If the Commission would wish to cross examine him upon any of the statements made in that petition or the exhibits attached, he is present and will testify.

By the **Chairman**: It is for you to say whether you want to examine him or not. I don't know as we care to cross examine him.

John J. Gragard appeared before the Commission, was duly sworn and presented a memorial from the Chamber of Commerce of New Orleans.

By the **Chairman**:

Q. Do you wish to make any statement in addition?

A. Nothing; only to say I feel we have quite an opposition by railroad interests, while the people are not represented here. They have but little to say. They leave this matter in your hands for justice. The people, in my judgment, are not represented. From my experience, you have not heard the side of the the people, but the railroads and those who are tickled by railroad interests are very well represented here. The people are not.

Q. Are there any persons here present or whose attendance you can procure this afternoon?

A. There are representatives here from other bodies that will bring some evidence.

Q. If you will hand up any names before our adjournment, or on our coming in in the evening, we will call them.

A. I only wish to say I feel on oath that the railroad interests and people who are especially favored are well represented here, but the people are not; and you being appointed by a President who knows no South, no East, no North, no West, we feel sure you will truly consider the interests of the people, and we feel that their interests are for the maintenance of that clause. We may not be favored. We have no doubt we will be—the railroads in order to make the people dissatisfied and force us into measures, may adopt very heavy tariff rates, but we are willing to submit to it and wait the time.

By **Mr. Stahlman**:

Q. Is it possible to get the people in here before the adjournment of the Commission?

A. They are not enough interested. The people that have special interests are the railroads and people who are especially favored by the suspension of the clause. The people, as a rule, are poor, and they are not sharpers or intriguers. They are expecting the honorable Commission appointed will carry out their interests and will see to it without having an array of influence against it. They have not money and influence to carry their point and bribe people to favor them.

Q. Are all the people who have been discriminated against so poor they cannot come here?

A. No sir; they are not—

The **Chairman**. No matter about that. I repeat what I said. You may hand in any names, and we will call them.

Ashton Phelps appeared before the Commission and having been duly sworn testified as follows:

I represent a Committee of the New Orleans Cotton Exchange. We have had this question under consideration for some time. I will say that our endeavor has been to present the latter as we view it in the fewest number of words. We have understood from the rulings of the Commission that it was their intention to consider only specific cases as presented to them, involving the construction of this law. We therefore lay before you this petition which, as we conceive does present a specific case; but we wish it understood that we do not rest our case entirely here. When we have had the ruling of the Commission on this case which we now present to you we shall take further steps to thoroughly investigate the question and lay the facts before you either in other cities or at Washington. Our petition reads as follows: (Mr. Phelps then read the petition.)

The **Chairman**. Do you wish to make any further statement in addition to this?

The **Witness**. No; I have none to make.

Mr. Stahlman. I would like to ask if it is proper to develop, as far as we may, the reason why the cotton is not shipped to New Orleans locally, and the reason why it would not come.

The **Chairman**. You may ask any question you desire to ask.

By **Mr. Stahlman**:

Q. Memphis is a cotton market, is it not?

A. Yes sir.

Q. A pretty large interior market?

A. Yes sir; it is.

Q. A buyer buying cotton at Memphis would entail the same expense upon himself to reship it to New Orleans locally that he would entail if he shipped from Memphis to export it, would he not?

The **Witness**. What do you mean by the same expense?

Mr. Stahlman. I mean the expense accruing in the purchase and in the shipment of that cotton outside of the rates of transportation at Memphis would be as great in case the shipment was made to New Orleans proper, as if made via New Orleans for export?

A. I do not grasp your point at all. I do not understand the point of your question.

Q. I will try to make myself clear. A man buying a thousand bales of cotton at Memphis would incur the same expense in the purchase in the weighing, in the handling and in the shipping of that cotton at Memphis, although he shipped it to New Orleans—

A. I understand what you mean. You mean the cost of classifying and marketing that cotton would be the same in Memphis that it is here.

Q. No; I do not mean that. I mean that it would be the same whether the purchase would be shipped for export, or be shipped locally to New Orleans?

A. Certainly.

Q. It would be the same?

A. Yes sir.

Q. I understood you to say that the difference between the rates from Memphis through New Orleans for export, and Memphis to New Orleans locally, and thence for export from New Orleans, was sixty-five cents a bale?

A. Yes sir.

Q. I would like to ask you what expense the shipper or buyer at Memphis would have to incur locally at New Orleans if he shipped locally; or in other words what expense the cotton would have to incur in the shipment from Memphis to New Orleans to be re-handled here, and re-sold and re-shipped for export over and above the expense incurred on a direct shipment.

A. I do not perceive that that has any bearing on this case. His outside expenses have nothing to do with it. I make the point that a different charge is made for precisely the same service, so far as the railroad is concerned. What the outside men charge is something that does not concern the railroad rate of freight. That has nothing to do with it.

Q. I am trying to develop the fact that it would be impossible for the shipper to ship to New Orleans locally if the railroads would carry the cotton for nothing.

A. That is the point that does not concern us at all. All we ask is to be put on a just basis, and if we cannot handle it afterwards it is our fault.

Q. (Handing a paper to witness.) I would like to ask if that is a correct statement embodying the charges incident to warehousing, weighing, sampling, etc., at New Orleans as in vogue in season prior to this and up to a very few days.

A. Correct, so far as a part of the business of the port is concerned, but about half of it is not.

Q. What about the other half?

A. Half of it is handled by outside parties—one third of the cotton handled here is handled outside of this.

Q. But two thirds is handled by this Company?

A. It has been heretofore, but it will be handled on an entirely different tariff next year. However, that does not touch our point at all. We do not ask to have any discriminating rates in our favor, nor do we put before this Commission what it costs to handle cotton after we get it here. If we can't handle it as cheap after we get it here, on a fair deal from the railroads, that is our fault and we expect to lose the business and don't want to keep it.

Q. This then is the correct charge that has been in vogue on cotton prior to this date—upon two thirds of the cotton brought to New Orleans?

A. Yes sir.

Q. I have a paper which has been prepared and put in such shape that the Commission may understand it, giving the charge on a bale of cotton shipped here locally, sold and re-shipped. Is that a correct statement? (Handing a paper to the witness.)

A. It is as I have said, on a part of the commerce of the port. It is not true on the remainder.

Q. Then as I understand it to ship here locally and re-ship the cotton would tax the cotton \$4.10 per bale over and above the charge the Memphis merchant would incur in case he shipped through.

A. That is one statement of the case, but a very incorrect one, permit me to say.

The Chairman. Make any explanations
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in that connection that you may desire to make.

The Witness. That would lead you to suppose the thing was all on one side; but if you will take the case as it concerns the shipper from any local station on the Mississippi Valley Road the statement is very different, because the charges in Memphis would be precisely the same that that man has to pay, or very nearly the same. The point we make is that whether a bale of cotton was sold or resold here or not, if you took it to New Orleans on a local bill of lading and that cotton went through New Orleans and never was stopped here and never was sold here, that would cost sixty-five cents a bale more than precisely the same cotton sent on a through bill of lading.

Mr. Stahlman. The point we make is that if the railroads were to bring the cotton here for nothing it would not come here from Memphis.

The Witness. Not with your discriminating rates of freight.

Q. The rate from Memphis, I understood you to say, on local business, was a dollar a bale to New Orleans?

A. Yes sir.

Q. A discrimination as claimed by you of sixty-five cents a bale?

A. Sixty-five cents on through business.

Q. If shipped to you locally it would cost \$4.10 more to handle the cotton to New Orleans than to ship it through?

A. Yes sir; from Memphis; but suppose it was shipped from one of the local stations. Then your whole case falls to the ground, because we can handle it as cheap as Memphis.

Q. Being discriminated against as you claim sixty-five cents, and having against you here charges of \$4.10, there would still be a tax on a bale of cotton of \$8.45 by shipping here locally, and undertaking to make the market here, and then re-shipping, would there not?

A. No sir.

Q. Deduct sixty-five cents from \$4.10 and what does it leave?

A. That is a one-sided way of putting the case. That has nothing to do with it. The point we make is that this discrimination of sixty-five cents a bale gives a fictitious advantage of sixty-five cents a bale to the price of cotton at Memphis. So far as all market is concerned, if we are put on an equality with other rates of freight and we lose the business, that is our loss and we are willing to stand it.

Mr. Stahlman. I want to say in this connection, and it is a fact which I will establish by the tariff, that the railroads centering at New Orleans bringing cotton as far as 626 miles, are transporting it at less than the charges in New Orleans from the time it reaches here until it reaches the shipboard for export.

The Witness. Where is that from?

Mr. Stahlman. From all points on the line of the Illinois Central, Louisville & Nashville, and Louisville, New Orleans & Texas Railroads. I am not advised as to the Texas Railroads, because, as I understand it, their cases are not being considered here.

The Witness. Will you explain to me what you understand by the charges in New Orleans?

Mr. Stahlman. The figures put on that card.

The Witness. You say on there one dollar a bale commission, I see, for one thing.

Q. If it is sold locally is there not two and a half per cent commission?

A. Are you aware of the fact that a large proportion of cotton sold in New Orleans is not on commission at all?

Q. How is it sold?

A. A great deal of it is sold as low as twenty-five cents a bale commission. It is bought by people here and they get what commission out of it they can.

Q. Is there not among the commission merchants of New Orleans a fixed rate of two and a half per cent commission?

A. No sir; there is not.

Q. Do you not charge two and a half per cent commission on a great deal of the cotton sold here?

A. On a great deal we do, and on a great deal we do not.

Q. Then you discriminate yourselves?

A. A man is free to have his cotton sold by whom he pleases. That is where he is different from a railroad company.

Q. Are you not free to ship from Memphis either by rail or river?

A. Yes sir, but how about the local stations? I am making the plea for the man at the local station who is to pay \$2.25 a bale to get the cotton here over the same line. He is the man whose case I am presenting to you. The actual charges on cotton here so far as the handling of cotton without regard to any outside charge, which is a matter of convention, are one dollar a bale including the compressing and drayage. The total charges for the next season and those which have prevailed on one third of the cotton here this season have been one dollar for handling a bale of cotton including the compressing.

Q. But that statement is correct practically as to the business heretofore?

A. No sir; it is not correct, so far as the great majority of the business is concerned. It is correct so far as a certain amount of fixed charges is concerned. When you come to put the commission in there it is not a correct statement, because a large amount of the cotton sold here pays a very small commission.

Q. You say the whole charge to be incurred at New Orleans hereafter is only one dollar per bale?

A. I do.

Q. What is your compress rate?

A. It will be fifty cents. That is what our business has paid this year.

Q. What is your cartage rate?

A. That is included in the rate of thirty-five cents storage.

Q. Is that to and from the compress?

A. No sir; one way, thirty-five cents.

Q. And drayage fifteen cents?

A. To the ship; yes sir.

Q. What is it for, carrying into the compress?

A. That is included.

Q. Let us understand it. There are two cartages here on cotton, are there not?

A. Yes sir.

Q. One into the compress and the other out?

A. Yes sir.

Q. Do you mean to say the cartage in and out and the compressing is all covered by fifty cents?

A. I say it is all covered by a dollar.

Q. What is the rate of insurance?

A. It depends upon how long the cotton is in the press.

Q. Say about a month?

A. One eighth of one per cent.

Q. How much is that?

A. That is about five cents a bale.

Q. What is your commission?

A. That depends altogether on the nature of the transaction. Some cotton here pays a dollar a bale commission and other business don't pay twenty-five cents. It depends altogether on the nature of the business. Some business is worth a dollar a bale to handle.

Q. Do you charge anything for sampling?

A. That is all included in the thirty-five cents.

Q. Do you charge anything for weighing?

A. Yes sir, we charge fifteen cents. Our total charge is fifty cents. It will be fifty cents. I should have put in there fifteen cents a bale for weighing and sampling.

Q. Your rate is now fifty cents?

A. Yes sir.

Q. And that includes cartage two ways?

A. No sir, not at all. I say the rate is thirty-five cents for the factor's charge, and that includes drayage from the railroad to the press, and all the handling in the press. That is thirty-five cents. I say thirty-five cents covers the storage of the cotton and the drayage from the railroad or the river to the press.

Q. I desire to refresh your memory. I have here a statement that contains the rates to go into effect after this year. It says: The figures as compared with the ruling tariff for the past winter are as follows: Storage, old tariff, forty cents; new tariff, thirty-five cents. That is a reduction of five cents. Drayage, old tariff, twenty-five cents; new tariff, fifteen cents. That is a reduction of ten cents. Compressing, old tariff, sixty-five cents; new tariff, fifty cents. That is a reduction of fifteen cents more on that item and a total reduction of thirty cents. Additional storage for uncompressed cotton, old tariff, twenty-five cents; new tariff, fifteen cents. That is ten cents more. Rejections, old tariff, twenty cents; new tariff, fifteen cents. Small numbers for speculation, old tariff, twenty-five cents; new tariff, twenty cents. Five cents less, making a reduction on the old rates of about seventy-five cents a bale; and yet you say the entire charge will be only one dollar a bale?

A. You are going on something that I understand perfectly, technically, and you do not. That would be very true if your bale of cotton went through all the transformations that are indicated in that tariff, but they do not.

Q. Is it not true that a bale of cotton handled in New Orleans and sold in New Orleans goes through those transformations of storage and drayage at the compressing?

A. Yes sir; those transformations it goes through, but all the remainder it don't, save in

exceptional cases, special business and special rates charged for it. That charge for small numbers is made to the men that own the cotton. It is not made to the men who sell it. It is made to the new owner for separate services.

Mr. Stahlman. I confess I am not quite familiar with this business.

The Witness. I am perfectly familiar with this business, whatever I may be with others.

Q. But the charge, as you admitted, was \$4.10?

A. No sir, I never admitted it.

Q. On two thirds of the business?

A. No sir, I did not.

Q. That was my understanding.

A. I said it varied with the circumstances. There is a great deal of cotton sold here that don't pay at all.

Q. In what other respect is that an error?

A. You have got a dollar a bale. That is one thing. Brokerage, classifying, re-weighing and inspection—there is not one bale of cotton out of ten that pays brokerage. The buyers buy their own cotton. The compressing is too high. That is the same charge on cotton that comes from Memphis or anywhere else. Wherever it comes they collect it anywhere. That is charged to the ship.

Q. I would like to ask you to file with the Commission a statement of the expense incurred in handling cotton prior to this year, and a statement of the expense of handling cotton under the new agreement hereafter?

A. I will do that.

Q. I would be glad to have that statement in here this evening.

A. I can give it to you right now.

Q. You can take your time.

A. I don't need any time; I can give it to you just now. Do you want the dearest rate that was paid here last year, or the lowest?

Q. If you discriminated you had better give us both.

A. We did not discriminate, but business is very apt to be done in different ways. Some people have more enterprise about them and get their business done cheaper. The rate of the cotton compress association for storing cotton sixty days was fifty cents. The lower rate was forty cents. There was drayage to the ship. The highest rate was twenty-five cents and the lowest was fifteen cents. For compressing, the highest rate was sixty-five cents and the lowest rate was fifty cents.

Q. Was there any insurance?

A. One eighth of one per cent. This is the same in all cases.

Q. What is that on a bale of cotton—five cents?

A. Yes sir.

Q. That is the highest? That is what you charge the planters?

A. It is all the same. They all charge the same. That is what we pay and what we charge.

Q. Are you a cotton factor?

A. I am. I know exactly what I am talking about.

Q. Do you charge nothing for sampling?

A. We charged last year about fifteen cents a bale.

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Q. Was that the highest?

A. About the same all through.

Q. What for weighing?

A. That includes the weighing.

Q. Weighing and sampling?

A. Yes sir.

Q. You weigh cotton but once here?

A. That is all.

Q. Does classifying come in too under that head?

A. That is a charge the buyer pays.

Q. It is a tax on the cotton, is it not?

A. Yes sir; it is in Memphis just the same as it is here.

Q. We are discussing New Orleans. That is ten cents, is it not?

A. Yes sir.

Q. Is there a brokerage?

A. Very rarely. Most men buy their own cotton.

Q. Now the commissions. What are they?

A. The commissions are with the character of the business.

Q. Give us the highest.

A. The highest is $3\frac{1}{2}$ per cent.

Q. That is a dollar a bale on an average?

A. About that; yes sir.

Q. And the lowest?

A. I would hate to undertake to say that, because I don't know.

Q. Do you make any discriminations yourself? I won't use the offensive term "discrimination," but do you make any differences?

A. In only one or two cases, as I will explain to you. In cases of large crops, requiring no advances at all, where they come to us without any advances, we sell them at half commission. The work is very much less and there is no risk about it.

Q. When a man wants advances do you advance the money without any interest?

A. No sir; I do not suppose we do.

Q. You charge him interest?

A. Of course we do. We have to pay it when we borrow it.

Q. You charge him what your money is worth?

A. We don't charge him very high rates.

Q. What do you charge him?

A. Eight per cent per annum.

Q. Never more?

A. No sir.

Q. What are the stevedore charges on a bale of cotton?

A. About fifty cents a bale. It is done, I believe, as low as forty-five cents.

Q. What responsibility does the stevedore assume and what duty or labor does he perform?

A. He employs the screw men who put the cotton on the ship, and the longshore men who roll the cotton on board the ship. He counts the ship off and is supposed to know how to load her so as to get the greatest amount of cotton into her for her capacity. He does that for round price and he superintends the work.

Q. Now I want to ask you if you think a railroad that will carry cotton to New Orleans locally at a dollar a bale for over 400 miles is discriminating against it, when right under your own eyes you charge fifty to fifty-five cents for putting it from the side of the ship into the ship, per bale?

A. Have you ever seen that work done, and do you know the nature of the work?

Q. I ask you the question assuming it is very hard work and very difficult work. Do you think a railroad that brings cotton locally to New Orleans for one dollar a bale is discriminating?

A. I say that road is discriminating when they bring the cotton over the same road for the same haul for sixty-five cents a bale, no matter what the charges are.

Mr. Morrison. These roads ask that this law in its operation be suspended, and that the old order of things may be continued as to rates. Mr. Phelps insists that the law should be enforced so that the old order may not continue to exist, because he claims that you charge twelve cents more for bringing cotton to New Orleans if it stops there than you do if it goes through. Now you are justifying that as a philanthropist by saying that the man for whom you may carry it is to escape these local charges. Is that what you are trying to establish?

Mr. Stahlman. The point we are trying to establish is not so much that as the fact that if we brought the cotton here for nothing it would not enable the City of New Orleans to handle it locally.

Mr. Morrison. I do not see what that has to do with suspending this law.

Mr. Stahlman. The gentleman undertakes to bring into his computation the charge of discrimination.

Mr. Morrison. That is that you charge him twelve cents more for bringing a bale here than you do if it goes through. Now you are justifying that by saying that it would cost not you but the owner of the cotton something if you unloaded it here, and to save that something you will forego higher rates and carry it on.

The Witness. Will you allow me to make one remark in passing?

Commissioner Bragg. I understand Mr. Stahlman to mean that is the reason why the cotton is shipped for export here without stopping here.

Mr. Stahlman. That is the point exactly.

Commissioner Bragg. It is done to avoid these charges.

Commissioner Morrison. And he wants to help them by saving them an additional twelve cents. They themselves save \$3.10 or more by not stopping, and you want to give them twelve cents more to encourage them not to stop.

Mr. Stahlman. Those are not the figures. The gentleman made the statement that the rate on cotton from Memphis to New Orleans was \$1 a bale, and yet a man was permitted to ship from Memphis through New Orleans on a through bill of lading at a less rate than the New Orleans merchant would get if it stopped here by sixty-five cents a bale. The facts of that statement the railroads will undertake to rebut, I assume. I assume that the railroads are not carrying cotton from Memphis to New Orleans at thirty-five cents a bale, which would be implied by the gentleman's statement. That is what they would have to do in order to make a discrimination.

The Witness. How is that implied? The local rate is \$1 a bale?

A. Yes sir.

Q. The discrimination of which you complain is sixty-five cents a bale. If the railroads are guilty of the discrimination they are obliged to carry cotton from Memphis to New Orleans for thirty-five cents in order to produce that discrimination.

A. Not at all. I don't claim anything of the kind. The petition does not state it. Permit me, before we pass from this topic, to say that Mr. Stahlman's presentation of the charges at this port,—while I haven't the faintest idea that he does not believe them perfectly correct, still I protest here in the name of the Cotton Exchange that they do not do the port justice in this: That while he sets down the charges which are put on a bale of cotton at this port, including the compressing and the putting of that cotton on board ship, he fails to state to you that the bale of cotton that goes through here without stopping pays all those outward charges so far as compressing and putting on board are concerned, but that is not the point we are making here. The point we make to you is why this railroad should carry the bale of cotton from Memphis to New Orleans for sixty-five cents a bale, and say to the man at a way station 124 miles south of Memphis, "If you want to ship a bale of cotton or over that road in the same direction you must pay for the services \$2.25 a bale."

Q. Does the railroad of which you are now complaining charge any more relatively from local stations than it charges from Memphis?

A. Yes sir.

Q. Are you prepared to sustain that statement?

A. That would not come within the provisions of this bill, anyhow, because it is not a haul in the same direction and the same service.

Q. You charge a discrimination against me?

A. I do, because it is a haul in the same direction as far as this matter of local stations between Memphis and New Orleans is concerned there is no discrimination.

A. There is at some of the stations, because there are stations where you can ship a bale of cotton to Memphis under the tariff and haul it back again for less than you can ship it to the point direct.

Q. You want the railroads to so adjust their rates that the business from Memphis shall pay tribute to the commission merchant to New Orleans?

A. No, sir, I do not ask anything of the sort. I simply ask that we be put on the same basis, be given the same rate of freight, and put on an equality, and then let our business take care of itself. If we can't take care of it, it must go.

Q. The rates from Memphis are not controlled always by New Orleans. There are numbers of lines. There are lines by Newport News and Boston. According to your own statement, lopping off everything, a local shipment of cotton would pay \$2.70 a bale to be sold and re-handled here over and above what an export bale would cost?

A. No sir; I do not accept any such statement. I do not admit it for a moment.

Q. I would like to ask how you would get rid of the charge if the cotton was shipped locally to New Orleans assuming the railroads made the same rates from Memphis to Liver-

pool—charged those same rates from Memphis to Liverpool added to the rates from New Orleans to Liverpool as the through rate would make. How would it be possible to avoid that charge?

A. We will take care of ourselves. If we lose the business on the local charges here, that is our own business. We don't ask you to help us handle it after we get it here. We only ask for equitable rates which will give us in the open field the same chance; and then if we can't bring it here, we do not ask to have the trade controlled for us by discrimination.

At this point, 2 P. M., the Commission took a recess until 4 P. M., and then re-assembled.

The Witness. On thinking over the question since the adjournment of the Commission, I have thought it would be a simple way to get at the matter of the relative charges, if we took a bale of cotton from one of these way stations and let it go, on the first supposition, to Memphis and then come through here on the sixty-five cent rate; and then take the supposition that it was shipped directly here from that point and was handled here in New Orleans. With the permission of the Commission I will take the charges of that supposition. Let us suppose the bale of cotton gets to Memphis. Since the adjournment of the Commission I have taken the pains to get a statement of the charges at Memphis. Let us take them *seriatim*.

The Chairman. Are you supposing it goes from any designated station?

The Witness. Any station on this line and is handled at Memphis. Let us suppose first it starts this side of Memphis and goes into Memphis, irrespective of the rate of freight, and is handled there. Take first the storage, thirty-five cents a bale in Memphis. It is forty cents a bale here. The weighing I do not know the exact figures of, but the total charge for handling that bale of cotton in Memphis on the factor's account of sale is fifty cents. Our charge under the new tariff is the same. In Memphis cotton is stored in warehouses by the factors and is sent from there to the compress to be compressed. For that there is a charge made of twelve and a half cents per hundred pounds. We have no such charge as that, but we have a charge for drayage from the compress to the ship, fifteen cents a bale, which substantially offsets that charge. The charge for compress in Memphis is fifteen cents a hundred pounds, which on a bale of 500 pounds of cotton makes seventy-five cents. The charge here is fifty cents a bale for that same bale of cotton. We have taken that bale of cotton to Memphis and had it handled there and we have brought it here and handled it here, so far as the city is concerned. The cotton has got to be put on shipboard, and the charges for putting that balance of cotton on shipboard when it goes through New Orleans on the sixty-five cent rate are precisely the same as for putting that bale of cotton on shipboard when it is handled here. Both bales of cotton whether hauled in Memphis or in New Orleans, pay those charges of compressing and putting that bale of cotton aboard ship in every case.

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So when you figure out the mere question of charges, I think you will find that they vary very little in case of either place. So there is no extra charge of \$3.10 a bale for handling cotton here as compared with Memphis or any other port in the United States. That can be figured out only by taking the charges for putting cotton on board ship in New Orleans, and supposing the same bale of cotton handled in New Orleans afterwards with no such charges, which is an entirely unfounded assumption. That bale of cotton pays those charges in both cases. The Memphis factor charges precisely the same commission for selling that bale of cotton as in New Orleans. With him, as with the New Orleans factor, in certain cases it is a matter of convention and agreement. I make that statement, Mr. President, in order that it might not go on record with the tacit admission of the New Orleans Cotton Exchange that there exists any such disparity as that. I know the whole state of the case, and I know just as well as I know I am standing here that no such facts exist.

By Mr. E. B. Kruttschnitt:

Q. I understand that the complaint made by the New Orleans Cotton Exchange is that where cotton is shipped from Memphis and stops in New Orleans the price charged for the carriage is one dollar per bale, while for that same cotton shipped from Memphis via New Orleans to points in the Eastern or Northern States, taking the sea route from New Orleans, the charge which the railroads make, or the proportional share which the railroad companies get of that freight is only sixty-five cents per bale?

A. Between sixty and sixty-five. That is a part of the charge, only one branch of it.

Q. You state here in your petition that the rate of freight from Memphis to New York, via Louisville, New Orleans & Texas Railroad is thirty-two cents per hundred pounds. Where did you get those figures?

A. I got them from carriers who are in business.

Q. You mean that no cotton, as I understand it, is shipped directly from Memphis to New York. It is shipped from Memphis to spinning points in New England, via New York, is it not?

A. It makes no difference. I think it very likely cotton is shipped that way. I cannot answer on any such case as that.

Q. And this is the share which the L. N. O. & T. R. R. gets of that through rate to Fall River and other spinning points?

A. Yes.

Q. You have been a cotton factor in this city for a number of years?

A. Yes sir.

Q. Your house has done a large business?

A. Yes sir.

Q. You have received cotton from pretty much all points tributary to this point, have you not?

A. Yes sir.

Q. You are familiar with the rates of freight charged on different routes?

A. Pretty familiar with them.

Q. I would ask you whether the rate of \$2.25 to which you referred, from Shaw's Station to New Orleans, is an unreasonable

rate of freight when compared with the charges made by other carriers for the same number of miles of carriage?

A. Do you want a full answer to that question?

Q. I would like a categorical answer first, and then you may make any explanations you desire?

A. I think it is not, but I think the local charges of all the roads have been very high as compared with their through charges.

Q. That was not the question. I ask you whether it is a reasonable rate when compared with the charges made by other roads for the same number of miles of carriage into the city?

A. I do.

Q. It is reasonable when so compared?

A. Yes, sir.

Q. I will ask you whether or not it is an advantage to the commerce of New Orleans to receive this cotton which comes from Memphis, and upon which a rate of sixty-five cents per bale is charged, that is to say this cotton in transit for New England points.

A. In what way do you put that question? In the aggregate or for particular individuals?

Q. Would it be an advantage or a disadvantage to this city to have that trade cut off entirely?

A. It would be rather an advantage on the present basis.

Q. And to have cotton go across the country?

A. That is a different question. I don't answer it that way.

Q. I ask you if that cotton should not come here at all, would it be an advantage or a disadvantage?

A. It probably would be a disadvantage in a certain sense. It would not make very much difference one way or the other. It might be to some individuals.

Q. If I told you the railroad company were compelled to choose between lowering the rate from Shaw's Station to the Memphis rate, or raising the Memphis rate to the Shaw's Station rate, I will ask you whether it would not be a disadvantage to the commerce of New Orleans if they did the latter?

A. It would not.

Q. It would not be a disadvantage to cut off the Memphis cotton from New Orleans?

A. Not in the shape it comes here now.

Q. You do not consider it any advantage that this hundred and odd thousand bales of cotton should come to this port via the Illinois Central and via the Valley route?

A. No sir; not at the present rate, which practically makes Memphis a seaport.

Q. How do you mean?

A. I mean to say that their rates are within seven cents a hundred of ours to these points.

Q. But does not that cotton in passing through New Orleans give certain advantages to this port?

A. It gives certain advantages, but they are mere counterbalancing disadvantages.

Q. What are the disadvantages?

A. It helps to make Memphis artificially a better cotton market relatively than she should be. A bale of cotton at Memphis is practically placed in the same position as a bale of cotton at New Orleans on the seaboard.

Q. Would not Memphis retain the same advantage if the rates from Memphis to New Orleans were raised to the Shaw's Station rates?

A. If those were maintained; yes sir.

Q. Under those circumstances, would it be an advantage to have low rates from Memphis to New Orleans, or a disadvantage?

A. I do not understand you.

Q. If New Orleans is to elect between having the cotton go across the country from Memphis to the New England spinners, or come to the South at this reduced rate, which would be the greater advantage to this port?

A. It would not make very much difference either one way or the other.

Q. Whatever difference it made would be, however, in favor of New Orleans?

A. The thing then, so far as New Orleans is concerned, becomes almost a banking transaction.

Q. There are some other port charges also?

A. There are some port charges, but it more than overbalances so far as the great majority of the community are concerned.

Q. Are there any charges made by the Cotton Exchange against this railroad company in reference to its rates of freight in addition to this?

A. None whatever; and I want simply to take this occasion to say that the Cotton Exchange has not singled out this road alone in this matter from any idea that they alone were making these discriminations, but because we consider this case involves principles that are fundamental and on which we wish to have a decision, so that when we get that we will know where we stand.

Q. The points from which these lower rates are charged by the L. N. O. & T. R. R. are all competitive points, are they not?

A. Yes sir.

Q. Vicksburg, Huntington and Memphis?

A. Yes sir.

Q. You also know that if the rates from these points were raised to the same rates charged from contiguous noncompetitive points, none of that cotton would come to New Orleans.

The Chairman. Do you mean the same rates that prevail now?

Mr. Kruttschnitt. What the rates would be if equalized.

The Witness. We have not in our petition claimed a mileage rate. We have not claimed that the Memphis rate should be equalized with the local rate. We claim relatively reasonable charges.

Q. You claim that no less should be charged from Memphis than from any point this side of it?

A. That is the point which we submit to the Commission, who are experts. We claim relatively reasonable rates from these noncompetitive points. We do not claim that every rate of freight on that railroad should be made precisely the same. We ask the Commission to take the testimony in this case and in other cases of the same kind as they come before them, as to what are reasonable rates of freight for the service from through and from local points.

Q. But if this tariff were re-arranged in such

manner as to give rates from those competitive points approximately the same as from contiguous noncompetitive points, would it not be a great disadvantage to the commerce of New Orleans?

A. If it were applied to the eastern roads out of Memphis it would make no difference, because it would raise through rates of freight to the eastern seaboard.

Q. But if the rates by the eastern roads were so much lower in proportion as to enable them to govern the freight, it would be a disadvantage to the commerce of New Orleans?

A. It would be if they remained so; but if the Commission rule that they ought to equalize their rates, those cheap through rates from Memphis would not last very long.

Q. In other words, it would be a disadvantage to New Orleans if the freight rates from those competitive points by other routes to the sea were so arranged that New Orleans would not get the trade. It would be a great disadvantage to her, would it not?

A. It would depend on the circumstances entirely.

Q. What do you mean by that?

A. I mean if we were cut off altogether from receiving any cotton along that line of road, it probably would be a disadvantage.

Q. If you were cut off from receiving any cotton from those competitive points it would be a disadvantage?

A. We don't think any such construction of the law would cut us off.

Q. Any tariff which would cut you off would be a great disadvantage to this port, would it not?

A. I cannot conceive very well of any tariff that would.

Q. If it did, it would be a great disadvantage, would it not?

A. I don't see the use of answering that question, so long as the Mississippi River don't go dry, because we can get the cotton that way in any event.

Q. Do you not know that rates by river were raised very much as soon as the Interstate Commerce Law went into effect?

A. I should not be at all surprised, because I think the railroads have been driving the boats out of competition at these competitive points, because they have had a recourse the boats have not had—charging more at noncompetitive points.

Q. They have driven them out by low rates of freight?

A. Yes.

Q. Do you not know the rates of freight by the river lines have been very much increased from those competitive points since the 5th of April?

A. Yes sir; very likely. It is very natural that they should be.

Q. Don't you know they were?

A. Yes sir.

Q. Don't you know they were put back when the clause was temporarily suspended?

A. Certainly. It gives the railroad the power to compete at these points, but the man in the interior does not get the benefit. It is simply restoring the old state of things.

Q. Do you consider it an injury to the commerce of New Orleans that the railroads should

bring the cotton here from Memphis rather than the river?

A. I do not see it makes any difference provided they bring it on relatively the same terms. It is an injury when it is brought here now to us as a market.

Q. Do you know whether it is the custom of the river lines to charge less from competitive points than from noncompetitive points?

A. It may be in some cases. I think as a general rule, they have a tariff. Sometimes they take less; but still any man can run a steamboat on a river.

Q. Do you not know as a matter of fact that their custom is to charge more from noncompetitive points than from competitive points?

The Witness. What kind of competitive points do you mean; railroad competitive points?

Mr. Kruttschnitt. Yes sir.

A. They necessarily have to charge less for the railroad competitive points, because the railroad can make any rate there to drive the steamboat out.

Q. How is it from river competitive points where there is no railroad?

A. Those rates of freight are adjusted by competition between the different steamboats. But the man at the local station on this line has not that kind of competition. He is in a different fix from the man at the landing of the river.

Q. The man at the point on the river where there is no competitive line has not any of the advantages of the competition?

A. There always can be competition on the river.

Q. But there is not always?

A. In nine cases out of ten there is.

By Commissioner Bragg:

Q. Do you remember about what the total receipts of cotton were at the Port of New Orleans last summer?

A. About 2,000,000 bales; 1,900,000.

Q. How does this season compare with last?

A. I could not give you the statistics, but I can get them.

Q. Can you tell us about what proportion of the cotton goes through this port on through bills of lading for foreign points, without stopping here?

A. Last year there was about 1,100,000 bales of cotton handled here actually in compressing, and the remainder went through. This year the proportion has been just about the reverse. It has been about 1,100,000 that went through, and about 900,000 actually handled here.

Q. Do you know what were the receipts of the Port of Galveston last year.

A. No sir, I do not. I do not follow those things exactly. Some of our men here are statisticians, and they can give you that information in a nutshell.

Sidney Bernhimer appeared before the Commission and was duly sworn.

The Chairman. You may make your statement.

The Witness. I sent you my documents from Port Gibson City. I suppose you have them filed with your other papers; and also a reply in reference to the statements made by

Mr. Cumings at Washington, in reference to the rate changed from Port Gibson, Mississippi. He made the statement at Washington that the rates are now a dollar less than they were in former years over our old route, which I proved was mistaken.

By the Chairman:

Q. What old route?

A. We used to have a route for shipping our cotton over the Grand Gulf & Port Gibson road, but the L. N. O. & T. road bought them out and tore it up, and now we are compelled to ship cotton over that road at a rate two hundred per cent higher than to Vicksburg. The printed tariff to Vicksburg is seventy-five cents a bale and the Port Gibson rate is \$1.75. Vincent & Haines told me they had shipped at fifty cents a bale. Our rate is \$1.75. There is the same discrimination made on molasses and sugar, and we claim it is an unjust discrimination. We can't sell goods in Port Gibson as they can in Vicksburg on that account; and the trade that ought to go to Port Gibson goes to Vicksburg. I claim if the railroad company can carry cotton for seventy-five cents from Vicksburg to New Orleans, or fifty cents, they certainly can carry from Port Gibson for less than \$1.75. We do not expect it to be hauled as cheap as Vicksburg, but we do expect it at a lower rate than \$1.75. Even taking their printed tariff, the rate is entirely too high. We are perfectly willing and expect to pay more, but not such a difference as that. We have cotton now lying at Port Gibson waiting for the action of the Commission, which amounts to a considerable sum. \$1.75 is too much to charge. We are nearer New Orleans than Vicksburg, and still we are paying \$1.75 while Vicksburg's printed tariff is seventy-five cents. On the old route the cotton was handled four times, and this way it is only handled twice; but we are made to pay the same, if not more than it was in former years. We used to get cotton through by the Grand Gulf & Port Gibson route for \$1.64.

By Commissioner Schoonmaker:

Q. Are you in business at Port Gibson?

A. Yes sir; I have been in business there a good many years. We have even applied for thousand bale rates to the L. N. O. & T. Road and got no response. We are on a direct line; no change of cars; no transfer; no nothing. We claim that the rates charged are too heavy in comparison to the rate at Vicksburg.

Q. What is the rate from Port Gibson to Vicksburg?

A. \$1. From Port Gibson to New Orleans, 204 miles, they charge us \$1.75, while from Port Gibson to Vicksburg, only twenty-nine miles, they charge us \$1. They have got us tied, and we can't help it. Under the construction of the law we think the Commission has a right to make a change.

By Commissioner Walker:

Q. As I understand you, you think there should be some discrimination in favor of competitive points?

A. Yes sir; we expect that; but not such a great difference. We don't expect to receive freight at the same price Vicksburg does, because it is a competitive point and has the river in front of it; but we do expect the difference not to be as great as it now is, certainly.

By the Chairman:

Q. What is the distance from Port Gibson to Vicksburg?

A. Twenty-nine miles.

Q. And what is the rate?

A. \$1. The distance to New Orleans is 204 miles, and the rate is \$1.75.

By Commissioner Walker:

Q. How is it about Baton Rouge?

A. I think it is either 50, 60 or 75. I am not well posted on that line.

By the Chairman:

Q. What should you think would be a fair difference to make in favor of Vicksburg and against you?

A. Twenty-five cents a bale as between us and Vicksburg. We can't handle cotton to advantage in certain parts of our county because it goes to Vicksburg. I am told they get molasses at forty cents a barrel. We pay \$1.85. That is discrimination in favor of Vicksburg.

Q. And a difference of 25 cents against you, you would think, would fully overcome all the disadvantages and expense of the service?

A. Yes sir; but \$1.75 we claim is entirely too heavy. It is against all reason.

Hon. N. D. Wallace appeared before the Commission and was duly sworn.

The Witness. Mr. Chairman, I desire to present here a petition which will express the sentiments held upon this question by four of the largest mercantile exchanges in the city, containing, I might say, next to the Cotton Exchange, all of the business element of the city—the New Orleans Produce Exchange, the Sugar Exchange, the Mechanics' & Lumber Dealers' Exchange and the Merchants' & Manufacturers' Association. The petition treats of the subject in general form, but we have also witnesses to be examined who will testify to their knowledge of the trade and their ideas about it—merchants in the city. I am sorry to say that under some erroneous impression that got about, the idea exists in the minds of many that tomorrow you would be here and the testimony against the suspension of this clause would be taken up then. A number of the best posted merchants who intended to appear before you, I am told, will be unable to appear to-night, owing to that misapprehension. Therefore, if it should be necessary, I would ask that they be allowed to give you such views as they may have concerning that branch of the business. (Mr. Wallace then read the petition above referred to.)

This paper contains the unanimous sentiment of the business interests represented in the different exchanges, and this action of their sub-committee, or committee appointed for this purpose, has been received and indorsed and improved by each board of directors of the various exchanges; giving you, I think, a very strong insight into the opinions of the business community of this city. So far as I have heard the testimony today, I think, I do not remember, but one witness representing the mercantile department of the city who has taken exceptions to the opinions expressed in this petition, and that was a representative of a particular local trade of his own which would naturally have been influenced, but

which was not expressive of the general trade of New Orleans. The general opinion in this city is that the law should be enforced; that the necessity for the clause was seen on the passage of the Bill. With all due respect to the Commission we ask that you will at least give this provision a test and see its workings, see its effect, beneficial or otherwise, upon commerce. In making their petition they do so with all respect, but they particularly urge it with a view to the fact that that in a very short time after the time allowed for the suspension, if another period were allowed to the road in this section, it would run up into our new crop year, the period when we are marketing our product; and then if tested, any ill effect it might have on trade would be felt much more seriously than it would be at this season of the year. The general opinion, I think, has been that that was intended by Congress as a safety-valve in case of any serious results to the commerce of the country; and the idea of this community is that it should be tested, at least given a fair trial; and then if it does not work properly you can utilize the power given to suspend it.

William Campbell appeared before the Commission, and having been duly sworn, testified as follows:

The Witness. The first case we would state is this: A rate of freight exists from New York to Memphis by the Morgan Line and Mississippi Valley Road to that point on first class freight of sixty-five cents; and that same rate exists from New Orleans to Memphis. We have here freight from Boston to Brookhaven, first class sixty cents.

By Commissioner Walker:

Q. Where is Brookhaven?

A. On the Illinois Central Railroad, between here and Jackson, Miss. We have from New Orleans to that same point, on that same class of goods, over that same line, a rate of seventy cents. I cite those as two cases. Here is a bill of lading (producing it) of the Southern Pacific Railroad, from New York to Brookhaven, Miss., and the various classifications are defined as follows: Second class, forty-five cents, fourth class thirty-five cents, sixth class twenty-five cents. The Illinois Central Railroad printed tariff, bearing date April 23, tells us that that fourth class rate of freight from this city to that point is thirty-eight cents, making a difference on its face of three cents in favor of New York as against New Orleans. These are facts about as near as we can get at them. I have here a bill of lading from New York via the Virginia, East Tennessee & Georgia Air Line. It classes sugar as sixth class at forty-five cents from New York to Norfolk, and over the tier of railroads down to Jackson, Miss. We have a rate by the Jackson Railroad from here to that point of forty-five cents, showing that they haul that freight from New York to Norfolk and through the East Tennessee, Virginia & Georgia Air Line down to Jackson, Miss., for twenty cents. I have here a bill of lading from Louisville, Ky. It carries with it plow irons. The rate of freight from that point to Jackson, Miss. is fifty-three cents. By the Illinois Central Railroad tariff here the rate of freight to that point on the

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same class of goods is seventy-two cents, making a difference between fifty-three and seventy-two cents in favor of Louisville. I have here another bill of lading from New York to the same point which carries sundry articles; but I desire to point out but one.

By the Chairman:

Q. What do you mean by the same point?

A. From New York to Jackson, Miss., sardines on that bill of lading from New York were carried at eighty cents. From New Orleans to Jackson that same class of goods under the classification here by the tariff have a rate of eighty-five cents. I have a freight here from New York to Orange, Tex., going through this port. The rate of freight from New York to Orange, Tex., on fourth class goods is fifty cents. The rate of freight from here to that point is thirty-five cents, which would indicate that they carried that freight from here to Orange, Tex., for fifteen cents, while we have to pay thirty-five. That was given under the signature of a general freight agent in New York. I have a bill of lading here from St. Louis to Jackson, Miss., on flour, a rate of seventy-six cents per barrel. The same class of goods from here to that point, Jackson, Miss., cost seventy-six cents barrel. I believe that is all the statement I have to make. There are others representing other exchanges who have facts similar to mine.

By Mr. Stahlman:

Q. Will you please read the dates of the bills of lading you have produced?

A. The one I last read from St. Louis bears date March 28. The rates of freight I read from New York to various points in Texas, I singled out to establish what they are—all in that neighborhood. The date is April 18. The bills of Thurber, Whyland & Co. of New York are the 28d and 21st of March, and the bill from Louisville bears the date of March 28—all of a very recent date.

Q. What is the date of the tariff?

A. April 23, by which we made the comparison.

Q. Do you understand that to be the tariff issued since relief was granted, or assuming that there would be no relief?

A. We took the tariff as we found it, without regard to what its effect would be or may be.

Q. You are not making any comparison between any rates prior to that date?

A. We operate on the tariff. That is our only guide.

Q. The tariff from New Orleans to these points is dated April 23, and the shipments were made some time prior. The nearest shipment is about some two weeks before and some of them run back thirty and forty days.

A. We have them reaching from April 18, to March 21.

Q. I suppose you are aware of the fact that tariffs do change and they have been changing quite often as circumstance would arise to render it necessary?

A. We merely take these facts to show if it was permanent, what we might expect.

Q. Was it not customary to change the rates even before suspension?

The Chairman. Do you mean during the last month? These are during the last month.

itness. There are some April 23, March 21.

shlman. The latest is April 23, hers are all before the suspension.

Cummings:

sh to ask if I understood you cor-
aying that the L. N. O. & T. railroad
tion with Morgan's line of steamers
sixty-five cents on cotton from Mem-
ew York?

sr; I had no reference to cotton. I
you the exact article I had reference
first class goods as classified. From
k through New Orleans to Mem-
class freight is carried at sixty-five
l from New Orleans to that same
same class of goods is carried at
cents. They ask the same rate.

e you the bill of lading showing

ve not.

e you a tariff showing that?

sr; I can verify it by your general
ent or anybody from the Mississippi
it is here.

shlman. I believe there is nothing
plicating the line I represent.

itness. Nothing in the world.

Chairman:

it effect do you claim this has upon
ss of the port?

way this operates against us, gen-
this: We find articles that we pro-
elves carried to those distant markets
ght back by circuitous routes or
ur doors at a less rate of freight than
tain for them here.

that is harmful to the business of

sr; because it prevents us from sell-
goods here ourselves.

mmings. It is but justice, perhaps,
ness to say to him that the general
ent and the New Orleans agent of
ny are both in the room, by whom
he can substantiate those figures.
nation is directly at variance with

itness. I will ask Mr. Howe, if he
He is my authority. Mr. Howe,
orrect in stating the rate?

owe. You were, until a few days
not the case now.

airman. Mr. Howe had better be

Howe appeared before the Commis-
having been duly sworn, was exam-
llows:

Campbell:

I correctly state to the gentlemen of
ission that the rate of freight from
c was sixty-five cents and that the
mphs was the same?

r statement with regard to the rate
v Orleans to Memphis was correct.
ement as regard the New York
bly has been correct in the past; in
ach lower rate has been had in the
sixty-five cents from New York to
a much lower rate.

Q. How long has it been since that rate was
lowered?

A. Within two months.

Q. Does the rate of sixty-five cents from
New York to Memphis exist now?

A. It does not.

Q. When did you change it?

A. It was changed in New York about three
or four days ago I believe. I have not the ex-
act dates.

Q. Has this community received official no-
tice of the change?

A. I do not know sir. I did not give it.

Q. Is there any means of finding out when
there has been any change?

A. There is no regular way to find out at
present.

By the Chairman:

Q. Are the rates posted?

A. No sir; it is a through rate. The Com-
mission has not said it should be posted as yet.

Q. You have not posted the rates at all?

A. No sir.

Q. You have not given any public informa-
tion on the subject in any way?

A. No sir. I fact I haven't the making of
the rates myself.

Q. What are the rates?

A. Eighty-two cents.

Q. From New York to Memphis by way of
New Orleans?

A. Yes sir.

By Mr. Campbell:

Q. Did you not tell me on Friday or Satur-
day that the rate of freight from New York to
Memphis was sixty-five cents on that class of
goods?

A. I did sir.

E. L. Ranlett appeared before the Com-
mission and, having been duly sworn, was ex-
amined as follows:

By Mr. Wallace:

Q. I believe you live in this city?

A. Yes sir.

Q. Are you engaged in business here?

A. I am engaged in the manufacturing in-
terest.

Q. Have you been here for some years?

A. Yes sir.

Q. You have had a good deal of experience
in the course of your business career on rates
of freight from various points competing
with other cities?

A. Yes sir.

Q. Heavy as well as other goods?

A. Yes sir.

Q. Will you be kind enough to make to the
Commission the statement you desire to make?

A. On short notice without any preparation.

—Mr. Wallace invited me here to demonstrate
if possible, that New Orleans was entitled to
the full benefit of the Interstate Commerce Bill
with regard to the long haul clause. That is
about the only subject I interest myself in, be-
cause our goods need a long haul to get them
to market. On all questions of that kind New
Orleans up to this time has been at a serious
disadvantage. We are a port invaded by
steamers from the east, with low rates of
freight naturally; and in order to compete

with the lowest competition produced by them, the railroads from the east are forced in their through rates to competitive points beyond, to recognize that competitive rate. For instance, the railroad rate from New York to any point in Texas is bound to take cognizance of the fact that the water rate from New Orleans, which is three quarters of the distance, is only, on an average, about twenty-five cents per hundred pounds on car loads, Class A. Adding to that the local rate by rail would put Texas down in competition with New Orleans, almost. Therefore we are very anxious for the long haul clause to be enforced against those roads. It is because our natural advantages determine the question of our rights and because it is necessary that we should have those advantages that we want the long haul clause. I have only two papers to put before you as documents. The rate from New York to Chicago direct, which is about the same distance as from New Orleans, is thirty-five cents a hundred pounds by rail on car loads, Class A. The Illinois Central Railroad under date of April 16 classifies carloads Class A at forty-nine cents. On an article that New Orleans has distinct supremacy of in the commercial world, importing it at a less cost from a foreign country manufacturing it with American labor at the same cost, bringing it to New Orleans at a low cost and a shorter time, we are unable to distribute it at anything like an equitable rate to markets which legitimately belong to us, by these railroad discriminations. This is a long haul. It is over a thousand miles. Subsequent to the enforcement of the Interstate Commerce Bill, and outside of the territory in which the long haul clause was suspended, there is a distinct violation of the law. I believe of the 80,000,000 pounds of Mexican hemp imported into the Union annually the manufacture of over 40,000,000, of it in the City of New Orleans would be absolutely imperative under any equal distribution of the rights of this section under the Bill, because it would be impossible to compete with the City of New Orleans were that Bill enforced. This is true of almost all manufacturing enterprises in our State. The manufacture of shot, which we import largely from the west on lines of road centering and converging in New Orleans—the distribution of that article has been seriously hampered in the immediate past by the operation of competitive rates produced by a suspension of this clause. I have been all my life engaged in making freight rates; and New Orleans, while entitled to the greatest consideration, is, as you gentlemen will certainly determine if you have the time, under a ban of discrimination wide spread and general. The merchants here find at the moment they are about to consummate a trade they are confronted with the rate of delivery; not the rate of freight but the rate of delivery on the goods at a point much nearer by thousands of miles sometimes to them than any other point, the competitive point particularly; and the trade is canceled because they cannot make the rate. We have a port equal to any port in the Union, unquestionably. If you have time to investigate that you will see it, if you do not know it already by history. There is nothing

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can prevent our commercial supremacy but discrimination on freight rates; nothing; and that you will find.

Q. Is it not true that St. Louis houses ship the article of shot into Texas under the guise of willow and wooden ware?

A. It is true.

Q. Is it not a fact that that is contrary to the regulations of those roads?

A. It is.

Q. Is it not known by some of the roads in Texas that that has been done and they have failed to interfere with it and stop it?

A. It is.

Q. Is not this seriously injurious to the shot trade of this city?

A. Yes sir.

Q. Has it not interfered with the shot business of the city already?

A. Yes sir.

By Mr. Stahlman:

Q. I would like to ask you to specify what the rates are from New Orleans to Chicago on hemp, and New York to Chicago.

The Witness. On the manufactured article?

Mr. Stahlman. Yes sir.

A. Thirty-five cents a hundred by rail, twenty-seven cents a hundred by canal and steam, and twenty cents by the Lakes.

Q. What is the rate from New Orleans?

A. Forty-nine cents.

Q. What is the distance from New York to Chicago by rail?

A. It is fractionally the same as from New Orleans—it is within 100 miles; it is within 50 miles.

Q. The distance from New Orleans to Chicago is what?

A. Within 50 miles of the same as it is from New York to Chicago.

Q. Are you not mistaken about that?

A. I don't know whether I am or not. I don't believe I am mistaken.

Q. There is at least 150 miles difference?

A. That would not make 40 per cent. difference in the rate. That would only be 15 per cent; and this is a difference of 40 per cent in the rate; and besides, it is a long haul, and the rate is calculated in that case in favor of the short haul.

Q. With reference to the shot rate—I am not here as a defender of the Texas & Pacific Railroad, but I want to get some information. Are you yourself familiar with the shot rate just referred to?

A. Yes sir.

Q. Do you not know that the transaction referred to was a swindle upon the part of the shipper at St. Louis and was promptly investigated by the railroads at considerable expense and has been stopped?

A. I will answer the question. The swindle referred to has been perennial for fifteen years. I have been in the shot business for from fifteen to seventeen years in New Orleans, and from that day to this it has been going on and is a thing of every day occurrence until it was alleged to have been stopped. You say it is stopped. That is my first information of it. I am glad to hear it.

Q. I want to ask you if the shot manufacturing industry of this city has always

a position to sell shot with freedom. Have you been making shot all the time and undertaking to compete?

A. We were not discussing the question of one particular tower, but an industry which has been going on for fifteen years. I don't suppose you are interested in the particular welfare of one institution, but the trade. The trade has suffered, under my personal knowledge, about fifteen years by discrimination. This is as well known to the gentlemen around me as A B C. That thing has been known to them and I will do them the justice to say that on this end they have turned Heaven and earth to stop it. They have employed special detectives and others, and the first intimation I have heard it was finally stopped was right at this moment today; because within sixty days it has been done.

Q. Were you and Colonel Wallace engaged in the same institution?

A. Yes sir.

Q. Have you ever had any combination with any shot manufacturers of other section for the purpose of pooling your business, under which you agreed to remain silent, lay quiet and do nothing?

A. We leased our tower, if that is what you mean.

By **Mr. Wallace:**

Q. Is it not true that your business has been largely in shot coming here on consignment and that you desire to enter into the Texas trade not as a leased tower, but in your business?

A. That is right. I am not representing any particular corporation, but the trade of New Orleans.

Mr. Stahlman. The fact still remains that you leased your tower.

W. W. Finley who had been previously sworn and examined again appeared before the Commission and said:

In connection with what was stated about the shot business and shot being shipped as wooden ware, as one of the Texas roads, one of the roads that makes the delivery into Texas, I would like to state that the Texas roads have organized an inspection bureau and have at the principal points in Texas inspectors for the purpose of inspecting every car load of freight and seeing it is properly classified and charged for.

Hugh McCloskey appeared before the Commission and having been first duly sworn was examined as follows:

By **Mr. Wallace:**

Q. You are a resident of New Orleans?

A. Yes, sir.

Q. What business are you in?

A. Commission merchant and dealer in general produce.

Q. You do a good deal of business in the West?

A. Yes, sir; principally in the West.

Q. You are President, I believe, of one of the Exchanges here?

A. President of the Produce Exchange.

Q. Have you had any experience in shipping

here since the Interstate Commerce Law went into effect?

A. I have had my attention drawn to certain rates that were given after the law went into effect.

Q. Will you be kind enough to state to the Commission what your experience has been?

A. On the 6th of April my attention was drawn by the firm of Smith Brothers & Co., after which I verified it by a representative of the Illinois Central Railroad, that the rate of freight from here to Chicago on that date was \$1.07 a hundred. I have the bills of lading to prove that the rate from Chicago over that route to New Orleans on the same date was thirty cents a hundred.

By **Commissioner Schoonmaker:**

Q. What was the classification?

A. Fourth class.

By **Mr. Wallace:**

Q. Is it not true that the thirty cent rate was given to a very large, enterprising and wealthy firm in Chicago?

A. Several firms.

Q. They were pretty large, were they not?

A. Yes sir; Armour & Co., and the Anglo-American Packing Company, two of the largest concerns in Chicago, were given a rate on that basis.

By **Mr. Stahlman:**

Q. The rate from Chicago to New Orleans was thirty cents?

A. Yes sir.

Q. And the rate from New Orleans to Chicago was how much?

A. The same day. \$1.07.

Q. On what class?

A. The same class; fourth class.

Q. Is bacon in the fourth class?

A. I think so; yes sir.

Q. Are you not mistaken?

A. That is my impression.

Q. Is it not a special class, Class B?

A. My impression is that bacon comes under that class.

Q. Would you expect to send bacon from New Orleans to Chicago?

A. No sir; but we would expect to send bacon to intermediate points between here and Chicago. The local rate to intermediate points were so high that under the law as it passed Congress the railroad in order to keep up its local rates between here and that point, was compelled to advance the rate to Chicago to correspond to the law, as I understand it.

Q. Your idea is that you ought to be able to bring meat from Chicago here, and then ship it back three or four hundred miles in competition with Chicago?

A. We are not alone. While we represent several large Chicago packers, we also represent a large St. Louis packer from whom we can get freight by river, if necessary.

Q. If the law were enforced and the rates made the same to all intermediate points as to New Orleans, do you think you would be able to bring it down here and then ship it back?

A. It might be brought down at certain times when the fluctuations of the market would justify us in doing it.

Edwin Belknap of New Orleans, Louisi-

and appeared, before the Commission, was duly sworn and said:

I wish to offer in evidence a bill of lading from New York by Savannah to Tallahassee, Florida. The round charge is \$1.36 first class, whereas the rate from New Orleans is \$1.29. I leave this as a specimen of the discrimination against this city in competition with New York. At the same time I submit the tariffs of the Illinois Central Railroad to certain points in Alabama and Georgia, from this city as compared with those from New York, wherein I find that the greatest case of discrimination is at Eufala.

By the **Chairman**:

Q. What is the date of that?

A. April 25. The rate on first class freight is \$1.15, and from New York it is \$1.14. The distance from New Orleans is about 400 miles, and from New York about 1,000. I have in connection with this, a gentleman who is largely interested in business, and who can give you further information.

Mr. Stahlman. I don't understand the gentleman to have made any complaint against the Louisville & Nashville.

The **Witness.** Yes sir. I said the Illinois Central. I should have said the Louisville & Nashville. The principal case is from here to Eufala, where the rate is \$1.15 from New Orleans and from New York \$1.14 on the same class, first class.

Mr. Stahlman. Is the gentleman aware that Eufala is not on the Louisville & Nashville Road, and that that road has no control over the rates from New York to Eufala?

The **Witness.** No sir; I was not aware of that. I supposed it was part of the same system.

Mr. Stahlman. The Louisville & Nashville has no control over those rates, and cannot make any rate from New Orleans to Eufala except such as the connecting roads see fit to allow.

John W. Bryant appeared before the Commission, and after having been duly sworn, said:

Mr. Chairman. I appear only as the representative of the National Board of Steam Navigation, which is an association of steamboat owners or steam vessel owners rather, in the Mississippi Valley and in the Northwest and the East. The object of the association, is to promote the interests of steam vessel owners, and to protect them from exactions and discriminations, both local and legislative. Taking advantage of the invitation that had been extended by the Commission, the Board had a meeting in New York on the 26th of April, and prepared a protest with some resolutions against the suspension of the fourth section of the Interstate Commerce Act, and they have commissioned me to read the protest.

The witness then read the protest.

Ashton Phelps who had been previously sworn and examined, again appeared before the Commission and said:

I wish to make a couple of corrections. I desire to be as thoroughly correct, in my statement.

You will find that in the petition of the Cotton Exchange, the cost of transfer from the railroad to the steamship here is put at \$5 per car. I have since had information it is only \$2 per car. Nevertheless we were careful as we had not exact information on that point not to let that charge figure at all in the 65 cent rate. It has nothing to do with it. Another correction I wish to make in a statement I made a little while ago. I stated that the charge for compressing in Memphis was fifteen cents per hundred pounds. I have been informed that the rate has been changed within the last sixty or ninety days to 12½ cents per one hundred pounds. If the Commission will permit me one more remark, which I forgot to make in the course of my testimony, I will say that in any competition between the railroads and the steamboats, the railroads will always have the insurance from Memphis to New Orleans in their favor to make the rate.

M. L. Scovell appeared before the Commission and, having been duly sworn, was examined as follows

By **Mr. Wallace**:

Q. Where do you reside?

A. In Shreveport.

Q. How long have you lived there?

A. About twenty years.

Q. What is your occupation?

A. I am now general freight agent of the Red River and Coast Line Steamboat Company.

Q. Your occupation has given you an intimate acquaintance with all the business details there, has it not?

A. It has sir.

Q. You heard it stated this morning that there had been an advance in steamboat rates. Do you remember what it was?

A. I heard the assertion made this morning that rates had advanced from sixty cents a barrel from St. Louis on flour to \$1.10 to Shreveport.

Q. The rates by river?

A. The rates by river did not advance. Our rates prior to the time the Interstate Commerce Bill went into effect, was fifty cents a barrel on flour from St. Louis to Shreveport. They are still fifty-five cents a barrel.

Q. You heard it stated today by witnesses for suspension at Shreveport, that the result of the advanced rates was almost a total suppression of business. Have you, during your daily intercourse with the business men of Shreveport, noticed such an effect?

A. I did not notice any such effect. The business seemed to be going on about the same way since the Interstate Commerce Bill went into effect as before. There was some little delay in getting goods on account of the river route being longer than the way they have been getting them direct by rail before, but I didn't see any suspension of business. Everything moved about the same.

Q. If section four were enforced, how would it affect the competition at Shreveport; would it continue as it had done before?

A. I think the competition would be about the same. The Texas & Pacific Road is en-

the stage of water during that week or the week following?

A. No. I think the Commission understand me, and you ought to, too.

Mr. Stahlman. I have before me a paper showing the rates from Memphis to New Orleans by your line, 775 miles, on first class, thirty-five cents.

Commissioner Walker. What is the date?

Mr. Stahlman. This paper was prepared last August. I am having it verified now. The rate from Memphis to Columbia, Arkansas, 216 miles, was fifty cents; that is, the rate for 775 miles was thirty-five cents, and the rate for 216 miles was fifty cents. For second class freight the rate for 775 miles was thirty-two cents, and for 216 miles forty cents. On third class freight the rate for 775 miles was twenty-six cents; for 216 miles thirty-five cents. For fourth class freight the rate for 775 miles was nineteen cents, and for 216 miles thirty cents. In other words, that is the water rate from Memphis to Columbia, Arkansas, as against the rate from Memphis to New Orleans. That is about the line of rates that they carry to intermediate landings.

The Witness. Those rates I never heard of before. They belong, as I told you before, to the New Orleans Anchor Line. They don't stop at Vicksburg, and I am not familiar with those rates.

A. M. Halliday appeared before the Commission and having been duly sworn was examined as follows:

By **Mr. Wallace:**

Q. What is your business?

A. Steamboating.

Q. You are on the river now, are you?

A. Yes sir.

Q. What is your boat?

A. The Paris C. Brown.

Q. Does she belong to a line of steamers?

A. She belongs to the Cincinnati & New Orleans Transportation Company; the Southern Transportation Company.

Q. You run on the Ohio River?

A. Yes sir; between New Orleans and Cincinnati.

Q. And you have been in the business a long time?

A. Yes sir; I guess about twenty years.

Q. Have you raised your rates at all since the Interstate Commerce Bill went into effect?

A. No sir; it has not affected our rates at all.

Q. You have not had a high water rate or any other rate than what existed before?

A. We have had a very low rate; no high rate; our rates are very low.

By **Mr. Stahlman:**

Q. From what points on the Ohio River do you run?

A. All points on the Ohio River from Cincinnati here.

Q. The rail lines have not advanced their rates from Cincinnati to New Orleans, have they?

A. I believe they advanced them for a few days.

Q. You believe it?

A. Yes sir. I would like to state that I be-

long to a line of steamboats that eight years ago had nineteen boats. Today they have six. They ran three boats out of here a week. Now they run one in five days. The competition of points struck by the railroads has become so great that they have very nearly driven us off the river; and if that isn't discriminating against one class of men I don't know what is.

The Chairman. It has been stated that there were some agricultural organizations to be heard. I would inquire if there is any representative of such an organization here? (No response.) Is there anyone present who desires to be sworn, or to call anyone else as a witness?

Mr. James A. Renshawe. I desire to ask on behalf of the New Orleans Cotton Exchange whether or not the railroads, which are all represented here, will be allowed to present any evidence in rebuttal of the specific charges that have been presented by the New Orleans Cotton Exchange, at any other sitting or any other date than this? Not, being lawyers we are not familiar with these points.

The Chairman. Let me inquire now if any of these petitioners desire to offer evidence in rebuttal of any evidence presented here in opposition to their petitions?

Mr. Cummins. Yes sir.

The Chairman. Are you prepared to put it in now?

Mr. Cummins. No sir; not on the part of the Louisville, New Orleans & Texas Railroad Company, as I stated to the Commission this forenoon.

The Chairman. What is the nature of the evidence you wish to produce?

Mr. Cummins. That our discriminative rates, so termed, as between Memphis and New Orleans and Port Gibson, Vicksburg and New Orleans, are justified by the quantities hauled between these places, by the lower amount of expense in hauling the larger quantities rather than the smaller; and that the discrimination is not an arbitrary one upon our part, but necessitated by the competition we meet at these competitive points. We have pretty full evidence upon those points, but, as I stated before, we are not prepared to present it here, supposing we would be given the opportunity of presenting it at Memphis. Our headquarters are there, and that is where our records are all kept.

The Chairman. I do not understand that to be in rebuttal of anything that has been brought forward here today on behalf of the Cotton Exchange.

Mr. Cummins. It will be at least explanatory.

The Chairman. You are to bring forward certain facts and seek to draw certain conclusions from them, but the facts are not antagonistic to those that have been brought forward here today.

Mr. Cummins. I do not think we will dispute the facts as stated by the Cotton Exchange, or by the gentleman from Port Gibson. I think the facts are all correctly stated, unless it might be as to some questions of rebates.

The Chairman. If you desire to disprove

the facts that have been brought forward here today, it would be proper to do it now and here.

Mr. Cummins. I appreciate that.

Mr. Stahlman. I desire to file the cotton tariff of the Louisville & Nashville Railroad, and of the Illinois Central—its tariff at the present time and one which has been in effect for some time; and I propose to illustrate by that that there is no discrimination against the City of New Orleans on cotton.

The Chairman. Are these the tariffs that are published?

Mr. Stahlman. Yes sir; and posted.

The Chairman. So that these gentlemen have had an opportunity to know what they are?

Mr. Stahlman. Yes sir; they can get them by going to the office of the company.

Mr. Renshawe. Should they not have been filed this morning?

Mr. Phelps. We have had them. But does the Illinois Central Railroad still maintain the same rate out of Memphis as they maintained before this clause was brought into effect? They have brought about 60,000 bales of cotton out of Memphis. If they do, we make the same point against them that we made against the Louisville, New Orleans & Texas Railroad: that their local rates are unduly high compared with their Memphis rate. If that rate is a reasonable one for the transportation, the other rate is too high.

Mr. Stahlman. The Memphis tariff is not included, but from other points it is.

The Chairman. Can you state what the tariff is?

Mr. Stahlman. I cannot. The Mississippi Valley Road will furnish that evidence at Memphis, I believe.

Mr. Renshawe. The Memphis rate has no particular bearing on this point.

Mr. Phelps. I made that remark because we presented no case here on behalf of the Cotton Exchange against the Illinois Central Road, for the reason that I was given to understand that they had withdrawn that Memphis rate. I may have misunderstood Mr. Murray, but if that rate is still in force, we make the same point against the Illinois Central Road that we made against the Louisville, New Orleans & Texas. If the through rate is reasonable, the local tariff is exorbitantly high.

Mr. Stahlman. I desire, also, to file certain accounts of steamer and port charges in the City of New Orleans relating to the cotton business, which, in our judgment, have had a great deal to do with crippling the cotton business of New Orleans.

The Chairman. Let them be exhibited to the gentlemen on the other side, so that they may have an opportunity to examine them.

Mr. Wallace. I suggest that, as our evidence has been presented under oath, Mr. Stahlman or some one should be sworn.

The Chairman. He has been sworn, and whatever he states we take to be under oath.

Mr. Stahlman. I want to state under oath that those figures were furnished me as identical copies of the books of the institution, by the gentleman whose name is at the head of the paper. I believe them to be just as they

stand—from a responsible gentleman. If it is necessary to have them brought in here and witnessed, I will have them brought. I desire, also, to submit this (exhibiting paper) as an additional statement, coming from a prominent citizen of the City of New Orleans, of the charges on cotton at New Orleans, fixing the charges incident to the movement of the business at New Orleans at \$4 per bale on local shipments.

The Chairman. That is not an actual transaction.

Mr. Stahlman. Yes sir; figured on a bale of cotton from Shreveport to New Orleans.

The Chairman. Who is the man?

Mr. Stahlman. Mr. R. Spillings.

The Chairman. If it does not represent an actual transaction to your knowledge, he had better come in.

Mr. Stahlman. He is not in the city. He is probably four or five miles out, but I will try to get him this evening if I can. It verifies the statement I presented this morning.

Mr. Phelps. I do not desire to present any statement on this question. I repeat what I said in my evidence, that it is not germane to this question. I would like to ask if the Illinois Central tariff bears date April 23?

The Chairman. It bears date May 2.

Mr. Phelps. This tariff bears date subsequent to the tariff I hold in my hand, but it does not alter the facts so far as I can gather from a glance at those rates. They are the same as in my tariff. My tariff bears date April 23.

Mr. Stahlman. Now I want to say, on behalf of the Louisville & Nashville Railroad, that is largely interested in the traffic to and from river cities West and South, that we shall undertake to introduce at Memphis, Tennessee—and I make this statement with a view of giving our river friends notice—full testimony covering the river and rail business, and the relations one to the other; what the railroads have done, and what the rivers have done. I want them to know that that is what we propose doing at Memphis, so that they may be prepared to meet us.

Mr. Sheldon. Mr. Chairman, I wish to say that I have prepared an argument in reference to the Texas & Pacific matters, and, with the leave of your honorable Commission, I would like to submit it in print.

The Chairman. We shall be glad to receive it. We will receive arguments in that form, not only on behalf of the railroad companies, but also from parties who oppose their applications. The arguments may be handed in at any time before we finally dispose of the matter.

Mr. Houston. I would like to call the attention of the Commission to what I believe is a distinction between an application made in the petition which I had the honor to present today, and the contest carried on here between the merchants and citizens of New Orleans and the railroad companies running into New Orleans. The distinction I make is this: That our road, the San Antonio & Aransas Pass Railroad, as is shown by the certified map attached to the petition, is but a very small corporation cut off on one side by these long interstate lines and systems of railroad, and on

the other side hemmed in by these water routes with which we have to compete; and I wish to say also to the Commission, and it may be understood as said under oath, for I can prove the fact, that there is at present a large amount of freight, especially wool freight, which is now waiting to be moved and which parties are holding in Corpus Christi, awaiting the action of the Commission upon this petition, with the hope that our rail routes will have an opportunity of competing with the water route. If the Commission could give consideration to that petition, and allow at least a temporary suspension of section four, as I believe the Commission has done in the case of the Transcontinental Lines, with reference to wool particularly, it would be a great relief to the petitioners and would give the Commission an opportunity to pass finally upon the question after a fuller and more perfect hearing. I would be glad to have the matter acted on as soon as the Commission can do so conveniently.

The Chairman. Parties I suppose all understand that we have a meeting on Wednesday of this week at Memphis and at that place we will take up further evidence for and against these several applications. I will say in respect to those organizations that it was stated were not prepared to submit evidence here, or any other organizations that wish to do so, that they may submit documentary evidence either at Memphis or at Washington. Parties who propose to submit arguments in print will understand that those arguments should be forwarded as speedily as possible, and they may be sent to Washington also.

Mr. Stahlman. One of our officers is here—I neglected to call him on the stand—for the purpose of presenting a petition and a letter that was sent to him from Pensacola.

The Chairman. If it bears upon the petitions that are now before us, it can be handed to our secretary, who will take charge of it.

Mr. Cummins. I desire to rebut the statements made by the Port Gibson gentleman with regard to rates. The witness by whom I expect to do that is an old Port Gibson resident who is in Memphis, a gentleman who has been living there for twenty-five years.

The Chairman. He is not here now?

Mr. Cummins. No sir. He had charge for a long number of years of the little railroad that ran from Port Gibson to the river, which the witness on the stand spoke of this morning. I cannot do it here.

The Chairman. Do you desire anything more than the passing in of these memorials, Mr. Stahlman?

Mr. Stahlman. No sir.

The Chairman. You understand the statements set forth in them to be true?

Mr. Welch. I understand Mr. Gonzales wrote that letter to me. I know his signature well, and I know those are the views expressed by him as a very prominent and intelligent merchant at the City of Pensacola. I have also a petition signed by Mr. McCormick, who is one of the principal owners of large mills at Muscogee in Florida, whose signature I am also familiar with.

Mr. Stahlman. It is a local point on the line of our road.

The Chairman. I think now the Commission is prepared to close the sessions at this place, and they are therefore declared closed.

PROCEEDINGS AT MEMPHIS.

Names of Witnesses, in Order of Examination, etc.

George R. Knox, Gen. Freight Agt. Nash. Chat. & St. L. R. R.

T. G. Ryman, Manager Steamboat Lines.

J. J. McCann, Merchant Miller, Nashville, Tenn.

H. H. Butteroff, Manufacturer of Stoves, Mantels etc., Nashville.

W. Morrow, Wagon Manufacturer, Nashville, Tenn.

J. H. Wilkes, Grain and Hay, Nashville, Tenn.

J. H. Fall, Hardware.

J. F. Wheelless, Manufacturer, Murfreesboro, Tenn.

Chas. O. Thomas, Merchant Miller, Murfreesboro, Tenn.

J. W. Thomas, Pres. Nash. Chat. & St. L. R. R.

E. B. Stahlman, L. & N. R. R. (re-called.)

W. R. French, Wool Manufacturer, Tullahoma, Tenn.

Leonard Parkes, Wool, Nashville, Tenn.

D. S. Williams, Lumber and Wooden Ware, Nashville, Tenn.

G. S. Kinney, Wholesale Liquor Dealer, Nashville, Tenn.

B. Frank Lester, Live Stock, Nashville, Tenn.

O. H. Hight, Secretary Merchants Exchange, Nashville, Tenn.

J. B. Briggs, Tobacco, Russellville, Ky.

H. A. McLemore, Grain, Columbia, Tenn.

J. W. Rosamon, Fruit and Vegetables, Gadsden, Tenn.

W. R. Craig, Grain and Produce, Pulaski, Tenn.

E. P. Gracey, Grain, Clarksville, Tenn.

D. M. Kennedy, Board of Trade, Clarksville, Tenn.

J. A. McGregor, Manufacturer, Erin, Tenn.

William Buquo, Lime, Erin, Tenn.

M. H. Clark, Tobacco, Clarksville, Tenn.

H. D. McHenry, Coal, Hartford, Ky.

J. W. Moores, Coal, Southwest Kentucky.

F. W. Cook, Brewer, Evansville, Ind.

George P. Heilman, Miller, Evansville, Ind.

W. W. Shelby, Miller and Tobacco, Henderson, Ky.

U. W. Armstrong, Furniture, Evansville, Ind.

B. F. Mitchell, Gen. Freight Agt. W. Div. Newport News & Miss. Val. R. R.

Logan H. Roots, Banker, Little Rock, Ark.

C. F. Penzel, Wholesale Groceries, Little Rock, Ark.

D. Miller, Gen. Freight Agt. Memphis & Little Rock R. R.

H. M. Cooper, Cooperage, Little Rock, Ark.

J. T. Pettitt, Produce and Cotton Exchanges, Memphis, Tenn.

R. F. Patterson, Cotton, Memphis, Tenn.

W. W. Schoolfield, Wholesale Grocer and Cotton, Memphis.

Peter McIntire, Sugar, Memphis, Tenn.
John L. Wellford, Chickasaw Cooperage Company.

J. A. Godwin, Dry Goods, Memphis.
Harlow Dow, Coal Oil, Memphis.
A. H. Moses, Iron, Sheffield, Ala.
John Atherton, Distiller, Louisville, Ky.
George Gaulbert, Merchant, Louisville, Ky.
Frank Hartwell, Grain, Louisville, Ky.
Horace Pashaw, Flour, Louisville, Ky.
S. Zorn, Grain, Louisville, Ky.
Chas. Ballard, Flour and Cornmeal, Louisville, Ky.
Joseph LeCompte, Merchant Miller, Lexington, Ky.

George W. Decker, Newport, Arkansas.
A. K. Ward, Memphis Fertilizer Company.
Virgil Powers, Gen. Com. Southern R. R. & S. S. A.

G. W. McGinnis, Port Hudson & Grand Gulf R. R.

Chas. W. Drown, Secretary Steamboat Association.

MEMPHIS, TENN., May 4, 1887.

THE COMMISSION met at 10 A. M. in the room of the United States Court, all the members being present.

The **Chairman**. Gentlemen, the occasion of the visit of the Commission appointed under the Act to Regulate Commerce is probably understood by you all, so that any extended remarks by way of explanation would be entirely unnecessary. It is doubtless known to you that while that law lays down a certain, definite rule for railway charges for the transportation of persons and property, it contemplates the possibility that there may be exceptional cases requiring a suspension of that rule; and it confers upon the Commission the power to investigate the supposed special cases and to determine upon them. Certain railroad companies have made application for the exercise of the authority of the Commission in that regard, under that provision of the law. In order to determine upon the propriety and the wisdom of exercising its authority, the Commission is under the necessity of inquiring into the facts; and it has thought that those facts might be most conveniently gathered at certain central points in the territory covered by the operations of those railroad companies. The City of Memphis has been selected as one of those central points. We are here, therefore, to-day, for the purpose of gathering facts which may bear upon the wisdom and the propriety of granting the suspensions that have been prayed for by these railroad companies. We expect those facts to be brought forward by the railroad companies in support of their applications. At the same time we recognize that the general public has quite as much interest in the questions involved as have the railroad companies themselves; and therefore we are here to receive evidence from municipal bodies, from commercial bodies, even from private citizens, that may be offered in support of the applications; and we are equally here to receive the evidence of other bodies or of other citizens that may be offered in rebuttal of that which tends to the support of the applications. In other

INTER 8.

words, we want all the facts, from whatever source they may come; and are as ready to receive them from any private individual as we are from any public or corporate body.

A word more in regard to the order of proceeding. It has seemed to us that it would be convenient, that it would tend to expedite the proceedings and bring out an orderly presentation of the facts, if we receive first the evidence that might be offered in support of the applications made to us and, immediately upon concluding that, to then take up the evidence that should be offered in opposition. So we will receive first the evidence that may be offered in support of the applications, and then that which may be presented in opposition. It will conduce to order and expedition if the names of witnesses are handed to us in advance. While we do not absolutely require that, yet we shall expect the names of the witnesses proposed to be examined, or the names of persons who desire to come forward and give evidence, to be handed to us between this hour and the hour when we propose to meet this afternoon, which will be 4 o'clock.

With these brief remarks we are ready to proceed with the taking of evidence. We propose to do so promptly; to proceed without delay and continue the morning session until 2 o'clock, taking then our recess for dinner.

I hold in my hand and will now give to the Secretary a statement from residents and business men of the City of Baton Rouge, stating certain facts which they think tend to support the petitions which have been presented, and concluding with a request for the granting of those petitions.

Mr. J. W. Thomas (President Nashville, Chattanooga & St. Louis Railway.) Mr. Chairman, if it meets with the approval of the Commission we would be pleased to present the evidence of the Nashville, Chattanooga & St. Louis Railway first. It is true we represent a comparatively short line, but we were the pioneer road of the State of Tennessee, and as such I think probably it would be well for us to lead in this investigation. While we represent but 600 miles of railroad, we represent more than one eighth the mileage of the State of Tennessee, and we think one quarter of the commercial interests of the State.

George R. Knox appeared before the Commission, and having been duly sworn was examined as follows

By **Mr. Thomas**:

R. Where do you reside?

A. Nashville, Tennessee.

Q. What is your occupation?

A. General freight agent of the Nashville, Chattanooga & St. Louis Railway.

Q. How long have you been connected with that road?

A. About twenty-five years.

Q. Are you familiar with the principles of making local and through rates upon that road?

A. I am.

Q. Do you know the charter rate of the road?

A. Yes sir.

Q. What is it?

A. For heavy freights thirty-five cents per

hundred pounds per hundred miles; for light freight, ten cents per cubic foot.

Q. Is that the limit on heavy freight on the line between Hickman and Chattanooga?

A. In no case do we charge up to the charter rate.

Q. How much per ton per mile is the rate on heavy freight?

A. Seven cents per ton per mile.

Q. What is the rate on coal from points outside of Tennessee to Nashville?

A. There is a summer rate and a winter rate.

Q. About what does it average per ton per mile?

A. About six mills per ton per mile, as well as I remember.

Q. What is the rate on grain and agricultural products?

A. On grain and flour fourteen cents per hundred pounds from stations south of Nashville on the main line is the minimum rate.

Q. What is the rate from New York to Nashville?

A. On first class, ninety-seven cents per hundred pounds.

Q. What is the rate from New York to Chattanooga on first class?

A. \$1.14.

Q. Who makes the rate, and how is it made from New York to Chattanooga?

A. It is made by the rate committee of the Southern Railway & Steamship Association, representing the various lines reaching Chattanooga by the different routes.

Q. Have Nashville and Chattanooga any voice in the making of the rate from New York to Chattanooga?

A. Practically none. As a member of the rate committee I would have a vote on the question, but we do not do a very large share of the business, and therefore have no controlling voice in establishing that rate.

Q. You say the rate to Chattanooga from New York on first class is \$1.14, and to Nashville it is ninety-seven cents?

A. Yes sir.

Q. Suppose Nashville were not a competitive point and had no other means of transportation, and the freight from New York came through Chattanooga; what would probably be the rate from New York to Nashville via Chattanooga?

A. The line from Chattanooga to Nashville would probably charge about the same rate per mile as charged by the lines from New York to Chattanooga. That would make the rate probably somewhere between \$1.40 and \$1.50. I couldn't tell without stopping to figure it out.

Q. You make your rate from New York to Nashville for what reason?

A. The trunk line rates to Cincinnati, Evansville, Cairo and Paducah, added to the current river rates from those points, would make a very much lower rate than \$1.40 or \$1.50.

Q. What is the rate from New York to Murfreesboro, twenty miles south of Nashville?

A. The rate on first class from New York to Murfreesboro is \$1.22.

Q. What would the rate to Murfreesboro be

if there was no competition at Nashville coming through Chattanooga or Nashville?

A. It would then be based on Chattanooga, with the local from Chattanooga added—\$1.64.

Q. What, then, is the reason for a lower rate at Nashville than at Chattanooga?

A. River competition.

Q. What is the rate from Nashville to Atlanta on grain?

A. Twenty cents per hundred pounds.

Q. What is the rate from Nashville to Augusta on grain?

A. Twenty-two cents.

Q. What is the rate from Nashville to Charleston, Savannah and other coast points on grain?

A. Nineteen cents per hundred pounds.

Q. What is the cause of that difference of twenty-two cents to Augusta and nineteen cents to Charleston or Savannah, over 100 miles further?

A. Competition by ocean, the western grain coming in via Baltimore and other northern and eastern ports, by steamships and sailing vessels which fix the price at the coast. If we were to make a rate from Nashville to Charleston and other coast cities in line with the rate to Atlanta and Augusta we would exclude our Tennessee products entirely from reaching those points.

Q. Do you know of any instances where under substantially similar circumstances and conditions there would be a difference in rates for equal distances and like kinds of property?

A. I do not.

By **Mr. Stahlman:**

Q. What is the nature of the competition between Cincinnati and New Orleans?

A. It is river competition.

Q. Is it not rail competition too?

A. It is river and rail both, but I presume the main competition is water competition.

Q. Does that same competition apply to business between Cincinnati and Mobile?

A. Yes sir. There is a water line from New Orleans to Mobile. It would not be perhaps quite so strong as at New Orleans, but still it applies with a great deal of force.

Q. What affects the rate practically between Louisville and Montgomery?

A. There are several points kept in view in fixing the rates to Montgomery, but the main one is the rate to New Orleans and Mobile by water with a water rate from those points to Montgomery.

Q. And the same applies to Selma?

A. Yes sir; perhaps fully as strongly as to Montgomery, perhaps a little more so; as Selma is nearer Mobile by water.

Q. Does the same competition that controls the rates between Louisville and Mobile affect the rates between Louisville and Pensacola?

A. Yes sir.

Q. What affects the rates from St. Louis, Cincinnati and Louisville to Pensacola, Mobile, New Orleans, Montgomery and Selma affects the rates from Evansville and St. Louis also?

A. Yes sir; as much and perhaps a little more so from Evansville and particularly from St. Louis, as I think there are more boats from St. Louis and Louisville to New Orleans.

Q. Does not the river competition in connection with the short rail haul through Vicksburg have a bearing?

A. That is one of the factors; yes sir. As I stated, there are several. That is another very strong one.

Q. Are not the rates between Clarkesville and New Orleans affected practically in the same way?

A. They are.

Q. And Mobile?

A. Yes sir.

Q. And Montgomery and Selma and Pensacola?

A. All go together.

Q. The rates between Louisville, Cincinnati and Memphis are regulated by water competition?

A. Oh, yes sir.

Q. And Clarkesville the same way?

A. Yes sir.

Q. And St. Louis?

A. Yes sir.

Q. And Evansville?

A. Yes sir.

Q. Is there competition between Cincinnati and Nashville by water?

A. Yes sir; no direct boats now, but I understand the Cincinnati freight comes almost daily and is re-shipped at Paducah on Cumberland River boats which make some four or five trips per week.

Q. There is a regular line of packets on the Cumberland River?

A. Two lines now.

Q. Suppose the railroads should advance their rates between Cincinnati, Louisville and Nashville, is it not your opinion that a boat line would be established, or that the boats would carry the traffic?

A. Yes sir, I think so. In confirmation of that opinion I understood in Nashville only yesterday or the day before, that one of the gentlemen interested in the boats above Nashville was contemplating putting on a large boat between Cincinnati and Nashville direct, if the fourth section is enforced. The rumor is he is getting ready for it.

Q. What influences are at work on the routes from Nashville? Does not the same rule that applies to Louisville, Clarkesville and Cincinnati in fixing the rates to New Orleans and Mobile apply also and fix the rates from Nashville to Mobile and New Orleans?

A. Practically so; yes sir.

Q. And also from Nashville to Montgomery and Selma?

A. Yes sir; there is a relation between the rates from Nashville, Louisville, Evansville and other points that is observed. They all go up together and come down together. They can't be avoided very well.

Q. I believe you stated in your original examination that the rates to the Southern coast if advanced would exclude Nashville and Tennessee products from being shipped to that territory?

A. I think they would be shut out of the coast territory.

By the Chairman:

Q. Did you say you had a charter rate?

A. Yes sir.

Q. What is that charter rate?

A. On light freight ten cents per cubic foot. On heavy freight twenty-five cents per one hundred pounds per hundred miles.

Q. Do you charge what your charter would allow you to charge?

A. On heavy freights we never get anywhere near it. On light freight, possibly on some classes we now make the rate per hundred pounds which, if applied per cubic foot might increase it in some few instances.

Q. But as a general thing the charter rate does not control your action at all?

A. We are very much below it.

Q. So that has very little to do with your charges? You say Tennessee products would be excluded from the Atlantic Coast if the rates were raised. What products do you refer to?

A. Largely grain and the products of grain, and the hog product of Tennessee. Middle Tennessee, particularly, is an agricultural section.

Q. Do you raise grain there to ship to these ports?

A. Oh yes sir; lots of it. Nashville alone handles, I think, some 8,000,000 bushels of corn per annum.

Q. Do you not bring it in very largely from the West and Northwest?

A. It is brought in this way: our local crop comes in—the wheat crop—about the first of July, and our corn crop about the first of November; and of course owing to the character of the crop, the size of it, and to the Southern demand, that lasts a longer or a shorter period, perhaps six or eight months sometimes, and the local crop will supply the trade. Then they piece out for the remainder of the year by drawing on the West.

Q. So that in the aggregate a very large amount of grain and provisions is brought from the West into that region?

A. Yes sir.

Q. Which on the whole does not supply itself with what it consumes?

A. Well sir I think Tennessee raises more grain than she consumes, but they ship it the first half of the year and then draw on the West the latter part of the year.

Q. There is a large region there demanding all those products?

A. Yes sir.

Q. You spoke of what these rates would probably be under different circumstances. The rates are not absolutely determined by the circumstances, are they?

A. Yes sir; I might so state.

Q. Do you mean for all this region?

A. Yes sir.

Q. They are absolutely determined by circumstances?

A. Yes sir. To illustrate: heretofore in constructing rates our base rate would be the rate from Chicago to Baltimore, plus the steamer rate to Charleston. That made a rate from Chicago to Charleston rail and water. Therefore when we were making our all rail rate from Chicago to Charleston, we would perhaps make it five or six cents per hundred pounds higher than the water rate.

Q. You have rate committees that consider these circumstances and determine upon them?

A. Yes sir; representing all the roads.

Q. Do not those rate committees very fre-

quently differ largely in their views as to what these rates should be?

A. Yes sir; on questions of local competition.

Q. So that, after all, the circumstances would be determined upon by the rate committee, I suppose?

A. Well, as a general rule a certain action is laid down by the rate committee. No men on the rate committee would dispute the fact that the rate from Chicago to Charleston is based on the rate to Baltimore plus the steamer rate to Charleston, or the sail rate. They will all admit that.

Q. You think there are certain forces that they have to recognize and cannot avoid?

A. We all recognize them, no matter how we differ on local points.

Q. There are competitive forces between water and rail that you are under the necessity of recognizing?

A. Yes sir.

Q. You say that you do not know of rates being different where the circumstances or conditions are the same?

A. I do not; not in our section of country.

Q. When you say that, to what circumstances and conditions do you refer?

A. To the circumstances and conditions of competitive lines, markets and products, you might say.

Q. What you mean by that is nothing more than this: that the competitive forces operate differently at different points, and you are obliged to recognize them?

A. Yes sir; that is about it.

Q. You spoke of the competitive forces between rail and water, and said those established different conditions at different points. Is not that equally true where railroads cross each other and establish competitive points?

A. It is true but not to the same extent.

Q. Why not to the same extent?

A. Frequently we would have a railroad crossing—the roads may cross each other, perhaps out in the woods, and within a few miles of that crossing point we may have a town already established.

Q. But take now a point that has a considerable trade, quite a trade center. Take as an illustration Birmingham or Atlanta. In your opinion do the competitive forces at such points operate just as conclusively as they do at the crossing of rail and water, or the meeting of rail and water?

A. That is a question of the relative forces of competition of a number of railroads centering at a certain point as compared with the competition of water lines. I think really the water line competition is a little more severe than where there is nothing but railroads.

Q. Would that be for any other reason than because water transportation is the cheaper?

A. Well sir there is one trouble with water. To illustrate: there are certain steamship lines between northern and South Atlantic ports. Those steamship lines may have gone into an agreement with the roads by which to some extent the competition for the southern trade would be controlled or regulated; but back of the steamships are numberless sailing vessels who make any agreement with anybody; in fact each ship is owned by its own master.

Q. In this region in which your road oper-

ates do you get out of the reach of water competition at all?

A. No sir. To illustrate, if you will permit, I will remark that within the last two weeks a Nashville party wished to bring five hundred bales of cotton from New Orleans to Nashville for the cotton mills located at Nashville. The lowest rate was \$3 per bale. He brought it by river for \$1.80. It is the same way from St. Louis.

Q. Would the water competition reach points like Atlanta, so as to affect their rates too?

A. Not directly.

Q. But are you obliged to recognize at such points the force of water competition to some extent?

A. Yes sir; indirectly it affects the rate there. For instance: having fixed the rate to Montgomery the competition of markets comes in and regulates Atlanta.

Q. You spoke of the different circumstances and conditions which should justify a suspension of this clause of the statute in the case of your road. That you would apply at the principal competing points upon it, I suppose.

A. Yes sir.

Q. In your opinion are there any important competing points, whether that competition is by rail or by water, in that region reached by your road, or in Georgia, Alabama and Mississippi, if you please, where the circumstances and conditions do not so far differ as to justify the application of the principal on the same ground as it would be justifiable at Nashville for instance or other points on your road.

A. I don't believe I quite catch the meaning of your question.

Q. I want to get your opinion upon this principle—whether it is a principle applicable in all that region, or whether it is confined to a few points like Nashville, Cairo and Memphis?

A. Speaking for our own line at Hickman, the western terminus of our road we have the Mississippi River.

Q. I understand what you say as to your line, but I want to know how generally you think that principle is applicable in this region on other lines at these principal competing points. Let me put it in a different form. Could you name any one important point in the four States of Tennessee, Mississippi, Alabama and Georgia, where the circumstances and conditions are not so different from those which prevail generally as that it would not be admissible to make the case of that point an exception under the law, if there is to be any exception made?

A. If I understand you, could I name any considerable point in either one of those four States where the long and short haul clause could be enforced without injury?

Q. Why it would not be admissible because of the circumstances and conditions to make that point an exception.

A. I cannot now think of any point of that description.

Q. Then, in your view, if this clause is to be suspended, it would be proper to suspend it as to all this region?

A. Yes sir. The commercial relations of the various centers in those States are so interwoven that it seems to me that conclusion would be just.

Q. Is what you say there true of the country generally?

A. I cannot speak so much of the country north of the Ohio River. Their condition is no doubt, different from ours.

Q. Do you think you get out of the reach of water competition anywhere there?

A. Yes sir; I believe from the Ohio River to the lakes, some 800 miles the country is without any water competition to amount to anything to disturb the rates.

Q. Yes; but does not the water competition affect the rates everywhere?

A. Either directly or indirectly I think it does. I think in the entire United States, to a very considerable extent, the water competition does regulate the rail rates.

By *Commissioner Morrison*:

Q. What distance does the freight coming from the East pass over your road from Knoxville to Chattanooga?

A. One hundred and fifty-one miles.

Q. How much less do you say the through rate is to Nashville than to Chattanooga from the East?

A. The rate on first class from New York to Chattanooga is \$1.14; to Nashville, ninety-seven cents. I would like to add right there, however, that the rate to Nashville is based on the trunk line rate to Cincinnati and Evansville, or Cairo, and Nashville is practically a western city rather than a southern city. That is the reason why that is true. In other words, while the route from New York to Nashville through Chattanooga is a short route in miles, in rate making power the route via Cincinnati and Evansville is a shorter route.

Q. What is the difference in the charge over your road from the West, through Nashville to Chattanooga?

A. The rate from the principal western points to Nashville is regulated by the rate via the Cumberland River.

Q. How much do you charge to Nashville?

A. On what class of freight?

Q. The class you have been talking about; grain.

A. The rate from St. Louis and western centers to Nashville on grain, if I remember correctly without referring to my tariff, is fifteen cents. The rate to Chattanooga I will have to refer to my tariff for. That is twenty-four cents.

Q. What lines by water do you come in competition with at Nashville for the eastern freight coming west?

A. The trunk line route from New York to Cincinnati, or to Evansville or Cairo, in connection with the boats running from Evansville and Cairo to Nashville. There are two lines of boats running from Cairo to Evansville and Cairo to Nashville. The rate on first class—I had occasion to investigate it—from Evansville to Nashville by river is fifteen cents per hundred. My recollection is that the trunk line rate on first class at that time from New York to Evansville was eighty-one cents.

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The two rates added together made ninety-six cents.

Q. And going either way, then, whether through Knoxville to Nashville, or not, you carry a portion of the through freight?

A. Yes sir. I might say our road between Nashville and Chattanooga is a cross line. The distance from Nashville to Cincinnati is 295 miles and from Chattanooga to Cincinnati is only 336 miles.

Q. Is that proportion of the through freight from the east to Nashville by way of Chattanooga fairly remunerative?

A. We accept the same rate per ton per mile as our southern connections receive on that business; in other words, we prorate with them. We usually have a large number of cars returning from the South empty; and it is in the nature of loading for those return cars.

Q. Please give me an answer first and then you can explain why it is so. I ask you if your proportion of the rate from the East to Nashville by way of Chattanooga is fairly remunerative?

A. Under the present rates I think it is, under all the circumstances. Under different circumstances it would not be.

Q. It is, as things now are?

A. Yes sir.

Q. You have the same tariff you had before the Interstate Commerce Law was passed?

A. I think the rates are about the same.

Q. What is the distance from Chattanooga to Nashville?

A. One hundred and fifty-one miles.

Q. Then you are receiving more at Knoxville. Does it follow that if fairly remunerative to Nashville it would be still more so at the other place?

A. I suppose you mean at Chattanooga. The freight from New York to Chattanooga through by the southern routes does not pass over our road, and I would not feel justified to say what would be remunerative to those roads, for they have to judge for themselves about that.

Q. You cannot answer that?

A. No sir; because our road is not interested in that question.

Q. You don't know anything about rail-roading, or much about it, except so far as pertains to your own road, or your own interests?

A. I might have an opinion, but I would not feel at liberty to state it.

By *Commissioner Bragg*:

Q. I understand that your road extends from Chattanooga to St. Louis?

A. No sir; from Chattanooga to Hickman, Kentucky.

Q. The name of your road is the Nashville, Chattanooga & St. Louis, is it not?

A. Yes sir.

Q. At Hickman you connect with a road which extends to St. Louis?

A. At Union City we have a track arrangement to run to Columbus, Kentucky, and there we connect with the Iron Mountain Road; and at Martin we have a track arrangement by which we run our cars into Cairo, and there connect with the Illinois Central for St. Louis by what is called the Cairo Short Line.

Q. Those are just traffic arrangements made between your company and these other companies and these other companies?

A. Yes sir; with the Mobile & Ohio, you might call it, a track arrangement to run our trains into Columbus. We pay them for the use of their rails.

Q. What is the distance from Hickman to Chattanooga?

A. Three hundred twenty-two miles.

Q. Your road, as I understand you to say, is a local road, is it?

A. No sir. We do a large local business, but we do a large through business.

Q. But your through business is done in connection with other roads?

A. Yes sir; very largely.

Q. You start from the Mississippi River at Hickman, and you go over to Chattanooga, Tennessee. Is it or not true that a large proportion of the freight that you receive that passes over your road, comes from points beyond Hickman, on that end?

A. From points beyond Union City or Hickman; yes sir.

Q. Take the other end, from Chattanooga. Is there much freight that comes from beyond Chattanooga that passes over your road—through freight?

A. A great deal.

Q. That was the reason I spoke of it as a local road, as contradistinguished from a road that has a connection with tide water.

A. Exactly. I didn't catch the meaning of your question.

Q. What is the population of Nashville, Tennessee?

A. At present it is estimated at about 75,000.

Q. What are the chief articles of freight you transport over your road besides grain?

A. The product of grain, in the shape of flour and meal. I presume you would include that under the head of grain. Also hay and meat.

Q. Do you transport much cotton over your road?

A. I was just thinking up the main points. I had not completed the answer yet. We handle considerable cotton. Nashville handles about 50,000 bales of cotton per annum, and besides that we have considerable local cotton. There is a great deal of lumber passing over the road, and a vast quantity of pig-iron, both raw and manufactured, in the shape of water pipe and bar-iron, etc. In fact, I might say, all agricultural products pretty nearly, because Tennessee produces almost everything in that line. Nashville, too, is quite a large manufacturing center now, and we transport vast quantities of all sorts of manufactured goods. There is one of the largest farm wagon factories in the United States, at Nashville, and we haul a great many wagons and all sorts of manufactured goods. I couldn't begin to name them without looking over our tonnage reports.

Q. Do you ever so adjust freight rates as to compel a shipper to ship over one end or the other of your line by any particular route, or do you let the shipper choose his own route?

A. We let the shipper select his own route.

Q. And then make the rates and furnish the cars to enable him to ship his products as he pleases?

A. I say we let him select the route. That is true wherever we have arrangements by which we can warrant the through rate by various routes. Sometimes we may have authority from one line and not from another. We can only give a through bill of lading over the line that has given us the authority. But generally speaking, we give him his choice.

Q. Has it ever happened that after the rate committees make these rates, or agree upon them, they are forced to be changed by competition, before the next meeting of the rate committee?

A. Yes sir; there have been such cases.

Q. Does that happen very often?

A. Not very often. It has happened frequently, however.

Q. What is the competition that compels those changes before the rate committee meets?

A. Water competition is the main cause; in fact, I might say, almost the entire cause. To illustrate: right today I have information from St. Louis, Montgomery, Atlanta, Athens, Augusta and all that country, that corn and flour is today going down the river to Vicksburg, and then taking the short rail line across into all that country at about three and one half to four cents per hundred pounds lower than our tariff rate. We are losing business and have been for the last ten days from that cause.

Q. That is lower than the rate agreed upon by the committee?

A. Yes sir; this line of boats is not in the Association. They do as they please. That is going on today and has been for the last two weeks.

Q. Can you state any reason or principle why competition produced by long lines of contending railroads at a place like Birmingham, Alabama, for instance, coming from far distant eastern and western points is not as actual as it is when produced by water and rail?

A. The only reason I could give you for that is that I think the railroad men usually try to conduct their business in a little more orderly manner, and endeavor to have agreements and to live up to them a little more closely. That is about all the reason I can give.

Q. That is the only thing that prevents it?

A. No. The trouble is here. It is water competition. You may have your arrangements with your steamboat competitors, and fix certain differences between all rail and rail and water rates, and they may live up to their agreement; but back of the steamboats are a lot of sailing vessels that it is impossible to have any understanding with. I have known of one lot of 20,000 bushels of wheat from the West to Port Royal and into Augusta, come by schooner, taken right away from us. It was not the steamships that did it. It was the sailing vessels. You cannot have any understanding with the sailing vessels. There are too many of them. They are too numerous.

Q. The Queen & Crescent line goes into Birmingham from Cincinnati and New Orleans?

A. Yes sir.

Q. The Louisville & Nashville goes into Birmingham from New Orleans and Louisville?

A. Yes sir, and also from Cincinnati through to Louisville.

Q. The Georgia Pacific Railroad goes into Birmingham from Atlanta and the East, does it not?

A. Yes sir.

Q. Do you mean to say, or do we understand you to say, that those lines have any agreement among themselves as to any division of the business at Birmingham that goes over their respective lines?

A. No; I never heard of any agreement at Birmingham. I don't think there has ever been any agreement about the business going out from Birmingham.

Q. Or coming in there either?

A. Under the old—

Q. I am talking about since competitive rates have been allowed; within the last three years; since the opening of the Georgia Pacific Railroad.

A. There may have been some division of business from the East—merchandise coming into Birmingham by the southern lines. I can't state positively as to that, as I am not positively advised. But on the business going out of Birmingham, the pig-iron and iron products, I don't think there ever has been any division.

Q. Do you say there has been any agreement within the last two or three years, since the Georgia Pacific has been opened, as to business coming into Birmingham?

A. From the West—

Q. Or the East either?

A. I can't speak positively, because I do not represent any line going into Birmingham directly. I can't speak of my own knowledge.

Q. What are the physical characteristics of your road between Chattanooga and Nashville; that is to say, is it a road of heavy grades, etc.?

A. Yes sir. We run from Nashville to Cowan, eighty-seven miles, through an agricultural country—a portion of it, however through broken country. For instance, from Normandy to Tullahoma we rise about 500 feet in seven miles, and from Cowan to Chattanooga we run through a mountainous country, with heavy grades and sharp curves.

Q. What are the physical characteristics of your road between Nashville and Hickman?

A. The country there is not so broken. Between Nashville and Johnsonville on the Tennessee River we have some pretty heavy grades. West of Johnsonville, running through West Tennessee, the grades are easy.

Q. How about the bridges and trestles?

A. We cross the Tennessee River twice, once at Johnsonville and once at Bridgeport. We have had a good many pretty high trestles, but we have been filling them up for years and have pretty well gotten through with them.

Q. Have you a profile of your road here?

A. I suppose our president could answer on that point.

Mr. Thomas. No sir; we have no profile here.

Q. Is there any competition between your road and the Louisville & Nashville road at Nashville?

A. Yes sir; pretty sharp.

Q. That is independent of the river competition of the Cumberland River altogether, is it not?

A. Yes sir.

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Q. You try to get all you can and they try to get all they can?

A. Yes sir.

Q. Do you suppose there is any difference between your road and their road at Nashville in that respect, and each of the other lines at Birmingham that I questioned you about?

A. I think perhaps you misunderstood me. I admit that rail competition is very sharp; but you asked me to state the difference, as I understood, between rail and water competition. I do not deny but that rail competition is very sharp and very strong.

Q. That is the point I am asking you about?

A. Undoubtedly.

Q. At Atlanta it is the same way, is it not?

A. Yes sir; it is very strong there.

Q. Do you know about how it is at Meridian, Mississippi?

A. No sir; we do not take much business into or out of Meridian. I presume it is strong, but I am not personally advised of it.

T. G. Ryman appeared before the Commission and having been duly sworn was examined as follows:

By Mr. Thomas:

Q. Please state your residence and occupation?

A. I follow steamboating, and manage a couple of lines from Nashville to Evansville, and from Nashville to Cairo.

Q. Do you compete with the Nashville & Chattanooga Road at Cairo for business between Cairo and Nashville?

A. Yes sir.

Q. Do you compete at Evansville for business with the Louisville & Nashville from Evansville to Nashville?

A. Yes sir.

Q. Do you compete with the Louisville & Nashville on business to and business from Nashville and Clarksville?

A. Yes sir.

Q. What is your rate on first class goods from Nashville to Clarksville?

A. Ten cents a hundred.

Q. What is your rate to intermediate points between Nashville and Clarksville?

A. When we have got no opposition on the river our rate is fifteen cents a hundred.

Q. How far is it from Nashville to Clarksville?

A. Sixty miles by water.

By the Chairman:

Q. Do you run elsewhere than on the river in the State of Tennessee?

A. We ply between Evansville and Cairo Illinois, and then we go up the Mississippi sometimes after corn, and go down below Hickman. We go down the Mississippi and up the Mississippi after corn; and we go into the Wabash River after corn, and the Saline River, and sometimes we have went above Evansville; but seldom.

By Mr. Thomas:

Q. I understand you where you have competition by rail you make the rate, and where you have no competition to an intermediate point point for a shorter distance, you charge a higher rate?

A. Yes sir; we charge now for instance to Clarksville, on account of railroad competi-

tion, only ten cents a hundred; and at Ashton, thirty miles below Nashville, we only charge ten cents a hundred on account of the pike and wagon competition; but between Nashville and Clarksville, which is thirty miles below Ashton, we charge fifteen cents, and to Clarksville we charge ten, on account of railroad competition.

Q. That is the principle that governs your business?

A. Yes sir.

By the **Chairman**:

Q. Do you belong to the Southern Railway and Steamship Association?

A. No sir. I have no working arrangement with anybody at all. I used to. I have had contracts with railroads, but for the last year or two I have had none.

Q. Are there other boats plying on the river too?

A. There is now. There is a couple of boats running now.

Q. Do you have understandings with them in regard to rates?

A. No sir; we are fighting one another.

Q. You all work independently?

A. Yes sir.

Q. Then there is competition between you and them at these intermediate points?

A. Yes sir, now. The rate I refer to is not in force now. We have no rate now.

Q. What you have been telling us applied to some former period?

A. It is our regular rate when we have no competition. We have had the competition for the last twelve months.

By **Mr. Stahlman**:

Q. Is it true that even with the competition you now have your rates are sometimes higher to intermediate local landings than to the larger points where the business is larger?

A. Not now. Right now since this fight we have had with those two boats we make a broad ten cent rate up and down from Evansville and from Nashville down and from Paducah up. It is a broad ten cent rate everywhere. That is all we ask. In some instances it went under that.

Q. You have had lines on the river with which you had agreements, have you not; and when you make such agreements you generally embody the plan of charging more for the smaller landings?

A. Oh yes sir; when we can get our rate and we have got no competition we make a difference at the rail points of about five cents a hundred; in some instances more.

Q. If you had competition and were working under agreement you would do practically the same thing, would you not?

A. Oh yes sir; we have to do that to get the business at all. Our passage rate and everything is affected. Wherever a railroad point is we make it less, and I suppose the rail does the same.

Q. Will you please state to the Commission, if you know, the difference between the cost of transporting by rail and by water?

A. I have never studied it particularly, but I know the water can beat the rail materially for the same distance or even a longer distance. For instance, from Cincinnati to Nashville we are at present handling a great deal of goods,

steamboat load after load of dry goods, boots and shoes—I don't know about boots and shoes, but we are working all sorts of hardware and merchandise generally from Cincinnati to Nashville at about fifteen to eighteen cents a hundred, I believe. We only get a part of that. There is a division. The Memphis & Cincinnati boats bring it down to Paducah and Evansville and we take it to Nashville. We generally get it at any price we can.

The **Chairman**. Do you mean the rates prevailing and that are accepted, or do you expect the witness to go into an estimate of the elements that make up the cost of transportation?

Mr. Stahlman. My object was to ascertain the cost of transportation by river, if the captain is sufficiently familiar with it. We propose later on to develop the cost of the transportation by rail.

The **Witness**. By river from Cincinnati to Nashville, if you will study the geography of it you will see it is V shaped. It is twice as far from Cincinnati to Nashville by water as it is by rail; yet we can carry freights at eighteen cents a hundred; heavy freights, for each boat to get something out of it.

Q. What is the capacity of your boat, in tons, running between Evansville and Nashville?

A. Three hundred and fifty tons.

Q. How long does it take you to make the trip?

A. We make a trip a week. We go one way in three days from here.

Q. The running time from Evansville to Nashville is three days?

A. About that, according to the business we do. We make a trip a week; that is the time. Sometimes we have a day in each port.

Q. What does it cost you to make that round trip?

A. We make those trips for about \$700 a week with those boats.

Q. And the tonnage you carry is about what?

A. Three hundred and fifty tons. Then we have a passenger receipt and a freight receipt both ways and we have a local business. We get fuel cheap on the Ohio River and we run our boats very cheap.

Q. What is the cost of one of those boats running between Evansville and Nashville?

A. About \$18,000.

By **Mr. E. D. Baxter**:

Q. What is your insurance?

A. I don't insure. I ought to.

Q. What is it when you do insure?

A. Seven per cent.

By **Mr. Stahlman**:

Q. That expense of \$700 a week includes the wages of your men, etc.?

A. Stores, labor, wages and expenses.

Q. All the expenses incident to the trip?

A. Yes sir. Aside from that we have a light shore expense, which would probably swell the sum up to \$10 a day more all told.

By **Mr. E. D. Baxter**:

Q. I understand your expenses then would be \$110 a day?

A. I suppose it would be that at a guess; yes sir. It might not quite be that. Probably it would be.

Q. That includes the cost of your officers, and hands and fuel?

A. Yes sir; superintendence and everything.

Q. The tonnage of your boats I understand to be about 350 tons?

A. Yes sir.

Q. In a good season when you are running full, with a good through business and a good local business, how many tons of freight would you handle on a trip from Evansville to Nashville and back?

A. We don't get our full capacity all the time. When we get our full capacity probably we would handle seven or eight hundred tons; but we don't get that half the time.

The **Chairman**. Is it worth while to go into the particulars?

Mr. Baxter. I did not propose to do it with more than one witness. I want to get as definitely as possible the cost of steamboat transportation; and I understood the captain was familiar with it.

The **Witness**. He wants to see how much it would take to clean us out, I reckon.

Q. I am requested to ask what proportion of that expense is attached to the cabin, and what to the hold?

A. Our store bill is about \$125 to \$140 a week. It costs about \$150 a month to run the cabin, for labor, cooks, etc. I would have to get the book to tell you exactly.

Q. What do your passenger receipts average?

A. About \$100.

Q. For each trip?

A. Yes sir; hardly that. They would average about that.

John J. McCann, appeared before the Commission, and having been duly sworn was examined as follows

By **Mr. Thomas**:

Q. Please state your residence and occupation?

A. My residence is Nashville, Tennessee, and my occupation, merchant miller.

Q. What is about the milling capacity in barrels per day of the mills located at Nashville?

A. About 1800 barrels.

Q. Is all of that consumed in the vicinity of Nashville?

A. About one fifth of it is consumed in the vicinity of Nashville.

Q. What are the principal markets where you dispose of this product?

A. Georgia, Alabama, North and South Carolina, Florida, and occasionally some in Mississippi and Virginia.

Q. What would be the effect on your enterprise of the same rate per ton per mile?

A. The effect would be to localize our business.

Q. Suppose the rate to all coast points, or points depending upon the coast, was as high as Atlanta. What would be the effect then?

A. The effect would be that our trade would not extend beyond Atlanta.

Q. Then for the success of the milling enterprise in Nashville you would have to compete with other markets?

A. Yes sir.

Q. And have rates that allowed you to do so?

A. Yes sir.

By **Mr. Stahlman**:

Q. Is it not true that after the product of grain is exhausted in Tennessee you go to distant markets in the West and buy wheat?

A. Yes sir; there is not a season that we don't have that to do; and some seasons we have to wholly depend upon the West.

H. H. Buttorff appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Thomas**:

Q. What business are you engaged in and in what locality?

A. I am located at Nashville, and am engaged in the manufacture of stoves, mantels, grates and tin ware.

Q. About how many car loads of raw material and product do you receive and ship at Nashville?

A. We receive about 1,000 car loads a year of raw material. Our shipment after it is manufactured, amounts in car load lots to about 800.

Q. How many States in the Union do you think you send your products to?

A. To all the Southern States without exception and to California, Missouri and Illinois.

Q. Has it or has it not been the policy of the railroads at Nashville, and their connections to give you such rates as would enable you to compete with similar manufacturers located at other points?

A. It has been the policy of the roads to give us rates on material so that we could compete in the manufacture of our goods, and they have placed us in fair competition with every part of the country, so far as I know.

Q. Did you ever have any contract with the United States Government to furnish it with supplies?

A. Yes sir; we have had a contract with the United States Government for the past three years.

Q. Have you or have you not been solicited recently to make a bid for further contracts with the government?

A. Yes sir.

Q. Have you been able to make the bid; and if not, why not?

A. No sir; we have declined. We couldn't get a rate. We are compelled to deliver at Omaha, Kansas City, Chicago, St. Louis, New York and Philadelphia; and we were unable to get any rate at all, and therefore declined to bid this year.

Q. Is it or is it not essential to the welfare of your enterprise that you have competitive rates all over the country?

A. I think so most unquestionably.

Q. Do you think you would prosper with a like rate per ton per mile?

A. No sir.

Q. Do you think you would prosper if you were always confined to the shorter line to reach a market—if the longer line could not take your business?

A. No sir; I don't think we would.

Q. From where do you get your coke that you make these stoves with?

A. From West Virginia.

Q. About how far is that from Nashville?

A. I haven't the slightest idea.

Q. Is it over a hundred miles?

A. Oh, yes sir; I suppose so. I know it comes through Chattanooga, but how far it is beyond Chattanooga, I have no idea.

Q. Do you know how far it is from Nashville to Chattanooga?

A. It is 151 miles.

Q. How far is it from Chattanooga to Bristol?

A. I don't know.

Q. It is beyond Bristol, in Virginia, is it not?

A. It is in Virginia; yes sir; Pocahontas, Virginia.

By **Mr. Stahman**:

Q. You say the roads have given you competitive rates to enable you to fairly well compete with other manufacturers?

A. Yes sir; we have had no complaints of any kind.

Q. You do not mean by that to say that you had any advantage over anybody else, do you?

A. I don't know that we have sir. I don't know what anybody else has had.

Q. I mean anybody else from any other point.

A. I know we have had to pay sometimes five cents where we came in competition with St. Louis.

Q. You have had to pay the five cents yourself?

A. Yes sir; in order to meet St. Louis; that is, for Texas points particularly.

Q. Your distance from Texas points is about the same as from St. Louis, is it not?

A. I really don't know anything about geography; I know where points are located.

Q. You have been obliged to pay five cents in order to equalize your rates from St. Louis to Texas points?

A. Yes sir.

Mr. Baxter. I have not had the opportunity of being before the Commission at any of the other points. I represent the Louisville & Nashville Railroad. We cross the Chattanooga Road at Nashville. I understand the testimony that is now being taken on behalf of the Nashville & Chattanooga Railroad, which I see is being taken down by the stenographer, may be used by the Louisville & Nashville Railroad without any further re-taking of the testimony.

By the **Chairman**:

Q. Are the concessions made to you in rates at Nashville what you understand to be made to every business man in Nashville?

A. I don't know. I confine myself strictly to my own business.

Q. Your testimony concerns your own business?

A. Yes sir.

Q. You think you ought to have special rates, or else you cannot make your business profitable?

A. I don't know whether these are concessions to me specially or not. I know when I go to the railroad and say I must have a certain rate in order to meet competition to certain points, I generally get what I ask for, if it is reasonable.

Q. You said you could not get rates so as to make a bid for government work?

A. I couldn't get any rate at all.

Q. Other bidders, I suppose, were in the same predicament also, were they not?

A. Our principal competitor has been—

Q. I ask you just that question: whether you were under any disability that anybody else was not under; you could not get rates, although other bidders could?

A. If you will allow me to explain: Quincy, Illinois, has been our principal competitor, and they are so much nearer the distributive points than we are that I don't know what they can do. I suppose probably they might get rates, being located as they are. We couldn't.

Q. You don't know as to that?

A. No sir; I don't know.

By **Commissioner Bragg**:

Q. About what amount of capital have you invested in that business?

A. We have \$400,000 capital, besides a surplus of \$78,000.

Q. How long have you been engaged in that business at Nashville?

A. We commenced as a corporation in July, 1881.

W. Morrow appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Thomas**:

Q. Will you please state where you reside and in what business you are principally engaged?

A. Principally in the wagon manufacturing business.

Q. About how many wagons do you manufacture per annum?

A. About 16,000.

Q. To what principal points are they shipped and sold?

A. In the Southern States, though we have a trade in Illinois, Indiana, Kansas, Nebraska, Iowa and Minnesota. Within the last few years only we have been going into those Northwestern States.

Q. Is it or is it not essential to your enterprise that you should have competitive rates to all the principal markets of the country?

A. Yes sir; it is.

Q. Do you usually receive those rates from the railroads on application?

A. Yes sir; we have never had any complaint to make on that score.

Q. Suppose the rate of freight was advanced to \$10 per wagon. Could you lose that much out of your business on each wagon?

A. We could not.

Q. Who would have it to pay?

A. The man who buys the wagon.

Q. So low rates not only benefit you, but the purchasers of the wagons, you think?

A. They benefit the purchaser more than they do us. We wouldn't know what to do with \$10 profit on a wagon. We don't get anything like that.

Q. Are you interested largely in the marble quarries of East Tennessee?

A. Yes sir.

Q. Is that marble quarried and used in Tennessee principally?

A. Scarcely any of it.

Q. To what points is it principally sent?

A. Philadelphia, New York and northern

points. We have to rely continually upon the favor of the rates there to come in competition with the Vermont marble.

Q. You have to meet the competition of other marble quarries, wherever located?

A. Yes sir.

Q. And you have to have low rates to do so?

A. Yes sir.

Q. Have the Nashville & Chattanooga Railroad or the Louisville & Nashville Road which you ship over going south, withdrawn any rates on your wagons at points south of Nashville?

A. No; everything is just as it was. We are shipping under the same rates.

Q. Have the rates been withdrawn north of the Ohio River?

A. No. We have had some little trouble at some points in getting all the rates we wanted; but recently we are having no trouble with points north.

Q. What would be the effect on your business of an uncertainty or doubt about the stability of rates?

A. It has operated within the last thirty or sixty days to our injury. People have been uncertain about rates, in ordering. We receive orders in our business for shipments in August, September and October, away ahead, from customers who send in their orders to be filled later along in the season. Of course it has interrupted everything of that sort. People write us they don't know what to do, and it puts our business very much at an uncertainty.

Q. How long have you been in this business?

A. About twelve or fifteen years.

Q. Have you ever been seriously embarrassed by the want of securing competitive rates?

A. I never have. We have never gone to the railroad authorities in our lives with any just cause of complaint that we have not been met in a spirit of perfect frankness and candor and had matters adjusted. We have not always got what we wanted, but I expect maybe we were not always entitled to what we asked for. We have no complaint to make on that score.

Q. Do you or do you not think the life of your business is low competitive rates?

A. We think so. Our outgoing shipments amount to about 600 cars of finished goods a year; and the incoming shipments I suppose 900 or 1,000, and fuel and material say 1,500 car loads a year. There is a rolling mill there in connection with our wagon factory.

By the Chairman:

Q. What do you mean by competitive rates?

A. There are other wagon factories in the United States that are shipping into our territory, and we are going into theirs. We seek to equalize the rates through the railroad points north and south, so that we will be upon a perfect equality, so far as possible. We ship very little by river. There is no point we reach by river scarcely at all. We have very few customers on the river.

Q. What you mean by competitive rates is rates that correspond to those given to your competitors?

A. Yes sir. The rates we are chiefly interested in are the rates affecting our competitors. We are in a specialty and we look to nothing else.

Q. If I understand your statement, you want

only what is fair. If the rates given to your competitors over the railroads are also given to you that is all you ask?

A. Yes sir. We are very much interested in low rates because the lower the rate the cheaper we get the wagons into the market and the more purchasers we have.

Q. What I was endeavoring to get at was the meaning of the term as you use it. As I understand it now you mean the same rates given to your competitors?

A. I don't know what the legal construction—

Q. I am asking for your construction. I want to get at what you mean. You say you have had no difficulty in getting rates north of the Ohio?

A. We have had some trouble. We have had more trouble—

C. You are having none now?

A. We are getting rates now within the last week or two.

Q. Such rates, as I understand you, as are fair enough?

A. Yes sir; we are making no complaint at all.

Q. North of the Ohio do you understand that the railroads are charging more for the short haul than for the long haul in any case?

A. For awhile we could get no rates at all, but they are restoring the rates to certain points—pretty much the same rate we had before.

Q. I want you to answer the question I ask you. You say you are now getting rates. Do you understand the railroads there are doing what they are in this region—charging more for a short haul than they do for a long haul?

A. I don't understand they are charging us more.

Q. And yet you have no difficulty in respect to the rates up there?

A. We have not had for two or three weeks. Up to that time we did have trouble and had to suspend shipments. For two weeks now we have had no trouble.

By Commissioner Walker:

Q. Do you send your goods to Chicago?

A. No sir. We send some through Chicago to the Northwest, to Dakota, etc. We are shipping wagons to Minneapolis.

Q. Are there wagon makers in Illinois?

A. Yes sir.

Q. That compete with you?

A. Yes sir.

Q. Then when you speak about a competitive rate to Dakota, you mean a rate that will enable you at Nashville to compete with Illinois, do you?

A. Yes sir; we have to meet a part of that rate. The railroads don't put us on a perfect equality with those people, and we have to cut our profits to get there.

Q. When you find that you have got to get your wagons to some distant point to compete with other builders who are nearer, you go to the railroad and tell them and they make you a special rate?

A. They generally make such concessions as they can. They don't put us upon terms of perfect equality, because that is hardly fair.

Q. But they treat you pretty liberally?

A. Yes sir.

INTER S.

Q. Considering you are a large shipper and handle a great many cars both ways?

A. Yes sir. We have never had any complaint of unfair treatment to make against the railroads.

Q. Are there any other wagon makers in Nashville?

A. No; none to make any heavy shipments.

By **Mr. Stahlman**:

Q. Are the railroads any more liberal in making rates for you westward than they are in making rates from the West to Nashville so that the western wagon can compete with you in the South.

A. I don't think they show any unfairness towards us or against us. We are perfectly satisfied with our treatment.

The **Chairman**. Mr. Stahlman asked how they treat others.

The **Witness**. I don't know how they treat others.

Q. What I desire to elicit is if it is true that you do come in competition right at home with wagons from Illinois, and throughout the entire South?

A. Yes, sir; they get into Nashville and are selling their wagons in competition with us at prices I presume that pay them a profit, just as we are selling wagons in their territory.

By **Commissioner Schoonmaker**:

Q. You say you presume so. Is it a fact?

A. Yes sir; of course they are selling wagons and I take it for granted they are not selling them unless they are making some money. We generally get out of a territory where we are not making money.

By **Mr. Stahlman**:

Q. They are selling wagons right in Nashville against you, are they not?

A. Yes sir.

Q. And in Texas?

A. Everywhere, in all the Southern States. Our trade is principally in the Southern States. We are running in competition with the Louisville wagon factory, and various factories all through the country.

Q. In other words, the ordinary adjustment of rates has enabled manufacturers located at different points to compete with each other at different points?

A. Yes sir; that is the way I understand it.

By **Commissioner Walker**:

Q. You say you do not know what rates these other men are getting?

A. No sir.

Q. And you do not tell them what rates you have been getting?

A. No sir.

Q. Each man does the best he can in his trade with the railroad company, and sells his wagons for what he can get?

A. Yes sir; and where we can't get a rate that is satisfactory, we expect to cut our profits and to go into territory where we can make more money.

By **the Chairman**:

Q. Have the rates granted to you been uniform for the last year or two?

A. Yes sir; I don't think there has been any change; very little change if any at all.

Q. They have been uniform to different parts of the country?

A. Yes sir; any change of rates for the last four or five years has been very seldom.

By **Mr. Stahlman**:

Q. By uniform, you do not mean to say they have been practically the same to all points?

A. No sir; but I mean there have been no large changes—nothing amounting to a considerable sum.

By **Commissioner Morrison**:

Q. The rates have been practically the same to the same places?

A. Yes sir.

By **Mr. Stahlman**:

Q. There are persons dealing in wagons at Nashville, who buy their wagons from Studebaker, and there are agents for Studebaker and other manufacturers in Illinois?

A. Oh yes sir; I believe every wagon factory in the United States, or in the Northwest, is represented at Nashville by some firm or other.

Q. Do you, or do you not, mean to say that you have any special advantages given you or rates furnished you, that would not be given to anybody else that wanted to ship wagons from Nashville?

The **Chairman**. He has said expressly he did not know.

A. I do not know of any such discriminations, either for or against us.

Q. Are not your rates open?

A. They are at the railroad office, I presume.

Q. They are on the bills of lading?

A. Yes sir.

Q. There is nothing in the form of rebates or drawbacks?

A. We have never received a rebate that I know of. I don't think we have ever done that sort of business. Our bills of lading are filled out and the rate goes to the shipper. It is not a matter of secrecy at all.

By **Commissioner Bragg**:

Q. Do these men who sell wagons from Illinois and other places down there about Nashville, sell their wagons as cheap as you can sell yours?

A. There is very little difference sir.

Q. Right at Nashville?

A. Our wagons generally are sold at about two to five dollars cheaper than anybody else's wagons. There is very little difference. In Nashville, I suppose you can buy any other wagon just about as cheap as ours; but there is about that difference in the price list in our favor, in wholesale lots.

Q. Do you mean that that applies generally, no matter where you sell them?

A. Yes sir. There is a difference in price lists and discounts in our favor, of from two to five dollars.

Q. Is it equally true that in other parts of Tennessee they handle their wagons about as cheap as you do yours?

A. I don't see that there is any difference, scarcely, except may be to that extent. In Nashville the price is about the same. I don't think there is anything in the claim, but I don't hesitate to state it—we run by convict labor, and there are other factories in the United States that use convict labor also, in making wagons. Those who do not, put themselves upon high ground and say free labor makes a

better wagon than convict labor. There is nothing in that claim, but they ask just a little more for their wagons.

By **Commissioner Schoenmaker**:

Q. How many convicts have you at work?

A. We have only about 450 engaged in the wagon business. There are about 1300 in all, but they are mining and in outside operations.

J. H. Wilkes appeared before the Commission and, having been duly sworn, was examined as follows:

By **Mr. Thomas**:

Q. What is your business?

A. The grain and hay business.

Q. At what point?

A. Nashville.

Q. Where are the principal markets to which you ship your grain and hay?

A. North Carolina, South Carolina, Georgia, Alabama and Florida.

Q. When you ship to Georgia, South Carolina and Florida, do you find the same products from other points that you have to compete with?

A. Yes sir; we find products at all points where we ship to; products coming from other markets, but more especially the competition is sharp at the coast points and points near the coast.

Q. Has it, or has it not been the usage of the railroads to allow you rates by which you could compete with these other markets?

A. Yes sir; we have always had competitive rates in order that we could reach these sea coast points on equal terms with other rates and other lines.

Q. Suppose there was a uniform rate per mile; would your traffic be increased or decreased?

Commissioner Walker. Why do you ask that question? Is there any such thing in the Bill?

Mr. Thomas. Yes sir, unquestionably. If our rate to Atlanta or Augusta is twenty-two cents we must charge twenty-two cents or more to Charleston, Savannah or Jacksonville.

Commissioner Walker. What has that to do with a uniform rate per mile?

Mr. Thomas. That is in response to a somewhat popular demand. It is not in the law, but that is what some people want.

Commissioner Walker. You have asked the same question two or three times. It seems to me immaterial.

Q. Could you reach coast points at the same rate given to Augusta?

A. We could not. It takes a lower rate to reach the sea coast than it does the interior points. Sometimes we are cut out of interior points by grain being brought by the steamship lines carried from the west to Baltimore by rail and then by steamship lines to the coast point such as Beaufort, Port Royal, Charleston and Savannah.

Q. Is it or is it not true that the rate at Augusta is affected by this same ocean competition?

A. Yes sir; we have been driven out of Augusta repeatedly by a reduction in the rate of the steamship line working from Baltimore and other eastern points.

INTER 8.

Q. Can or can you not give any approximate estimate of the grain business at Nashville?

A. My estimate would be rather vague. I would suppose Nashville handled two and a half to three million bushels of corn yearly. I don't know how much wheat.

Q. As a general rule you have been granted rates in your business to enable you to reach competitive markets?

A. Yes sir.

By **Mr. Stahlman**:

Q. Have you known any rates made from Nashville within the last week or two other than those made by the lines out of Nashville, that have prevented you from selling grain at the prevailing rates in any of the southern markets?

A. Our grain is nearly all sold through the southern markets through brokers, and I was advised yesterday by a broker, that St. Louis had sold grain in Selma on the day before at a price two cents below what we could possibly sell it at on the present rate of freight, and that that grain was coming from St. Louis down the Mississippi, across to Mobile and up the Alabama River, making it a water route through the entire distance. That price was two cents a bushel below what we could possibly sell at upon our rate of nineteen cents per hundred.

Q. You do not mean to say that the railroads out of Nashville while they have given you rates which enable you to meet the rates at competing markets, at any time have made you rates so as to give you an exclusive privilege, or build up your market to the detriment of any other competing market?

A. No sir; I have never considered that we were especially favored. We have always been upon the same basis as other competing markets, and have never, so far as I know, had any special privileges or advantages.

Q. In other words, your idea is that you have not made any more money on the volume of business you have done than your competitors have done?

A. That is so.

Q. And you have been working on a close margin?

A. Yes sir.

Q. In shipping business competing for the trade of Mobile and Pensacola, would lower rates be necessary than are in vogue to Birmingham, Selma or Montgomery?

A. Yes sir; they would be necessary because we have the river competition. We draw our largest supplies of corn from the Ohio River and its tributaries. With open water routes to New Orleans and other points, it is necessary for us to have low rates to Pensacola, Mobile and New Orleans in order to compete with the boats running on the Ohio River.

Q. Let me ask you if in getting these low rates to coast points and to Pensacola and to Mobile you are enabled to make any larger profits on your shipments to those points than you make on your shipments to the interior?

A. No sir; our profits as a rule are less at the sea coast points than they are at the interior points.

J. H. Fall appeared before the Commission,

and having been duly sworn was examined as follows:

By Mr. Thomas:

Q. Please state in what business you are engaged and at what point?

A. I am in the jobbing hardware business at Nashville; the firm of Gray, Fall & Co.

Q. In what States is your trade generally found?

A. Principally in all of the Southern States, Alabama, Georgia, Florida, South Carolina and Mississippi.

Q. Have you or have you not what you consider reasonable rates to competitive points—where you have to come in contact with other markets?

A. Yes sir; we have always had them.

Q. Do, or do you not know whether you have had any special rates for your firm that have not been granted to other firms in the same business, at Nashville?

A. No sir; I do not. We have never had it that I know of.

Q. What would be the effect on your business if you were not allowed to compete with Evansville and other points that have the same line of traffic that you have?

A. Well sir; I think if the clause was enforced, it would have the effect to circumscribe our business, take our men off the road and localize it. In other words, we could not develop our full capacity with the machinery and capital we have in our business.

Q. Are, or are you not interested in any factory in Tennessee?

A. I am personally interested in the Laurel Mills Manufacturing Company at Strathmore, Tennessee.

Q. State what the custom is with reference to the product of this factory; whether you sell it in advance, or how.

A. We have sold our entire production two years in advance in New York, and that sale was based on the present rates of freight, and on the price of New York cotton. Since this law has been agitated and the rates north have been withdrawn, we are now shipping south and by coast to New York at a rate of fifty-nine cents a hundred. By rail it is seventy-six cents a hundred. If these rates were increased on us, it would as a matter of course curtail our profits very materially; in fact I should not think we would realize anything out of the trade.

Q. Have, or have you not had a contract with the United States Government for furnishing supplies?

A. Yes sir; we have the contract for it now for this fiscal year ending June 30.

Q. Have you been solicited to renew your bid for that business?

A. We have.

Q. If you have not done so, why have you not?

A. One of the reasons was that we did not know exactly what the rates would be. The government require us to deliver all our goods at Sioux City, Omaha, Chicago, New York and one or two other places; and not knowing what the rates would be, it was a large factor in preventing us; or rather, we were very much disinclined to bid on that account, because our margins are very short, and if the rates were

increased on us, we preferred not to bid at all, and didn't do so.

By Mr. Stahlman:

Q. At some distant points in the South the rates are less than they are to intermediate points. If those rates were lifted, so to speak, by advancing the rates to the distant points, would or would not that hurt your business?

A. Very seriously; yes sir. In fact, we have been very much disturbed about it. If you will permit me I may simply state that in a private way we were so much exercised that we consulted some seven or eight of the leading jobbers at Nashville, and they all have the same sentiment on the subject. We are very much disturbed in regard to the fourth clause, because they all do a large southern business.

Q. You feel you could not stand any advance in rates to the distant southern points?

A. Not at all. It would shut us out. Really, the business is narrowed down to the volume, and not so much in the profit. The money is made in our business on the volume we do; and the local trade could not take up what we are able to do. We are compelled to seek distant points.

Q. How many men does your house travel?

A. We travel from ten to twelve.

Q. What are your sales annually?

A. Between \$300,000 and \$400,000.

Q. How many other hardware firms are there in the City of Nashville?

A. I think there are thirteen.

Q. Nashville, from your observation, has a general trade to distant points in all branches of jobbing, has it not?

A. Yes sir.

Q. And they would probably be affected in the same way, would they not?

A. Yes sir; I think so.

Q. Do you not in iron come in competition at certain points in the South with iron coming down the Mississippi River?

A. We do not deal in bar-iron.

Q. How is it with horse-shoes?

A. We deal in horse-shoes.

Q. Are horse-shoes coming from Western New York, where they are made, able to come through the Port of New York and by steamer to the southern coast and up into the interior in competition with you very largely?

A. Very largely indeed; yes sir.

By the Chairman:

Q. You spoke of being shut out from competitive points if the rates were raised upon you. Is that upon the supposition that while the rates are raised upon you they will not be raised upon your competitors?

A. I presume they would be raised upon our competitors.

Q. If they are raised generally how would it affect you injuriously?

A. We would have the principal competition where they could reach these points by water. Our heaviest business is in Atlanta, and even up as high as Atlanta, they come down the coast to Savannah and up to Atlanta at a much lower rate than we could lay it there, provided the rates were raised from Nashville now. As it is, we are competing with them.

By Commissioner Walker:

Q. Won't you explain how it would injure the jobbing trade of Nashville if the rates to

the local points in the Southern States should be reduced. I am not talking about raising the competitive points. I simply inquire whether if the lower rates to the smaller points should be reduced that would injure your hardware trade?

A. I don't think there is much probability of the local rates being reduced, because I don't see how the roads can well stand it.

Q. Just answer the question. What effect would it have if the local rates were reduced?

A. If the local rates were reduced on all the lines in the aggregate to where it is now, it wouldn't injure the trade all; but if it did amount to any more, all those local rates being put together, it would very seriously embarrass our business. This is my opinion.

Q. If the local rates to points in the vicinity of Atlanta, for instance a circle of fifty miles around Atlanta, were reduced so as to make them on par with the rates to Atlanta, it would enable you jobbers to compete with the Atlanta jobbers, would it not?

A. I suppose it would with Atlanta, but Atlanta is not—

Q. That is all I ask. It would be true, would it not, if the same occurred in a radius around any other of the trade centers of the South?

A. Yes sir; I suppose what would be true about Atlanta would be true about any other point where there was no competition.

Q. And it would throw the jobbers of the country generally on a par?

A. Yes sir; and they are that way now.

By Mr. Stahlman:

Q. Suppose the rates from New York, Philadelphia, Boston and Baltimore were made the same to local points as to Atlanta, and the rates to Atlanta were made the same as to Nashville. For example, if the rates on horse-shoes from the point where they are manufactured in New York were made the same to La Grange, Georgia, as it is to Nashville and Atlanta, what would be the effect on the jobbing trade of Nashville and Atlanta in that line?

A. It would have a very serious effect. It would just result in their going to the factory for their horse-shoes and perhaps they would buy ten or twenty kegs where Nashville or Atlanta would buy a thousand kegs.

Q. From what you know of the business and pecuniary condition of the southern roads, is it your opinion that they could afford to put all of their local traffic on the basis of the through rates existing now?

A. No sir; I am sure they could not.

Q. You believe then that those rates to the terminal points would be advanced?

A. Yes sir; necessarily so. If the local rates were advanced they would be compelled to advance the through rates.

John F. Wheless appeared before the Commission and having been duly sworn said:

Mr. Chairman, I am charged with presenting a memorial to the Commission. It is from the manufacturers and merchants of Middle Tennessee, praying for the permanent suspension of the fourth section of the Interstate Commerce Law.

The Chairman. Do you wish to make any statement in connection with it?

LYNN S.

The Witness. I think not, Mr. Chairman.

The Chairman. You understand this statement to represent the facts as they are, do you?

The Witness. Yes sir.

By Mr. Stahlman:

Q. Will you please state to the Commission the business in which you are engaged?

A. I am president of the Empire Furniture Company at Nashville and the Belmont Flouring Mills of Murfreesboro.

Q. Your factory ships a large part of its product to different parts of the South?

A. Yes sir; the business covers from North Carolina to Texas.

Q. The railroads have so adjusted their rate as to enable you to do a fair business?

A. Yes sir.

Q. Your factory is not getting very rich even on the rates you have, is it?

A. No sir.

Q. It is just fairly able to compete with your competitors in the same business?

A. Yes sir.

Q. In Nashville and other markets?

A. Yes sir.

Q. Do you think you could afford any advance in rates to the points furthest from Nashville?

A. No sir.

Q. Do you know something of the pecuniary condition of the southern railroads, particularly the Louisville & Nashville?

A. I have a general knowledge, not a special knowledge.

Q. Do you think the Louisville & Nashville Railroad could afford to adjust its rates to all intermediate points between Nashville and Pensacola or Jacksonville, Florida, or Mobile, Alabama, on the basis of the rates fixed to those points and all intermediate points?

A. I should not think so, sir.

Q. If in your judgment the company should be forced to raise its competitive rates or reduce its noncompetitive rates, what do you think the company would do?

A. From my knowledge of the proportion of through business I should think they would increase the through rates.

Q. And that would not be very good for your business?

A. No sir.

Q. Or anybody else in your line of business?

A. No sir.

Q. As President of the Belmont Mills at Murfreesboro you are aware of the fact that the rates from Murfreesboro to Charleston, Savannah, Port Royal, and other southern ports are less than they are to intermediate points?

A. That is my impression. The manager of the mill is here. I am not as familiar with that as I am with the other matters, though that is my impression and understanding.

Charles O. Thomas appeared before the Commission, and having been duly sworn was examined as follows:

By Mr. Thomas:

Q. In what business are you engaged?

A. Merchant miller.

Q. At what point?
A. Murfreesboro, Tennessee.
Q. How far South of Nashville is Murfreesboro?

A. It is said to be thirty-one miles.

Q. What is the capacity of your mill?

A. 150 barrels.

Q. To what points principally do you ship this flour?

A. To Georgia, and sometimes Alabama and South Carolina.

Q. Do you ship any to the coast points?

A. Yes sir.

Q. Do you know whether the rates to the coast points are higher or lower than to the interior points in Georgia?

A. They are lower.

Q. How do your rates to those points compare with the rates from Nashville?

A. When we are milling wheat in transit they are the same.

Q. I am not speaking of that, but locally.

A. They are about three cents higher.

Q. To what points?

A. About three or four cents higher to the different points.

Q. An average of three or four cents?

A. Yes sir.

Q. Still you are able to make a fair profit on the product of the mill, are you?

A. Generally; yes sir. Sometimes competition is quite close and the profit small.

Q. You are enabled to meet competition at these water points in Georgia and South Carolina?

A. Sometimes; yes sir.

Q. As a general rule?

A. As a general rule. If I am not, I go to the general freight agent and ask for different rates.

Q. You do not know whether you have been favored with any special rate that has been denied other shippers?

A. No sir.

By **Mr. Stahlman**:

Q. As a rule you say your rates from Murfreesboro to coast points being further distant are less than to intermediate points. As a rule, even with a lower rate, are your profits on the coast business as large or larger than on your sales to the interior or intermediate points?

A. They are not as large.

Q. Then while the railroad is making some sacrifice in rates to let you into the coast, you too, make some sacrifice to get in?

A. Yes sir; if we want to sell.

By **the Chairman**:

Q. Do you mean you charge higher prices to the parties at intermediate points than you do to the distant points at which you sell?

A. We have at the coast points flour coming from Baltimore—

Q. I ask just that question. Do you mean that you charge higher prices to parties at intermediate points than to the distant points?

A. It is just owing to the freight. We deliver our flour. The price is a price delivered. If the rates at the coast points were two cents a hundred less than at the interior points, of course we could afford to sell it so.

Q. You say you get less profit there. How do you get less profit there? Do you add more profit to the sales to intermediate parties?

A. I don't know that I understand your question.

Q. I want to know how it is that you get less profit at the coast point than you do at the intermediate points, although your freights are less there?

A. On account of the competition with flour at other points.

Q. Then you charge more to the man on the railroad between your mill and the coast than you do to the man to whom you sell at the coast?

A. Yes sir.

Q. So that it works both ways with him; that is, he pays more freight and he also pays you more profit?

A. At what point?

Q. Any point in the interior between your mill and the coast point. I only want to see if I understand you. If I do, this is the effect: that he pays more freight and also pays you more profit than a man on the coast. I only want to know whether that is so. I ask what the fact is?

A. Yes sir; we get a higher price for our flour at the interior than we do at the coast. Would you like to know the reason?

Q. Give your reason if you care to. I only want to know the fact.

A. The reason is on account of competition. Parties in the West can get through by Baltimore, and come by steamer down to Charleston or Savannah or other points, and be able to sell flour; and if we want to sell flour, of course we have got to compete with them. Those parties can't get into Atlanta or can't get into Augusta, may be. They might not have as strong competition at Augusta as we do at Charleston. We might sell flour at cost at one point and at another point make a profit on it.

Q. You said something about milling in transit. What do you mean by that?

A. A part of the year we have home wheat. The balance of the year, if we want to run our mill, we have to bring our wheat from the West. For instance, say I buy wheat in St. Louis. I bring it through to our mill, and stop it, and mill it, and ship it beyond into Georgia or South Carolina. That enables us to run most all the year. If we didn't have that privilege we couldn't do it.

Q. Everyone has that privilege, I suppose?

A. Oh yes sir, certainly. I have no special privilege to this mill.

Q. What you speak about now is simply buying grain abroad and grinding it. That, of course, could be done by whoever has a mill?

A. Yes sir.

Q. What do you mean by milling in transit?

A. I just stated—by buying wheat in St. Louis, and bring it to our mill and manufacturing it into flour, and then shipping it into Georgia or South Carolina. That is what we term milling in transit. It gives us the opportunity of milling during the year, and then we have a certain rate.

Q. Oh, there is a certain rate about it. What is the rate?

A. Those rates are based on what is called the Ohio River points, I think.

Q. That is, the rate on grain to you?

A. Yes sir.

Q. You receive the grain, and it is delivered to you at a certain rate; I understand that; but I don't think you have yet explained what milling in transit is?

A. What part of it would you like me to explain?

Commissioner Schoonmaker. The whole of it.

Q. I want to know what it means, so that a person who had never heard of it before could understand from your statement what is meant by it.

A. We go on the same basis as a party does in the West. Does that make it plain to you?

The Chairman. No.

Commissioner Morrison. We are worse off now than we were before.

Q. You must know what it is. Tell us what it is?

A. I don't know how I could explain it better than I have.

Q. You have explained that you buy grain and take it to your mill, paying a rate based on the Cairo rate. I can understand that much, but there is something more to it; and if you will tell us what it is, I will be obliged to you.

A. I have got nothing to cover up, sir, as far as that is concerned.

The Chairman. No; but you do not disclose anything.

Mr. J. W. Thomas. Will you allow me the privilege of explaining it?

The Chairman. You may explain it, if you please, if the witness will not; only if you explain it, you will be under oath.

The Witness. I beg your pardon. I had not intended to conceal anything.

J. W. Thomas was duly sworn and said:

You ask what is meant by milling in transit at Nashville or any place. We call it reshipping. It is simply this: if the rate on grain from Evansville to Nashville is ten cents, and the rate on grain from Nashville to Atlanta is twenty cents, that would make a total rate of thirty cents from Evansville to Atlanta, Georgia. Now we allow our mills at Nashville, which you have heard have a capacity of some 2,000 barrels a day, to bring grain from Evansville to Nashville, and they pay ten cents. Then when they grind this grain into flour, they reship it, and we refund them the three cents which makes the same total rate from Evansville to Atlanta as if it were shipped directly from Evansville to Atlanta without stopping at Nashville to be ground. That is all there is in this business.

By the Chairman:

Q. That would apply whether the grain comes from a direction that would naturally pass it through Nashville, or not?

A. It would apply to all grain brought through Nashville, ground and reshipped; both rates combined would be the sum of the single rate from the point of original departure to the point of destination.

By Commissioner Morrison:

Q. From where the wheat grows to the place where the flour is made?

A. From the wheat field to the consumer in the south.

Q. If you take it two or three hundred miles out of the way, in getting it there to enable

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this gentleman to grind it, you charge nothing for that; you charge just the same as you would charge if you had taken it directly to Atlanta?

A. Just the same. It makes no difference. The object of that is very plain. It keeps the mills employed the whole year round, instead of depending on the local crop, which may or may not be good.

Mr. Stahlman. Will you take my testimony on that point?

E. B. Stahlman who had been previously sworn, said:

I think I can make it a little clearer than Mr. Thomas can. I will illustrate it by a point from your own statement. We will say the rate from Detroit to Charleston is thirty cents a hundred by the direct line, and the lines through Nashville are as short as any, practically. The miller at Nashville first grinds up the product of Tennessee. The miller at Murfreesboro is in the same fix. The rate from Detroit to Nashville, we will say, is fifteen cents, and the rate from Nashville to Charleston nineteen cents, making thirty-four cents a hundred in bringing that wheat from Detroit to Nashville, and reshipping from Nashville to Charleston, against a direct rate of thirty cents through Nashville or through Baltimore to Charleston. The miller at Nashville and Murfreesboro is put on the basis of being allowed to go to Detroit and bring that wheat to Nashville for the purpose of keeping his mill going, and keeping his custom in the south during the year, and then reshipping at a rate from Nashville or Murfreesboro to the South, the two rates combined being precisely the same as the rate from the original point of shipment.

The Chairman. That is it. Now Mr. Thomas (Charles O. Thomas) I want you to understand that in what I said no reflection was intended upon you at all. You assumed that we understood this matter. Perhaps we did; but we wanted it brought out in evidence. We wanted it to appear. When you made your reply you were partly assuming that we understood what was in your mind, while in point of fact we wanted to call it out as fully as we have now got it from Mr. Stahlman's statement. That is all. I want you to understand there is no imputation upon you at all.

By the Chairman:

Q. Mr. Stahlman, when this arrangement is made is anything issued as evidence to the miller of what the understanding is?

A. There has been heretofore; yes sir.

Q. Something is issued to him. What is that called generally?

A. It is done in this way: it is a tariff based on business from certain points to certain points.

Q. Is what you issue to him something that passes from hand to hand, and that may be disposed of by him to somebody else?

A. No sir.

Q. It can only be issued to him, and it can only be availed of by him. For example, the miller buys 10,000 bushels of wheat and brings it to his mill and he is expecting to grind that up and transmit it to Charleston, if you please?

A. Yes sir.

Q. When it goes through does it go through as wheat?

A. The flour rates and the wheat rates are practically the same. They are the same from all western points.

Q. But whatever is shipped by the railroad company for him represents wheat, I suppose?

A. It goes in this way—

Q. It represents 10,000 bushels of wheat?

A. Let me make myself a little clearer. In the first place, the miller at Nashville—and it is open to all millers in Nashville, and other points of milling in Tennessee—must first produce his bill of lading and freight bills paid on the wheat from Detroit—the local rates from Detroit to Nashville. I will say there has been a great deal of wheat from Michigan to Nashville put through on that very principle. That has been the custom in the past. He must also show by his bill of lading to what points in the South he ships the product of that wheat. Then the two rates are combined, the rate into Nashville on the wheat, and the rate out of Nashville on the flour; and the difference between the two local rates thus combined is refunded to him.

By *Commissioner Walker*:

Q. When you get the wheat and deliver it to him, do you give anything in writing in the form of a certificate that he has brought so many bushels of wheat from Michigan?

A. No sir; he holds the bill of lading from Michigan as his voucher. That is his certificate that he has brought the wheat, and the freight bills he has paid.

By the *Chairman*:

Q. Is that something that is recognized as transferable?

A. No sir; I don't so understand it at all. It was designed originally to keep the mills going after the product of the State was consumed.

Q. You have not known of any practice of that sort?

A. No sir.

Q. Is this privilege that you give to the millers of Nashville one that is open to all millers in the State of Tennessee?

A. Yes sir; all on the line of our road. I only speak for our road.

Q. Small and large?

A. Yes sir; all those who ship and who receive.

Q. But in this indirect way a rate is made which might vary very considerably from what the rate would be if the grain were transferred directly?

A. Not at all. The rate in the first instance is based on the rate by the most direct route.

Q. I understand; but the indirect route by your own representation may be doubled the distance it would be by the direct route.

A. We are fortunately so situated that the Nashville route is about the shortest route.

Commissioner Morrison. You have the nearest road to everywhere. (Laughter.)

Q. How do you get at it when you want to settle. Do you charge him the rate from Murfreesboro to Charleston less the difference there would be between the sum of the locals and the through, or do you charge him the full rate and then give him a drawback—a rebate?

A. I think before this law went into effect it

has been the custom to let him present his bills at the end of the month and refund to him the difference, and that arrangement has been open to everybody engaged in the milling business. I want to state, and I tried to make it clear and will do it now, that this arrangement is not sought, nor does it in effect give the miller at Nashville any advantage over the man who sees fit to ship direct from the original point of shipment to the ultimate point of consumption, Detroit to Charleston, say, for example.

By *Commissioner Bragg*:

Q. Is that arrangement made or entered into for the purpose of benefiting the miller at Murfreesboro or Nashville, or is it done for the purpose of giving the Louisville & Nashville Railroad Company work in hauling that freight?

A. For both purposes sir. Of course the miller, by having this arrangement made for him, is able to keep his mill going.

Q. There was a time, I suppose, before you got to doing business in this way, when you did not give them that rate?

A. Yes sir.

Q. How did your revenue—I am talking about the railroads now and not the millers—compare then with its amount after you gave the millers this rate?

A. The business has increased, and I will state this: as far back as twelve years ago there were not enough mills in Middle Tennessee to grind the wheat for home consumption. There was not as much wheat grown because there were no mills to grind it. The arrangement, I think, applied to perhaps the first mill of any size that was erected, and the result has been to increase very largely the production of wheat in Tennessee.

Q. That is all right enough; but now the question I further ask is this: How has it affected your business; whether the revenue of your road has increased on that sort of arrangement or not?

A. It has increased. I will explain why.

Q. I want to ask you why.

A. The southern consumer wants the flour. He don't want the wheat. Nine tenths of the consumers of the South want the flour. But for the mills at Nashville, the Detroit wheat would have been ground at some other point and have gone through some other way to the southern coast, and the Tennessee miller would not have existed, and the Louisville & Nashville, and the Nashville & Chattanooga Roads would consequently not have carried the traffic. The tendency has been first, to increase the production of wheat because there is now a legitimate demand for a great deal of wheat, and secondly, the erection of merchant mills in Middle Tennessee, Nashville and other stations; third, the transportation over the Louisville & Nashville Railroad and its connections of the products of the West.

Q. Now, I want to ask you another question. Since that mode of doing business commenced, about what has been the aggregate increase in the demand for wheat at Detroit and other points per annum to carry out this arrangement?

A. At Nashville and Murfreesboro too, so far as our country is concerned, it has been quite large. Much depends upon the nature

of the crop in the sections nearer to Tennessee than Michigan; but last year, for example, there was a short crop in Illinois, as I was informed, or at any rate the prices were high, and the same in Indiana; and the result was that the wheat came largely from Michigan. At certain seasons it comes largely from Illinois. At certain other seasons it comes from the vicinity of Kansas City. Our millers, of course, buy their wheat wherever they can buy it cheapest, and the result has been to bring a large amount of wheat through this section of country from that country that would not come in that form. I suppose it would find an ultimate market.

Q. That has been greatly injurious to Michigan, Illinois and Kansas City, and greatly beneficial to the South, has it?

A. I think it has been very beneficial to Illinois, Missouri and Michigan as well as to the South. I think it has been a joint benefit.

W. R. French appeared before the Commission and having been duly sworn was examined as follows:

By **Mr. Thomas**:

Q. Please state what business you are engaged in?

A. I am a woollen manufacturer.

Q. At what point?

A. Tullahoma, Tennessee, half way between Nashville and Chattanooga, on the line of the Nashville & Chattanooga Road.

Q. What is the amount of the product of your mill?

A. Between five and six hundred cases.

Q. Where are your principal markets for these goods?

A. We sell goods in Savannah, Mobile, New Orleans, Cincinnati, St. Louis, New York, and points in Texas and Mississippi.

Q. Where do you get your raw material?

A. We get the greater portion of it from Chicago, St. Louis and Baltimore.

Q. Have you low rates from Chicago, St. Louis and Baltimore to Tullahoma?

A. Yes sir.

Q. Rates you are satisfied with?

A. Perfectly so.

Q. How about the rates on your products?

A. We get reduced rates; low rates.

Q. Do you know whether you get a lower rate to a distant point than you do to an intermediate point, in the aggregate?

A. We do.

Q. Do you make as much on your goods to one point as to another, or less on those you send a long way off?

A. I think the goods we sell in the interior nearer home, we get a little better profit out of than those we ship further off. In other words, we pay a rate into Texas of \$1.35, although we have points in Georgia and Mississippi, perhaps, where the rate would be fifty-five, sixty and seventy-five cents.

Q. They are not in the same direction and not on the same line?

A. They are on the same line, but we get a little better profit out of the goods we sell nearer.

Q. In short, you think you would have to have competitive rates in order to meet other markets?

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A. Yes sir.

By **Mr. Stahlman**:

Q. If you did not have those rates to distant markets, your figures, would be very much reduced?

A. Yes sir; it would cut my profits down.

Q. Are you doing fairly well?

A. Yes sir; a very good business.

Q. Do you understand you have any advantage; that you are particularly favored; that you have any advantage over anybody else similarly situated?

A. No sir.

Leonard Parkes appeared before the Commission and having been duly sworn was examined as follows:

By **Mr. Thomas**:

Q. You are located at Nashville?

A. Yes sir.

Q. You are a manufacturer of woollen goods?

A. Yes sir.

Q. About what is the amount of product of your mill?

A. I don't believe I can give you the exact product. It is about 20,000 pieces a year; 18,000 to 20,000.

Q. Where do you principally find market for those goods?

A. Principally at the coast points, New York, Baltimore, Charleston, Savannah, Mobile and New Orleans, outside of my own market at home, Nashville.

Q. Where does the raw material come from?

A. Our wool is now partially grown in our own section. Part we bring from the West.

Q. From your understanding of the law, what do you think would be the effect on your business of the strict enforcement of the fourth section, the long and short haul section?

A. Unless the law operates over the coast line to Philadelphia, and unless it operates down the river from Louisville to two competing points that I have, I will have to shut up shop.

Q. Do you understand the provisions of the law to apply to water transportation, or not?

A. I have not so understood it.

Q. Then it could not operate on that, if it does not apply?

A. No sir. I am unfortunately situated just now, if you will allow a statement. During the pendency of this matter it has become necessary for me to make sales of my goods for the fall delivery. The custom of all the woollen mills in the West is to sell their goods delivered, no matter to what point. In order to keep my trade I have made sales, and I am at the mercy of rates from now on for the balance of the fall delivery.

By **Commissioner Walker**:

Q. You say you sell your goods delivered?

A. Yes sir.

Q. Do you have the same privilege that the millers have of buying your wool, manufacturing it in transit, and shipping it forward?

A. No sir; I work under the published tariff, always.

thought higher rates than there ought to have been; but that was cases where we shipped west. Our particular business could stand that better than other departments, for this reason: we are located right in the center of the producing part of Tennessee where Tennessee whisky is made, and there is no competition outside of the State on those goods.

Q. What effect do you think a rigid construction of this fourth section of the Interstate Law, as you understand it, would have on your business?

A. I think it would reduce the volume of my business considerably sir. To give you an illustration: I have noticed rates in several years past, and up to recently on my desk when enclosing bills of lading I have had bills of lading calling for rates at Athens, Tennessee, a distance of 115 miles, at from thirty-eight to forty cents; to Atlanta about forty-two, according to my recollection, and to Jacksonville, Florida, thirty-eight cents. The reason for the very extremely low rate to Jacksonville, Florida, was in order to give us an opportunity to compete with Boston, Baltimore and New York down the coast, and that did give us the opportunity. Had it not been for the low rates we wouldn't have had that opportunity.

Commissioner Morrison. You don't sell any at Atlanta, do you?

The Witness. That is a private secret. (Laughter.)

By Mr. Stahlman:

Q. In your trade with Memphis do you have competition from St. Louis and Cincinnati?

A. Yes sir.

Q. The competition is very strong between the transportation lines by river and rail to Memphis?

A. Yes sir.

Q. You do not mean to say by stating that you have had favorable rates that you have had any advantage over any other competitors according to your understanding?

A. No sir; not over any other.

Q. You have been on a reasonable basis compared with other markets?

A. Yes sir; that was what I endeavored to get. In getting my rates I always made a statement as to what markets I would have to compete with, and I endeavored to get rates that would give me an opportunity to so compete.

Q. You have the same competition at New Orleans as you have at Memphis, practically?

A. Not to such a great extent. Our business has not been so great at New Orleans.

Q. You have not done so much business there?

A. No sir.

Q. Has it been more difficult to sell at New Orleans than at Memphis?

A. Possibly it has been a little more difficult. They have been using a different grade of whisky there. One reason that I believe a suspension of the long and short haul clause would work well in my business—I will give you a recent occurrence as an illustration: I have been informed in the last month or so that a shipment of 2,400 barrels of whisky was made I believe from Bremen, Germany, around Cape Horn to San Francisco at \$1.24 a barrel. I have a shipment just landing from Bremen

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at Louisville, I believe day before yesterday. At the extreme low rate of water from Europe, unless I get some concession, it would be difficult for myself or any other man engaged in my line of business to compete with whisky that has gone around the Horn at those low rates. The gentlemen can see very readily the rates they will get on the Southern Pacific coming out of San Francisco east for 1000 miles this side of it we couldn't compete with. There is a point we might meet them. We couldn't reach them as we began to approach San Francisco unless we got reasonable rates. In other words, to points between Omaha and Atchison on that line, I suppose the rates would be higher naturally; but if you give us an opportunity to compete with those low rates, you would have to give us a lower rate to San Francisco than you would possibly to those other points.

Q. There is a great deal of whisky made in Middle Tennessee, is there not?

A. Yes sir.

Q. And it consumes a good deal of corn?

A. Yes sir.

Q. They bring the corn largely from the West, don't they?

A. Some of it, when the crop is short in Tennessee. We raise about 62,000,000 bushels of corn in Tennessee; that is, approximately. That is the estimate of it that I have received. In seasons of short crops they bring a good deal from the West.

Q. You do not think the manufacture of whisky in Tennessee has hurt anybody in the western grain producing section?

A. Not at all.

Q. It has helped them?

A. Yes sir; we have got corn from there when our crop was short.

Q. As far as you know, in your business, either in grain or whisky, there has been no special discrimination in favor of Nashville?

A. Nothing special; only the effort has been to place us on an equal footing with other places we had to compete with.

By Commissioner Morrison:

Q. Do I understand you to say you have imported some whisky lately?

A. Yes sir.

Q. How much freight does it cost you to bring it into Tennessee?

A. We are bringing this to Louisville for this reason: Nashville is not a port of entry. It is a port of delivery. I believe the United States laws say in bringing it directly to the port of delivery, the tax has to be paid, and therefore we are bringing it to Louisville and taking it as we need it, paying the tax there.

Q. How much does it cost from Bremen to Louisville?

A. I have not seen the charges on this lot, but if you go back to the period before the Interstate Commerce Bill went into effect, they proposed to bring it for \$2 a barrel.

Q. About how much is that a gallon?

A. It is supposed to be about forty gallons to the barrel. That would be about five cents a gallon. That is a very low rate.

Q. Five cents a gallon for freight?

A. Yes sir. This was proposed to us before the Interstate Commerce Bill took effect. We were advised that possibly the rate might be higher if we didn't order it, but we didn't

der it even then until we needed it, so I don't know what the rate will be. I haven't received the bills. I got a letter day before yesterday saying it had about reached Louisville. I think it will be somewhere about \$2 or \$2.50 a barrel.

Q. That is five cents a gallon?

A. Yes sir; It might be a little more than that.

Q. How much do you pay for the privilege of bringing the whisky into the country?

A. There are custom house duties and some other little charges. It will cost ninety cents a gallon tax.

Q. What is the amount of the tax in New York?

A. No tax there; only storage and warehouse possibly.

Q. Don't you pay a tax for bringing it into the country?

A. Yes sir.

Q. How much?

A. Ninety cents a gallon.

Q. That is the local tax here?

A. Yes sir.

Q. Is there not another tax besides that on whisky?

A. No sir; none that I know of.

Q. Then it must have gone out?

A. It went out; yes sir. It was exported.

Q. It was whisky made in Tennessee?

A. Yes sir; and was exported some two or three years ago.

Q. It was sent abroad and brought back?

A. Yes sir.

Q. You have not paid any tax on it?

A. No sir; not up to this time. We still have some over there.

Q. It is whisky that has been dodging around keeping away from the tax?

A. Yes sir; you wouldn't permit us to hold it here without paying the tax—Congress wouldn't permit us.

Q. Is it the tax you have been dodging?

A. No sir; I didn't export it.

Q. I do not mean you personally?

A. Well, I suppose they couldn't find a market for it.

Q. I supposed it was foreign made whisky. I wanted to see how much advantage Tennessee whisky had and see whether any danger was to be apprehended from whisky across the water?

A. The import duty on foreign made whisky is \$2 a gallon.

Q. Then you would have the advantage of \$2.05?

A. Yes sir.

By **Commissioner Schoonmaker:**

Q. Where did this whisky go; to some foreign country?

A. It was exported from this country to Bremen, Germany. At the time it was due out of bond, the parties exported it to avoid the tax, or possibly to sell it over there. It was offered to my firm and we bought this lot, a part of which is being returned now. So I think, gentlemen, if the law could be so modified as to give us an opportunity to compete with these water rates and let our railroads give us lower rates too, say even out amongst the territories, we would have an opportunity of selling against such lots of whisky as go

around the Horn and go across the Isthmus. Probably there is about 7,000,000 gallons—it is reduced somewhat—remaining in bonded warehouses in Germany, which has been exported, that will be returned in the next two or three years, possibly some of it to San Francisco. We will have to encounter that in competition.

B. Frank Lester appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Thomas:**

Q. What is your business?

A. The live stock trade.

Q. At what point?

A. Nashville.

Q. Can you give any approximate idea of the volume of the stock business at Nashville; the number of car loads handled there?

A. Yes sir; 8,865 car loads went through the stock yard there in the last twelve months.

Q. What is your rate from Nashville to New Orleans?

A. \$65.

Q. What is your rate from Nashville to any intermediate point, say Montgomery?

A. \$76 to Montgomery.

Q. What is the reason of the lower rate to New Orleans than to Montgomery?

A. It is on account of the river and the western cattle. If we don't get a lower rate, we can't ship.

Q. As a general rule, you have competitive rates to the competitive points, do you?

A. Yes sir.

Q. And sometimes a higher rate to intermediate points?

A. Yes sir.

Q. Is your business profitable?

A. Yes sir; It has been.

Q. How will it be, probably, under your construction of the Interstate Commerce Law?

A. If the rates were a little higher, we would have to quit shipping to those points. It would break up our business to those points.

By **Mr. Stahlman:**

Q. You are a large shipper, are you not?

A. Yes sir; our firm shipped 467 cars in twelve months.

Q. And the railroads are not giving you any special privileges in the way of lower rates or rebates than anybody else gets?

A. No sir; not that I know of.

By **the Chairman:**

Q. What do you mean when you speak of your construction of the Interstate Commerce Law?

A. I mean if the rates were any higher to those points of course it would injure our business.

Q. That is what you mean?

A. Yes sir. They give us those rates in order to compete with other points in the west. The cattle can be raised in the West cheaper than we can raise in Middle Tennessee. We have to feed for six months in the year. They have water transportation where we have not.

By **Mr. Stahlman:**

Q. At New Orleans you meet the cattle from Texas?

A. Yes sir. We have a rate to Pensacola of \$65 a car. We furnish the butchers their cattle. They gave us that rate in order that

the butchers might buy their cattle from us at Nashville.

O. H. Hight appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Thomas**:

Q. What position do you hold at Nashville?

A. I am Secretary of the Merchants' Exchange.

Q. Could you give any approximate idea of the business in Nashville of cotton, grain, lumber and such things?

A. Yes sir; I have a synopsis of the statistics of last year.

The **Chairman**. If you have any statement in writing you may simply hand it in.

A. I have three separate statements (submitting them).

Q. From your knowledge of the business of the city generally, is it prosperous or not?

A. I think the city is generally prosperous.

Q. Does it, or does it not have a large distributing trade throughout all the adjacent country?

A. Quite large.

Q. In competition with other markets?

A. Yes sir; in competition with various other markets of the country.

Q. Do you, or do you not consider that competitive rates are very essential to the welfare of Nashville?

A. Absolutely so in every respect.

By **Mr. Stahlman**:

Q. As Secretary of the Exchange, are you familiar with the business of the City of Nashville, coming in contact with business men?

A. Yes sir.

Q. Is it your belief that Nashville has had relatively any better rates than any other city?

A. No sir; I don't think she has. She has had her geographical rates that she was entitled to.

Q. There have been some complaints on the part of some of our friends at Nashville because they did not get rates quite low enough, have there not?

A. Yes sir; there has been considerable complaint in that respect, but not as much in the last year as there was previous to that. The merchants and manufacturers are more satisfied that they are receiving their just dues.

Q. So far as your observation extends, the railroads have tried to do the fair thing by Nashville as compared with other cities?

A. I think so.

Q. And nothing more?

A. Nothing more.

J. B. Briggs appeared before the Commission, and having been duly sworn, said:

I have a petition here from various points throughout the Southern States, which I wish to put in.

By **Mr. Stahlman**:

Q. You reside at Russellville, Ky., I believe?

A. Yes.

Q. You are engaged in the milling business?

A. Yes sir; and banking; also in shipping tobacco to Europe.

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Q. Your country is a pretty good grain country, is it not?

A. Yes sir; it is about the best south of Mason and Dixon's Line.

Q. It is a pretty good tobacco country?

A. Yes sir.

Q. To what point does tobacco from your market go—leaf tobacco?

A. It goes originally from Clarksville, Louisville, New York and London.

Q. Then it is to the interest of your people, is it not, to have a reasonable adjustment of rates from these markets to which you ship?

A. Yes sir, I think so.

Q. The rates of freight being reasonably fair and low would be to the benefit of your people, rather than to have any advance in the rates from the shipping market?

A. Yes sir. I don't think any advance could be made now without very serious detriment to the interests of the country, over the present rates.

Q. As a miller you ship the products of your mill largely to the South?

A. Altogether so. We can't ship north at all. We ship altogether outside of the State of Kentucky.

Q. And you find it necessary to have lower rates to southern coast points than you do to intermediate points, in order to let you into those markets with your flour?

A. Yes sir; that is, to any points that are reached by water. We have to have competitive rates or we can't get to the market at all.

Q. For instance, your rates from Russellville to Charleston ought to be and are now lower than they are to Macon and Atlanta?

A. Yes sir; slightly lower; not very much difference.

Q. Still you don't think even with lower rates to Charleston and Savannah than to Atlanta and Macon your business would stand any advance of rates to those points?

A. I don't understand you.

Q. You do not think the rates from your point to Savannah and Charleston could be advanced without affecting your business?

A. I know they could not, to meet water transportation to those points.

Q. Are you shipping anything to Pensacola?

A. No sir. I shipped there last year. I haven't shipped there this year.

Q. The competition is so strong you can't get in?

A. Yes sir.

Q. Are you shipping anything to Mobile?

A. No sir; I haven't sold a barrel of flour there in two years.

Q. That is due to competition?

A. I presume so. I have a resident broker at all these large cities, and they say they can't get in owing to the competitive rates by water.

Q. But you do manage to sell some to the Atlantic coast points?

A. Our trade is altogether in car load lots of several cars. We don't sell any less than car load lots and consequently all our flour goes out of the State, and our trade has been for the last fifteen years with Charleston, Savannah, Jacksonville, Mobile, Pensacola, New Orleans, Memphis, Augusta, Montgomery, Macon and Atlanta. We don't sell to the smaller towns

at all. We only sell to the larger cities. It has narrowed down now so that my entire sales in the last twelve months have been to three or four points. I have not sold a car load of flour in Memphis in three years where formerly I sold as high as twenty and thirty thousand barrels here a year.

Q. The competition is so strong from other markets?

A. Yes sir. Montgomery was my second point. I have sold as high as thirty thousand barrels there in a year and I haven't sold a barrel of flour there in two years. My agent there says the flour comes around to Mobile and up the river, and that is his reason for not making any sales. I sell now more largely to Macon and Charleston than to any other point. My rate to Macon is eight cents higher than it is to Charleston and Savannah a barrel, and still I sell more flour there than any other point.

Q. I will ask you to state if you think you have been given any special advantages over anybody else engaged in like business?

A. There is another mill in town and they have the same rates I have. It is an open rate.

Q. Are the merchants in your town satisfied with the existing rates?

A. If you can judge by their petition signed by every merchant but one, and I suppose forty or fifty farmers. He said he knew nothing about it and therefore he didn't sign it. I think there are a hundred or more names.

Q. In the vicinity of your town?

A. Yes sir.

Q. And it is an intermediate point?

A. Yes sir.

Q. Your transportation arrangements are purely by the Louisville & Nashville Road, are they not?

A. The Louisville & Nashville and the Owensboro & Nashville, which is a part and parcel of the Louisville & Nashville.

H. A. McLemore appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Stahlman**:

Q. Will you please state to the Commission your place of residence and your business?

A. My place of residence is Columbia, Tennessee. My business is milling, and the grain business.

Q. What is the general business of Columbia; are there manufacturing establishments in your city?

A. Yes sir; we have a cotton mill there; another mill, several big sawmills and a few manufactories there.

Q. Your business consists of what?

A. We grind corn very largely, some five or six hundred thousand bushels a year, and ship grain amounting to somewhere between eight hundred thousand to a million bushels.

Q. Then there is a large lumber interest in your town, too, is there not?

A. Yes sir.

Q. And the products of your cotton factory are quite large, are they not?

A. Yes sir.

Q. The products of your mill go largely to the South, do they not?

A. Yes sir; exclusively to the South.

Q. And the rates on the products of your mill have been reasonable?

A. Yes sir; they have been all that we could ask.

Q. So as to enable you to fairly compete with your neighbors engaged in like business?

A. Yes sir.

Q. Have the roads made you a less rate for distant points than for intermediate points?

A. Yes sir; for coast points.

Q. Could you stand any advance of rates to coast points?

A. We could not, unless the rates were advanced by water.

Q. Do you find it necessary to sell the product of your mill at coast points?

A. We sell very largely there, sir; at least two thirds.

A. And your margin is as close there as it is at intermediate points, notwithstanding the low rates of freight?

A. Yes sir; the competition is greater.

Q. Are you at all familiar with the lumber interests of Columbia?

A. No sir; I know there is a great deal of lumber shipped there.

Q. And it goes a long way?

A. It goes north, I think, altogether, sir. I have heard a mill man there express himself pretty freely—Mr. Brown, a brother-in-law of mine.

Q. Are your merchants generally in Columbia satisfied with the terms they receive at the hands of the road?

A. Yes sir; I have a petition in my pocket now, I think, signed by all the prominent men of Columbia, with the exception of one, and I don't think he gave any reason for not signing it. I have also a petition from Lynneville, the town below us.

Q. Then as I understand it, the road is treating you perfectly well, and there is no discrimination in your favor as against any other point?

A. None that I know of, sir.

Q. And your people are fairly well satisfied?

A. Yes sir; I have heard no complaints. I suppose if they had been dissatisfied they wouldn't have signed that petition. It is signed by all the business men.

J. W. Rosamon appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Stahlman**:

Q. Where do you reside and what is your business?

A. Gadsden, Crockett County, Tennessee. I am engaged in growing and shipping fruits and vegetables.

Q. The business has grown considerably within the last few years, has it not?

A. Yes sir.

Q. The railroads have endeavored to furnish you reasonable facilities?

A. They have furnished us very satisfactory facilities.

Q. And reasonable rates?

A. Yes sir. Mr. Chairman, if you please,

I have a petition and statement written and signed by the officers of the various fruit shipping associations along the L. & N. Road, and also by the West Tennessee Horticultural Society, representing nearly all the shippers in West Tennessee.

By the **Chairman**:

Q. You are a member of some one of those organizations?

A. Yes sir.

Q. And you know the facts to be correctly set forth?

A. Yes sir.

By **Mr. Stahlman**:

Q. Do you think it would be for your interests to apply a rule to your business which would in all cases oblige the railroads to charge as much for the long distance as for the shorter distance?

A. I think it would almost drive us out of business, sir.

Q. There are times when you are obliged to go a long distance with your products?

A. Almost all of our products go to distant markets, northern, eastern and western cities.

Q. And it requires quick work to transact your business?

A. Yes sir.

Q. If the market should be glutted in one direction you would have to transfer it to another?

A. Yes sir.

Q. And the rate of transportation is an important factor in enabling you to transfer your business readily?

A. It is very important.

By the **Chairman**:

Q. Where is your place of business located?

A. Gadsden, 75 miles up the L. & N. Road.

Q. You ship to the North?

A. Yes sir; Boston, New York, Philadelphia, Louisville, Cincinnati, Indianapolis, Chicago and Omaha.

Q. You get lower rates to New York than you do to Indianapolis?

A. No sir.

Q. Do you get lower rates to New York than you do to Louisville?

A. No sir.

Q. What distant points do you get lower rates to than you do to intermediate stations?

A. We get a greatly reduced rate to all those cities.

Q. Perhaps you do not fully understand me. To what distant points do you ship your fruit for a less sum in the aggregate than you do to any intermediate station?

A. All of the points. We have a reduced rate.

Q. Let me ask you again. Do you ship to New York for a less sum in the aggregate than you do to Indianapolis, for instance?

A. Proportionately.

Q. Undoubtedly proportionately, but for a less sum in the aggregate?

A. We pay \$1.86 per hundred pounds to New York, and I think about ninety cents to Indianapolis, if my recollection serves me right.

Q. To what point this side of New York do you pay more than you do to New York?

A. No point sir. We pay less to Pittsburgh that is right on our route and less to Cincinnati than we do to Pittsburgh and New York.

INTER 8.

Q. So that you do not pay less to the distant points than you do to any intermediate point?

A. No sir; we pay less than the local rate would be, added together.

Q. Do you understand there is anything in this new law that prevents your having such rates?

A. I don't know that I am competent to construe the law; but I am satisfied that if we were compelled to pay local rates aggregated, it would amount to a rate that our business wouldn't stand.

By **Mr. Stahlman**:

Q. Take a case like this: you have been shipping to Chicago, and your rate is reasonably satisfactory?

A. Yes sir; we get a rate of seventy-three cents per hundred pounds on highly perishable stuff, which is satisfactory.

Q. Ordinarily the rate to a point beyond is higher than to Chicago?

A. Yes sir.

Q. Might not conditions and circumstances arise which would compel the railroad to give you a rate to a point beyond, less than the rate to Chicago? Is it not true that the rates to Chicago are less than to Indianapolis, although the business passes through Indianapolis; are you familiar with that?

A. I am not thoroughly familiar with that. I don't think the rate is less to Chicago than it is to Indianapolis. I don't think it is. That is not my memory. I think it is a little less to Indianapolis than to Chicago; but in business of that character the great law of supply and demand governs; and other competing points around sometimes fill the market with such a supply as to reduce the price so that it would not be remunerative to ship to that market, and the railroads have in the past given us a graded rate, or a floating rate. Last season the bulk of our products went to Chicago. A number of competing points, Chattanooga and other points growing fruit very largely, pour them into Chicago until the supply reduces the price and it doesn't pay us to ship; and then the railroad offers us a reduction of rates to enable us to market our fruit.

Q. At other points?

A. Yes sir; and also at Chicago. They give us a floating rate to enable us to market our product. We have no complaints to make of the treatment of the railroad.

Q. You are all located at local stations?

A. Yes sir.

Q. And you are you satisfied with what the railroad does?

A. Yes sir. There are some names on that petition, of parties who live at Humboldt, the junction of the M. & O. and some at the crossing of the Illinois Central.

Q. But the bulk of you live at local points?

A. Yes sir.

Mr. Stahlman. I would like to have permission to say right here that Mr. Rosamon perhaps, is not familiar with the fact, but the rates through from Indianapolis to Chicago are less by fifteen cents a hundred than they are to Indianapolis.

The Chairman. That is, they have been heretofore.

Mr. Stahlman. Yes sir; and we would like to have that on the record.

The Witness. I am not familiar with that question. The bulk of our business has been done to Chicago. Then we scatter and go to New York, Boston, Philadelphia, Omaha and Kansas City.

Mr. Stahlman. I would like also—and I consider anything I say as under oath, if necessary.

The Chairman. That will be understood.

Mr. Stahlman. —to say that at times it is necessary when the products gather at some point, and become burdensome to that particular locality, to make lower rates to points beyond, in order to enable these people to continue their shipments. In other words, when one market is glutted we have been reaching beyond to give them another.

Commissioner Morrison. Indianapolis is about half the distance to Chicago, is it not?

Mr. Stahlman. No sir; Chicago through Indianapolis is only 185 miles further from this section than Chicago direct; and the distance from these points to Indianapolis is in the neighborhood of 487 miles.

Commissioner Morrison. It depends on how far south you go.

Mr. Stahlman. I am speaking of the locality which Mr. Rosamon represents.

W. R. Craig appeared before the Commission and, having been duly sworn, was examined as follows:

By **Mr. Stahlman:**

Q. You reside at Pulaski?

A. Pulaski, Tennessee.

Q. The center of a good country?

A. Yes sir.

Q. Agriculture, live stock and lumber?

A. Yes sir; and grain.

Q. You are engaged in the grain business?

A. Yes sir; grain and produce.

Q. You ship the products of Giles County to the South?

A. I do.

Q. Where do you find your largest market for the products of your country?

A. Pensacola is one of my best markets now.

Q. The rates to Pensacola from Pulaski are less than they are from Pulaski to Montgomery, are they not?

A. Yes sir.

Q. And even less than they are to Birmingham, are they not?

A. The same thing.

Q. The rates from Pulaski to Birmingham and Pensacola are alike?

A. The same.

Q. But the Montgomery rates are higher?

A. Yes sir.

Q. Do you meet competition at Pensacola?

A. Yes sir.

Q. You have no competition out of Pulaski?

A. No sir.

Q. No other railroad there?

A. No sir.

Q. And the railroad has fixed these rates in order to enable you to let your people dispose of the products of your country?

A. Yes sir.

Q. In competition with the products of the farmers from other sections?

A. Yes sir.

Q. What other interests are there at Pensacola?

A. Lumber, logs, cattle and cotton.

Q. I will ask you if the rates to Pensacola were advanced, if you think you would continue your shipments to that point?

A. No sir; I would not. It would cut me off very considerably.

Q. Then you would have to confine yourself very largely to the interior markets, would you not?

A. Yes sir; I don't think I could reach Montgomery right well, on account of the water transportation.

Q. What do you know of the situation as to lumber?

A. I was talking to a lumberman and he simply said to me "If the long and short haul clause is carried into effect, it will ruin my business," and so did a log man. We have a log man and a lumber man who do a great deal of business in that line, and they both stated to me that they thought, from what they could see of it, it would ruin their business in the lumber and log business at Pulaski.

Q. They have felt the effects of it somewhat?

A. Yes sir; one of them has felt the effects of it in lumber.

Q. How does your mercantile community at Pulaski feel?

A. I have a petition that ought to express their feelings better than I can do it myself. They are all opposed to it.

Q. The people generally in your town and locality are satisfied with the treatment they have received at the hands of the roads?

A. Well sir, I have heard but very little complaint. Of course you will hear complaints. There are men who will complain at almost anything. But I have never yet seen what I thought was an injustice and explained it to the general freight agent, but what he always fixed it up right and satisfactory.

Q. Yet you are satisfied you never had any benefits that some other man doing the same business couldn't get?

A. No sir.

Q. That is, any special advantages?

A. I never had any special rates that wasn't open to all.

Q. That is the basis upon which the Louisville & Nashville Road does its business through this section?

A. That is the only way I have been able to find out. I have thought that often.

By **Commissioner Morrison:**

Q. How far is it from Pulaski to Birmingham?

A. I forget the distance. It is about 125 miles, I believe, as well as I remember. I don't know. It is somewhere about that.

Q. How far is it from Pulaski to Montgomery?

A. From Pulaski to Montgomery I don't believe I can tell the distance.

Mr. Stahlman. One hundred miles further.

Commissioner Morrison. How far is it to Pensacola?

Mr. Stahlman. One hundred and sixty-five miles further than Montgomery.

Q. I understand they charge you the same

Q. What is it to Birmingham?

A. Twenty-one cents.

Mr. Stahlman. Now I want to say that the rate from Pulaski to Birmingham is practically the maximum of our local rate, being only 100 miles. The rate from Pulaski to Montgomery, being double the distance, is less than our local rate based on the average local rate or the mile local rate in existence.

The Chairman. Do you mean that you do not charge more to the intermediate stations there proportionately than you do to Birmingham?

Mr. Stahlman. I mean on that class of freight. This is the point: that the rate of twenty-one cents from Pulaski to Birmingham is practically the maximum local rate for that distance. The local rate from Pulaski to Montgomery, being twice the distance, would be more than the rate that Mr. Craig is being charged, only twenty-five cents, because of the competition coming by river. The rate from Pulaski to Pensacola is of course regulated by the water competition all the way round. Have I made myself clear?

The Chairman. I don't believe I quite get your idea. You say Birmingham has practically the maximum local rate. I don't understand that.

Mr. Stahlman. I mean this: we wouldn't undertake to charge a rate from Pulaski to Birmingham in excess of the basis of our local rates on that class of traffic. Say the rate per hundred miles on grain on our local tariff is twenty-one cents, and the rate for 200 miles on grain is thirty cents. We have not raised the rate to Birmingham. We have given the Town of Pulaski the benefit of the local rate between Pulaski and Birmingham, but we have

intermediate stations than there is to Birmingham. Of course competition between markets at Birmingham has something to do with it, but I think it is practically the maximum of our local rates for that distance. If there was no competing force at Montgomery, instead of the rate being twenty-five cents to Montgomery it would be thirty cents, and then we would only have to deal with the competing forces at Pensacola.

The Chairman. I wanted to ascertain whether you allowed anything for competitive forces at Birmingham?

Mr. Stahlman. I am not sure as to that.

Commissioner Morrison. Is the place over which you had some controversy, Opelika, on that road?

Mr. Stahlman. No sir.

Commissioner Morrison. What is the next principal town the other side of Montgomery on that road?

Mr. Stahlman. Greenville, I think.

Commissioner Morrison. Do you remember what the rates are at that place?

Mr. Stahlman. I do not. We can furnish the tariff, however.

Commissioner Morrison. I would like to have it, if you please.

By Commissioner Bragg:

Q. You do a milling business?

A. No sir; not a milling business.

Q. What is it?

A. Simply grain and produce.

Q. Wheat and corn?

A. Wheat, corn, peas, dried fruits, apples, pears, etc.

Q. You do not do much business with wheat at Montgomery, do you?

A. I haven't done much for two years, be-

cause we have not had much wheat. It is our wheat market when we have wheat.

Q. Do you know Joseph & Anderson?

A. Yes sir.

Q. They have a flouring mill there?

A. Yes sir.

Q. They do a very large business selling flour all over that country, don't they?

A. Yes sir.

Q. Does the fact that Joseph & Anderson are there, and have their flouring mill there, have anything to do with your business at that point?

A. It is a great help to us in disposing of our wheat. I have sold all the wheat I ever sold to them.

Q. Is there no competition in your business at Montgomery with wheat?

A. I don't know of any, only Columbia and those places on the road. I suppose the West competes with us some.

Q. Do you know that Joseph & Anderson buy a great deal of wheat from Illinois and Kansas and all that country up there?

A. Yes sir; they buy it from some other points, from the West some where, I don't know where.

Q. Do you tell us that you can sell them wheat at 25 cents a hundred in Montgomery cheaper than they can get it from Illinois and Indiana, on a through rate to Montgomery?

A. We have to sell it to them a little cheaper, or as cheap, in order to sell it to them at all. It is the only outlet we have. There is no other point we can ship to, except Birmingham or Montgomery.

Q. How does your wheat selling business compare in the aggregate at Montgomery with Birmingham?

A. We sell more at Montgomery.

Q. Do you not sell five times as much in Montgomery?

A. The mill at Birmingham has only been put up the last two or three years, and we have not had a wheat crop to amount to any thing. This year I sold more at Birmingham than I did at Montgomery, but I didn't sell much at either place. Our wheat wasn't good enough in quality.

Q. And the mill of Joseph & Anderson there has nothing to do with the rate that you get to Montgomery?

A. I don't know sir, whether the mill has any thing to do with the rate or not.

Q. I mean, has the fact that it is there anything to do with the freight?

A. It hasn't had anything to do with it for two years, as far as we are concerned, for we haven't been able to ship there at all.

At this point, 2 P. M., the Commission took a recess for two hours. At 4 P. M. the Commission reassembled, all the members being present.

Mr. W. M. Baxter. I would like to have leave to amend the petition of the Virginia, East Tennessee and Georgia Railroad Company.

The **Chairman.** Make your amendment and submit it.

F. F. Gracey appeared before the Com-

mission and, having been duly sworn, was examined as follows

By **Mr. E. D. Baxter:**

Q. Where do you live?

A. Clarksville, Tennessee.

Q. What is your business?

A. I have a variety. I am principally a grain dealer, wharf proprietor, steamboat agent, railroad agent, etc.

Q. How long have you lived at, or near, Clarksville?

A. Since the war; twenty-two or twenty-three years ago.

Q. Are you familiar with the country between Louisville and Memphis?

A. I cannot say I am entirely.

Q. Have you traveled over it frequently in daylight?

A. Yes sir.

Q. I wish you would state to the Commission whether it is thinly or thickly populated.

A. Compared with some sections of the country, it is thick. I should regard it as a thinly populated country.

Q. Compared with the section north of the Ohio River, how is it?

A. It is thinly populated.

Q. Are the local stations along the line of the road large prosperous cities, or small points?

A. There is a large majority of them very small. There are some two or three pretty fair stations along there.

Q. What are the largest stations between Louisville and Memphis?

A. I should think Clarksville was.

Q. Elizabethtown is the first place of any consequence, is it not?

A. Yes sir.

Q. What is the population of that?

A. I should say it was about 1500.

Q. How far is it from Louisville?

A. About forty miles.

Q. Bowling Green is the next place of any consequence?

A. Yes sir.

Q. How far is it from Elizabethtown to Bowling Green?

A. I can't say exactly. I should think, though, it was about the same distance; about sixty or seventy miles.

Q. Clarksville then is the next point of any consequence, is it not?

A. Russellville is a town of some little importance.

Q. How far is it from Bowling Green to Russellville?

A. About thirty or thirty-five miles.

Q. What is the population of Russellville?

A. I should think 2,000.

Q. What is the next town of any size?

A. There is no other until you reach Clarksville.

Q. What is the distance from Russellville to Clarksville?

A. Thirty or thirty-five miles.

Q. In coming from Louisville to Clarksville, what navigable rivers do you cross?

A. You cross the Green River and the Barren River, two streams of importance.

Q. Where do you cross the Green River?

A. I don't know the name of the place.

Q. Mumfordsville?

A. Yes sir. At Bowling Green you cross the other.

Q. And you cross the Cumberland at Clarksville?

A. Yes sir.

Q. Coming down this way, what is the next town of any consequence?

A. There is none until you arrive at Paris.

Q. What is the population of that place?

A. I really don't know; not to exceed one thousand, I should think.

Q. And the next place?

A. McKenzie, a small station; I don't know the population.

Q. The next is what?

A. Humboldt, and then Brownsville.

Q. What is the population of Brownsville?

A. I guess about 2,000 or 1,500.

Q. Three railroads were originally chartered from Memphis to Louisville, and now form a part of that line?

A. Yes sir.

Q. The old Memphis & Ohio Road?

A. Yes sir; from Paris to Memphis.

Q. And what was the next road?

A. The Memphis & Clarksville, from Guthrie on the Kentucky state line to Paris.

Q. Do you know how those two roads got into the present system of the Louisville & Nashville Road?

A. I don't know anything except just from the general talk. They were finally consolidated after having passed through a receivership.

Q. They both broke down financially, did they not?

A. Yes sir; and went through a receivership and were sold by the State.

Q. And bought in by the Louisville & Nashville Road?

A. Yes sir.

Q. The Louisville & Nashville Road built from Guthrie on to Louisville?

A. Yes sir; but all those things occurred before I was a citizen of the place.

Q. What is the character of the country between here and Paris, and the principal products? When you leave Paris, what are the principal products of the country from there to Guthrie?

A. From Paris to Guthrie it is wheat, corn and tobacco.

Q. Would you call the country between Paris and Clarksville a good agricultural country, or otherwise?

A. No sir; there are spots of very good agricultural land, but generally it is very poor.

Q. What is the distance?

A. I think about seventy-five miles from Paris to Clarksville.

Q. What is the topography of the country from Memphis to Paris; level or hilly?

A. It is undulating. I should not call it a hilly country, but it is rough in places. From Paris to Clarksville it is exceedingly rough.

Q. Does the railroad track between Memphis and Paris cross many streams?

A. Small, unimportant streams.

Q. But they require bridging and trestling?

A. Yes sir.

Q. And expensive superstructures?

A. Yes sir. There is one navigable stream, with a turn table.

Q. Are there not a number of bayous and

sloughs between here and there that have to be trestled and bridged?

A. Yes, sir; although I couldn't enumerate them. I know they are there from passing over them.

Q. What is the topography of the country from Paris to Guthrie?

A. It is very rough except a portion of the distance between Clarksville and Guthrie that is very fair, about ten miles.

Q. There are bridges and trestles?

A. Yes, sir; they cross both the Tennessee and Cumberland.

Q. There are expensive bridges at those two rivers?

A. Yes sir.

Q. What competitive water points are there on that line between Guthrie and Memphis?

A. I know of none except Clarksville and about thirty-five miles of the Cumberland that the road parallels, and then the station on the Tennessee River, and Brownsville on the Big Hatchie.

Q. Do you have steamboats on the Tennessee and Cumberland Rivers?

A. Yes, sir; all the year.

Q. Are they running in connection with, or in competition with the Louisville & Nashville road?

A. They are running in competition with the Louisville & Nashville. I don't know how they are running on the Tennessee River. I am not familiar with that.

Q. How do the rates of freight from Clarksville now compare with what they were before the war, or before the railroad was built? What has been the effect of the building of that line of railroad upon the commercial business of Clarksville so far as railroad or transportation routes are concerned?

A. For twenty years I have probably made every freight rate by river that has gone out of Clarksville, as well as by railroad, and I can state positively on that point. Twenty years ago the rate to New York was \$1.20 a hundred. The railroad then just entered the town, after the war. The road was finished before the war, but never was run until it was occupied by the armies of the opposing forces. The rate to New York was \$1.20. Immediately after the war, the rate from Cincinnati to Clarksville by river on first class goods was sixty-five cents, and on fourth class goods forty-five cents. That was twenty years ago. The river and rail commenced opposing each other and by friction gradually the rates were reduced from time to time as one would contend for the business against the other, until at the present time the rate from Cincinnati on all classes of goods is about twelve cents a hundred.

Q. The rate has been reduced from what point to twelve cents?

A. From sixty-five cents to twelve cents.

Q. How are the rates of the local stations, for instance Paris, Humboldt and other stations off the river, affected by the fall of these competitive rates at Clarksville?

A. Do you mean the rates into Clarksville, or the rates from that point?

Q. For instance a shipper, at an intermediate station; does he, or does he not, if any, and to what extent, get the benefit of the fall in rates?

A. Oh, yes, sir; there has been a fixed difference of about five cents either up or down, as the rates are made. We have never made a rate from Clarksville that Cherry, for instance, was not within five cents of the Clarksville rate.

Q. As the Clarksville rates are cut down by competition, the local stations get the benefit?

A. Yes sir; that has been the case all the time.

Q. That is equally true this side of Clarksville, is it?

A. Yes sir.

Q. Do you know what the earning capacity of that Memphis branch has been; in other words, has it been a profitable or an unprofitable investment to the Louisville & Nashville Railroad?

A. I could not state advisedly on that point, except as to what has been stated to me by the officers in connection with the road from time to time.

Q. You have been more or less connected with the company and have had more or less knowledge of its financial affairs?

A. I have been, as a shipping agent of freight. It has always been understood that the division, as far as I have known, is not a good division, except from our point north; and we only occupy ten or twelve miles of the road.

Q. Have you come here as the representative of a railroad company, or in what capacity?

A. No sir; I am the chairman of a memorial that I intended to have handed to you, from the Board of Trade of Clarksville. Mr. Kennedy had it in his possession.

By *Commissioner Schoonmaker*:

Q. Are you chairman of the Board, or what?

A. Mr. Kennedy is the Chairman of the Board of Trade, but I am the Chairman of the Committee that brought the resolutions.

D. N. Kennedy appeared before the Commission and having been duly sworn said:

Mr. Chairman, I am the bearer simply of a memorial from the Board of Trade of the City of Clarksville which I was requested to present to your honors. I am not an expert in railroad rates. The facts are stated pretty clearly in that memorial as to the position of our commercial men there as regards this long and short haul. I don't know that I can add anything more except that the commercial men of Clarksville are, I think, almost unanimously satisfied with the present status of the long haul and the short haul. We get about justice done us in the long haul, and we think full justice in the short haul, and we would rather stand by the long haul as it stands and the short haul as it stands than to have any change made. I think I express the almost unanimous opinion of our commercial men as well as our farmers, planters and all our interests. We consider they are all one and the same.

By *Commissioner Schoonmaker*:

Q. You had rather bear the ills you have than fly to others?

A. Exactly, particularly unknown ones.

By *Commissioner Morrison*:

Q. If you could have the local rates reduced a little, it would not hurt you, would it?

A. No sir; neither would it hurt us if the long rates were reduced. We would be willing to submit to both; but we take them as they are. We have no complaint to make of our local rates. In saying this I represent the Board of Trade of the City of Clarksville.

By *Mr. Baxter*:

Q. Were you not connected with the old Memphis, Clarksville & Louisville Railroad?

A. Yes sir; For many years years during its building.

Q. That road became insolvent, did it not?

A. Very badly insolvent.

Q. And was sold out and bought in?

A. Yes sir; sold once for twenty-five cents on the dollar; but we didn't get that finally, I think.

Q. Has it ever paid anything like interest upon its cost?

A. I can't speak of that.

J. A. McGregor, appeared before the Commission, and having been duly sworn was examined as follows

By *Mr. Stahlman*:

Q. You reside at Erin, Tennessee?

A. Yes sir.

Q. What is your business?

A. Manufacturer of staves and lumber.

Q. How long have you been in business there?

A. Since last October.

Q. Erin is a local point on the Louisville & Nashville Road, is it not?

A. Yes sir.

Q. You have hopes of doing a fair business at that place?

A. Yes sir; we have a large amount of lumber, there and have invested a large amount of money in a plant there with the expectation of doing a large business, but we are somewhat curtailed now.

Q. In what way?

A. On account of the action of this new law, the fourth section.

Q. Has it affected you at points north of the river where you want to ship?

A. Points north of the L. & N.; yes sir; eastern and northern points.

Q. Your shipments go long distances, do they not?

A. Yes sir; the majority of our products; as for example our rate to Cleveland, Ohio, has been increased about eight cents a hundred pounds. That is more money on a car load of staves or lumber than we expect to make.

Q. That is about \$32 a car?

A. Yes sir. There is no stave or lumber man in the country that is getting that much money on a car load of stuff. As a consequence we have either got to get lower rates or shut up shop.

Q. You pay a higher rate to all those points from the Ohio River; that is, there is a rate fixed based on the rate from the Ohio River as a rule?

A. Yes sir.

Q. So that you do not have any better rates from your station than they have at points north of the Ohio?

A. Not that I know of.

Q. In other words, you pay a higher rate?

A. We pay a higher rate.

Q. Even under the old arrangement?

A. Yes sir.

Q. And the price fixed north of the Ohio River by reason of enforcing the long and short haul practically shuts you out of the market?

A. That is what it amounts to exactly sir.

By the **Chairman**:

Q. Where did you market your wares north of the Ohio River before?

A. Our market in the past has been Cleveland, Pittsburgh, Buffalo, Philadelphia and New York.

Q. Did you find a market this side of Cleveland?

A. We found a limited market this side.

Q. Did you pay higher rates to such points than you were paying to Cleveland?

A. Oh no sir. As for example, what little stuff we market in Louisville we get there for eight cents.

Q. Then how is the enforcement of the new law affecting you?

A. Not on account of the rates below the river. It is above.

Q. How does it affect you? I don't quite understand it?

A. It affects us because our old rates have been increased.

Q. The rates are increased, but has it anything to do with the long and short haul clause?

A. That is what the freight agents of these roads tell us. I know of no other cause.

Q. That is what I wanted to bring out. I wanted to see what the trouble was. I do not understand that you were paying higher rates to points this side of Cleveland than you were to Cleveland?

A. Oh no sir.

Q. Then the change to Cleveland does not seem to be connected with any change of rates this side of Cleveland so far as your business is concerned?

A. No change of rates on the Louisville & Nashville Road.

Q. Or on any other road?

A. Yes sir.

Q. Where?

A. For instance, before this law went into force we got to Cleveland for twenty cents. Eight cents of that went to Louisville, and the balance from Louisville on to Cleveland.

Q. I have asked you to bring out the fact how that was, did you have to pay higher rates to any point this side of Cleveland than you did to Cleveland. I understand you to say you did not. If not, how does it appear to you otherwise than by the statements of these officers that the increase of the rates to Cleveland has anything to do with this clause of the law?

A. I don't exactly understand your proposition.

Q. How were you benefited by the old law, under which the railroads might charge less to a distant point than to a point nearer?

A. It benefited us to the extent that we were enabled to get, as I say, a twenty cent rate through to Cleveland. Now we are not able to get it.

Q. But this side of Cleveland you did not have to pay any higher rate than that?

LESTER S.

A. No sir.

Q. Then what is the connection between the increase of the rate to Cleveland and the clause of the law you refer to? Can you see any necessary connection there?

A. Yes sir; I think I can.

Q. What is it?

A. For instance, as I started to say, the rate to Louisville is eight cents. The balance of twenty cents went to the connecting lines that took that freight on through. Now those connecting lines can't do the work for the money.

Q. How do you know?

A. They say they cannot, and they do not do it, anyhow.

By **Commissioner Schoonmaker**:

Q. State what lines?

A. You can go out of Louisville in that direction by the Ohio, Mississippi and Pennsylvania.

Q. Give the names of the men who gave you that information?

A. The general freight agent of the L. & N. was one. That is our way in this country of getting rates.

Q. Who is he?

A. J. M. Culp. R. W. Geiger was another, the general freight agent of the Pennsylvania Line out of Louisville.

By the **Chairman**:

Q. That is all you know about it; these men told you?

A. Yes sir.

By **Mr. Baxter**:

Q. You get the rates that you are to ship under from Mr. Culp, do you not?

A. Yes sir.

Q. And he is the man that told you about the rates in operation now under which you cannot ship?

A. Yes sir.

By the **Chairman**: I do not question at all what you say about the rates that they charge you now; but what I want to know is what you know of this increase in rates being in any way connected with the enforcement of the new law?

A. All I know about that is what the railroad officials tell me.

William Buquo appeared before the Commission and having been duly sworn was examined as follows:

By **Mr. Stahlman**:

Q. You are a resident of Erin?

A. Yes sir.

Q. What kind of business are you engaged in?

A. Manufacturer of lime and staves; that is, slack-barrel material and merchandizing.

Q. To what section of country do you ship the products of your lime-kilns?

A. I believe we ship now into eleven different States, principally south, but we do reach Indiana, Illinois and Kentucky.

Q. What is the daily or monthly product of your kiln?

A. Our output for the two plants—there is competition there—is something like 125,000 barrels a year.

Q. From what markets do you come in competition with lime?

A. Our sharpest competition is on the Ohio River at three particular points, Memphis, Henderson, Kentucky and Louisville; and south at New Orleans, Mobile and Vicksburg. When we ship south we come in competition of course with the lime manufacturers who ship by rail.

Q. The railroads have been in the habit of making you a reasonably fair rate to these points?

A. Yes sir.

Q. In order to enable you to fairly compete?

A. Yes sir. We pay a less rate to Memphis, Louisville and Henderson than we do for shorter points between our place and those three points.

Q. Is not that the case as to New Orleans?

A. I think so; but I do not believe I can give you the data on those shipments.

Q. Will the rates that the railroads have given you enable you to send your lime to Memphis, Henderson, Louisville, New Orleans, Vicksburg and Mobile; and are your rates of transportation on the products of your kilns any less than the transportation rates on the rival kilns with which you compete?

A. No sir: when our competitors get a rate of that kind it is public property in our office. When they apply for a rate and get it we get the benefit of it, and when we apply for a special rate and get it our competitors get the benefit of it.

Q. Your place is a local point on the line of the Louisville & Nashville Road?

A. Yes sir; between Clarksville and Paris.

Q. How do your rates compare with the rates of your competitors from other points? Have you any better rates?

A. Not that I know of. I do not think we have got any better rates.

Q. Could you stand any advance in rates and hold a fair proportion of the trade?

A. No; for this reason: For instance, in shipping lime to Memphis we have got to get the lime here so that it will sell at a certain figure, and we take it, the railroad understands that, because they give us a rate that will justify us, by handling our lime close, to reach this market. If the rate were higher we could not reach it at all, because the lime sold here in competition against us would keep us out. We could not reach it unless the railroad company would help us to meet the competition that we meet here in Memphis.

Q. You say also you are a merchant?

A. Yes sir.

Y. You pay local rates on your merchandise?

A. Yes sir.

Q. And have no special privileges that other merchants in your town cannot avail of?

A. No sir.

Q. Are the rates to and from your town generally satisfactory to your business people?

A. Yes sir. I have a memorial in my pocket from all the merchants, shippers and manufacturers of our town, sworn to. I will hand it to the Chairman.

Q. Are not the rates from Louisville and Cincinnati to Memphis on merchandize less than they are to Erin?

A. Yes sir; we so understand it. I can not speak advisedly on that.

Q. And yet you are satisfied?

A. Yes sir; our people feel if the railroad company wouldn't help our business our town would be damaged. That is just the way our people feel.

Q. You have a manufacturing industry there in the way of staves, barrels and lime that is the life of your town?

A. Yes sir; and it is the biggest town for its size I think in the South.

By *Commissioner Schoonmaker*:

Q. How large is your town?

A. About 1,000 inhabitants.

By *Mr. Stahlman*:

Q. It has grown up within the last few years?

A. Yes sir; based principally on the lime industry; and here recently we have had large lumber manufacturing.

By *Commissioner Schoonmaker*:

Q. Where does the lime come from that competes with you at Memphis?

A. It is brought from various points. It is brought from the Ohio River. The Utica lime above Louisville is our sharpest competitor on the river.

M. H. Clark appeared before the Commission, and having been duly sworn said:

I have a couple of individual petitions, and also a petition from the Clarksville Tobacco Board of Trade.

By *Commissioner Schoonmaker*:

Q. How large is your town?

A. It has a population of about 6,000, sir. We do the largest business for the size of the town of any town in the United States, I understand.

By *Mr. Stahlman*:

Q. It is a large leaf tobacco market?

A. Yes sir; it is the second largest leaf tobacco market in the United States.

Q. How long have you been there?

A. I went there in January, 1855.

Q. Do you buy a large proportion of the crop annually?

A. I am the largest buyer there, sir.

Q. What is the value of the crop of tobacco sold in the market of Clarksville?

A. It was estimated last year at about \$5,000,000. We sold between 35,000 and 40,000 hogsheads.

Q. Is much of the tobacco produced in that section consumed in that section?

A. Our tobacco is entirely export tobacco. There is only about seven to nine hundred hogsheads used in the United States. Every bit of it seeks the seaboard.

Q. Does a good proportion of your tobacco come from local stations into Clarksville to be sold?

A. It all comes from local stations on the Louisville & Nashville Railroad, except a small portion which comes from the Cumberland River, up and down.

Q. Are your local rates into Clarksville reasonable?

A. Yes sir; they are. We have made them so. The Louisville & Nashville Railroad don't make our rates by themselves. Our merchants help to make them.

Q. Your merchants help us to make the rates?

A. Of course they do. You can not make a rate for us alone.

Q. We do not discriminate particularly in your favor, do we?

A. No sir. You try to charge us too much, and we try to have it hauled for less than cost, and we get together. In 1867 the rate of freight from Clarksville to New York was \$1.30. Now we ship all rail at 52 cents, and we ship by river and rail at 49 by one route, and by river and rail another route at 44. That has been the reduction since 1867. From 1855 to 1861 we shipped our crop entirely to New Orleans, but a small portion of it went from New Orleans to New York. There it went by sea. The sea freight varied from nothing to \$15 a hoghead. I have had tobacco carried from New Orleans to New York for nothing, taken as ballast; and I have paid \$15 a hoghead, which is nearly a dollar a hundred from New Orleans to New York.

By *Commissioner Schoonmaker*:

Q. What line do you ship by to New York?

A. We ship by every line. I have shipped tobacco to New York by way of New Orleans. I have shipped it by way of Savannah. I have shipped it by way of Norfolk. I have shipped it by way of Cairo. I have shipped it by way of Evansville, Cincinnati, Louisville, Wheeling, Pittsburgh, and some of it has gone through into Canada and come back to New York in that way. We ship by the cheapest route; and therefore our board petitions that you shall allow us still to have our hands untied to make the best trade and bargain we can. We consider we are able to take care of ourselves, and therefore we do not need government protection. The advantage that we have is that we have a competitive line of transportation which nothing can take from us, which is the Cumberland River, and with that we can always control our through freight rates to the seaboard in every direction.

By *Mr. Stahlman*:

Q. You have no better arrangement for making your shipments, although you are a large shipper, than anybody else at Clarksville?

A. No sir, the rates are made public for all shippers. I was asked the question the other day by a Swiss house for whom we have bought for twenty-eight years, if they saved their shipments and accumulated and got as much as fifty hogheads at a time could I get them a better rate than for three and five hogheads at a time. I explained to them that we sometimes shipped a thousand, fifteen hundred or two thousand hogheads at a time, and the rate was the same for two and three thousand as for one, because the car does not leave Clarksville until it is loaded. It may have one hoghead for me and eleven for somebody else, which fills the car. The rate is the same for one hoghead as for a thousand. We all know what the rate is. It is a public rate. We have different transportation lines of freight and we have our choice. We can ship by the Jellico route by way of Norfolk, or ship part by the other River route which goes by way of Evansville, or all rail and work through the trunk lines.

Q. You always have enough tobacco to load a car at Clarksville?

A. Yes sir.

Q. Or five or ten cars?

INTER 8.

A. Yes sir.

Q. That is not the case with local stations, is it?

A. No sir.

Q. They ship in small quantities, one, two, three, four and five hogheads?

A. Yes sir; necessarily.

H. D. McHenry appeared before the Commission and having been duly sworn was examined as follows:

By *Mr. Cummins*:

Q. Where do you reside?

A. I reside at Hartford, Western Kentucky, near to the line of the Chesapeake, Ohio & Southwestern Railroad.

Q. What is your business?

A. I am engaged in a good many things. I am a lawyer by profession and meddle in politics a little; but I suppose you want to ask me about the coal business.

Q. Yes; I am not wanting any politics now.

A. I am the president of and principal owner in two coal mines in the western coal fields of Kentucky, through which the Chesapeake, Ohio & Southwestern Railroad runs between here and Louisville. Through that same coal field the Louisville & Nashville Railroad has two lines, one to Russellville and Owensboro, and what is called the St. Louis & Nashville Railroad, which runs through that same coal field. I have neither of my mines on the Louisville & Nashville Railroad. I know something of their business, however, as both roads ship to Louisville I believe and certainly to this point at the same rates, the distance being about the same. They bring coal from that coal field here to the City of Memphis.

Q. State the principal places where you find consumption for your coal?

A. I suppose most of it goes to Louisville from that coal field. Memphis has got to be a very large consumer. I have shipped a great deal of coal by the Mobile & Ohio Railroad. I have had the contract for furnishing them all the coal that that road consumes for a great many years, but recently I have lost the contract. I ship to Paducah and to all the points between here and Louisville on both lines of road.

Q. State whether or not you are acquainted with the rates prevailing in the Memphis market for coal prior to the time that the railroad opened up to your mine in that vicinity an opportunity to ship that product into this market, and what change, if any, has been made in the market price of coal by reason of your competition in this market?

A. Of course I never sold any coal in Memphis until our road reached this place, although I had been in the coal business for a good many years shipping to Louisville. I have understood that the rate of coal has been brought down nearly one half. The Louisville & Nashville Company came into Memphis with coal just about the time our road came through, and then she came into the coal business and when we commenced bringing the Kentucky coal here, I think the price was brought down in Memphis nearly one half. I do not mean it came down suddenly to one half, but it stands to-day about one-half of what it did then.

Q. I believe you connect with the Mobile & Ohio Railroad at Rives Station?

A. Oh yes sir.

Q. State whether or not you come into competition with coal along any parts of that road other than where the supply of your coal is derived from?

A. Yes sir; I do that where we cross the Illinois Central Railroad. There is one thing I want to state to the Commission right here: I have been furnishing the Mobile & Ohio Railroad coal for at least twelve years. They consume all the coal on the whole line of road that they bought from me. Recently they have extended their line from Columbus, Kentucky, and bought a line up to St. Louis. They get coal now probably at about the same distance from Rives Station as if they took it from McHenry, one of my mines; and unless our railroad can give me a rate that is a very low rate, at least half of what they have heretofore been charging, I will lose that contract and can't get that contract, because they have got coal on their own road. The superintendent of the road said to me, that mine was a better coal and he preferred to get it if my rate would come down in the rate of transportation to about the figure that it cost them to haul it; that they would then take a large amount of coal from me. That was a few months ago. That matter is in abeyance yet. I don't know the rates of coal to the different points here from my coal mines. I know what it is to Memphis. It is now \$1.40. It has been \$1.60. It will necessarily be within a year from now, I am satisfied, with the competition of some of these Alabama coal fields, one dollar and probably less than a dollar for transportation to the City of Memphis. I suppose this law will not apply to the City of Louisville; but if the same principle applied to Louisville and we are cut off from Louisville and Memphis I consider half of the value of the coal property in our coal field taken from us, financially by reason of the rule.

By the **Chairman**:

Q. Will you tell us something about how that is going to be accomplished; how it can result?

A. There is a coal road, or a railroad, running out to a coal field, that will be completed in about a year.

Q. Where?

A. I don't know the point.

Mr. Cummins. Holly Springs and Tupelo, in the direction of Birmingham.

Q. It is opening some new coal mines?

A. Yes sir; and then we will be cut off from this trade entirely, unless they bring the rates down to a point which will be much lower than they are now.

Q. If I understand you, the Alabama coal field will be open for the Memphis market by the new railroad, much nearer to Memphis than your coal mines are in Kentucky?

A. Yes sir.

Q. And that the same rate per ton per mile of haul will allow them to get into Memphis at a much cheaper rate than you can?

A. Yes sir.

The Chairman. What has this testimony to do with the investigation? Why do you

bring such testimony? Is there anything in the new law that requires the same rate of charge per mile on railroads?

Mr. Cummins. None whatever; but I suppose the underlying question here, well recognized, is that the shortest line to any market makes the rate for that market.

The Chairman. Undoubtedly; but what has that to do with the law?

Mr. Cummins. We are looking to the effect of the law so as to see what we are to come to.

The Chairman. Yes; but I do not see that this testimony has any bearing upon this investigation.

Mr. Cummins. I want to say that the coal fields of Kentucky are supplying the Memphis market and the other markets mentioned, at lower rates than to intermediate stations—

The Chairman. And now the opening of a new line interferes with it?

Mr. Cummins. And will force them to secure still lower rates, or else be shut out. In that way we show the necessity for some intervention by the Commission.

The Chairman. Ask any specific question and let us see what bearing it has.

By **Mr. Cummins**:

Q. Are your mines furnished lower rates to these competitive points, such as the Mobile & Ohio Railroad, than to intermediate places?

A. Yes sir; they furnished me when I furnished the Mobile & Ohio Railroad under that contract, a lower rate than they furnished to some points between the mines and the point of delivery from Rives. Now on that haul that would give me a lower rate than they would give some of the local points between; less for the long haul than they charge for the short.

Q. Was not that the same case with regard to the Memphis coal?

A. Yes sir.

Q. If the Mobile & Ohio rate and the Memphis rate were advanced to the same rate that is charged to the intermediate stations, could you put your coal into those markets?

A. No sir.

Q. Suppose your Kentucky mines are shut off from supplying these competitive markets. What would be the result and effect upon your mining interests?

A. It would cut down our output very seriously; so much so as to make the value of the property less; and the same principle applied to the eastern end of the road would make our property almost valueless.

Q. Would it not also result in a serious impairment of the value of property by throwing out of employment large numbers of laborers now engaged in the industry?

A. That of course it would do. There are about ten or twelve mines on the line of that road and if we furnish these competitive points nothing and are cut off from the competitive points—I am running two local mines, and I can furnish the whole local supply from Louisville to Memphis myself and take a contract to do it.

By the **Chairman**:

Q. What are your rates to Memphis?

A. \$1.40 a ton.

Q. What is the distance?

A. It is about two hundred and seventy miles. The coal field is fifty miles wide and it is narrow along.

Q. What are the highest rates for any station between?

A. I do not know. Very recently I don't know of any point where they charge more than \$1.40 just now. Going east they make a very great difference. Coal is hauled at forty cents a ton from McHenry to the City of Louisville, a distance one hundred and ten or one hundred and fifteen miles, and they charge as much as a dollar between McHenry and Louisville. At Louisville sometimes the price goes up as high as a dollar, and even above that.

Q. Do you understand they are charging you for carrying coal to Louisville for what it costs them?

A. I expect, sir, they carry it for less than it costs them, that is in the summer time, and that trade is very valuable to us. In the summer, when we have got no local orders, it enables us to run our mines, and the railroads, having the cars, I understand, they take it for actually less than the cost of hauling.

Q. If they take it for still less it is all the more to your advantage?

A. Yes sir. When the price goes up in Louisville they raise the price of transportation on us immediately—as the price goes up.

By Mr. Cummins:

Q. Is Beaver Dam a station on the Chesapeake, Ohio & Southwestern Railroad?

A. Yes sir.

Q. I have here a petition signed by persons there. Do you know those persons? (Exhibiting petition to witness.)

A. Yes sir: I know them all. They are merchants and tobacco shippers.

Q. Do those names comprise pretty well the business men of the town?

A. Yes sir; they are pretty good representatives of the business. It is a little village, and that takes about all of them—I believe about all of the commercial men there.

Q. I have here a petition from the Town of Hartford. That is your own town, I believe, four miles off the railroad?

A. Yes sir.

Q. Look at the signatures to that petition and tell us who the men are?

A. They are the largest merchants and tobacco shippers in our town.

Q. I have another one from McHenry. Is that a station upon that line of railroad?

A. Yes sir; that is where my coal mines are.

Q. The petition is signed by the superintendent of the McHenry Coal Company?

A. Yes sir; the superintendent of the company.

Mr. Cummins. I will now present these petitions to the Commission.

By Mr. Stahlman:

Q. I understood you to say the low rates to Louisville benefitted you very much?

A. Yes sir.

Q. Is it not true that you have an arrangement with the railroad whereby you have practically to put your price of coal down to a low figure, and the railroad puts down its transportation to a low figure, fixing a minimum in each case.

A. Yes sir.

INTER S.

Q. And as the price of coal advances in Louisville the railroad freight advances a little and your profits advance a little?

A. Yes sir; we furnish coal to the Louisville market at less than the cost of production, frequently.

By the Chairman:

Q. Do you furnish the coal for less than the cost of production at these intermediate stations between your mines and Louisville?

A. No sir.

Q. You make your profit off of those?

A. We don't ship to those points any coal that amounts to anything except in the fall and winter season. This low priced coal to Louisville is shipped in May, June and July, when there is no coal shipped, scarcely, to the local points along the line of the road, and we are doing nothing.

Q. When you do ship to them you get a pretty good profit, do you not?

A. Yes sir; we get a reasonable profit.

Q. And the railroad does too does it not?

A. They have a reasonable profit, I suppose. We ship the same to those points the whole year round. There is no change in it.

Q. You understand the railroad company carries it for you for less than the cost, sometimes?

A. Sometimes it does.

Q. And at the same time you furnish coal without cost?

A. At less than cost of production. I will state in connection with that, if you will permit me, the price of the coal at the different points between McHenry and Louisville—that coal is furnished at a satisfactory price at all those towns along the line of the road. I have never heard any complaint about the price of coal. It is put upon the track along about nine or ten cents a bushel. I live six miles from my mines and I put coal to those points a hundred miles from McHenry as cheap as I can get it to my own coal house at Hartford. I put it to Louisville much cheaper, and I put it to Memphis as cheap as I can get it in my own coal house at Hartford where I live.

By Mr. Cummins:

Q. Six miles from your mines?

A. Yes sir. I have to haul it in a wagon. We have no railroad. I have been in the coal business ever since our road started, and I have never heard any serious complaint of the people. There are very few manufactories along the line of the road. We are always competing with the coal men and we bring it down tolerably low. Sometimes there is a little boom in coal and we get the advantage of it and put it up; but generally we put it through all the towns at about the same rate, winter and summer.

Q. What was the lowest rate per ton on coal carried at any time to Louisville, when you say it was a loss to the railroad company?

A. Forty cents.

Q. What is the average load per car?

A. They have cars now that take twenty-five tons. I suppose twenty tons is the average. They have some eighteen ton cars.

Q. That would then be \$8 per car of freight charges?

A. Yes sir.

Q. The prices have generally been sagging for some time past, have they not?

A. Yes sir; it does not pay. It pays here less than at any point we ship to.

Q. If you were charged the same rates to Memphis that you are being charged to intermediate points, you could not do any business, could you?

A. We can barely do business now.

Q. Do you ship coal to Nashville?

A. Yes sir.

Q. Do you come in competition there with coal from Tennessee mines?

A. Yes sir; sharp competition.

Q. Very sharp?

A. Yes sir.

Q. There is also some Pittsburgh coal coming into Nashville by river?

A. Yes sir; considerable.

Q. If the railroad was to charge you the same rate into Nashville that it charged to intermediate points, do you think you could compete successfully with Nashville?

A. Oh no sir; we could not at all.

F. W. Cook appeared before the Commission and having been duly sworn said:

Will your honorable body allow me to make a few remarks?

The **Chairman**. Any statement of fact you desire to make, you can make.

The **Witness**. Mr. Chairman and gentlemen of the Commission: We appear before your committee as a committee which represents the business men's association of Evansville, Indiana, and also are the bearers of a petition signed by nearly 1,000 citizens of Evansville. Evansville is a city of about 50,000 inhabitants, the center of a great grain producing country, and her manufacturing industries are very extensive. Her principal traffic is with the South, which has been built up at a great expense to her merchants and manufacturers. The enforcement of the long and short haul clause of the Interstate Bill would destroy all at one stroke. We pray therefore that your honorable body will give our petition your favorable consideration, and permanently suspend the operation of the fourth section of the bill so far as relates to the Louisville & Nashville and southern lines. The principal product of our manufactures go to the sea coast for distribution. We there come in contact with water traffic, and the steamers would naturally destroy all of our trade. Those sea coast cities are our distributing points. We would pray to have postponed the enforcement of that clause.

By the **Chairman**:

Q. What is your business?

A. I am a brewer.

By **Mr. J. B. Rucker**:

Q. To what extent do you brew?

A. About 50,000 barrels a year.

Q. How much do you send away from Evansville, and where does it go?

A. Principally to the South.

Q. What parts of the South?

A. It goes to almost every State in the South.

Q. Name some of the principal points?

A. Pensacola, Jacksonville, Montgomery, New Orleans and Mobile.

Q. Over what route?

INTER S.

A. Over the L. & N.

Q. Have you any other means of transportation for your beer?

A. No.

Q. Why?

A. Because we have no other connection with a road.

Q. Could you not transport your product by water?

A. We couldn't transport our goods by water. They are perishable, and have got to be packed in ice, and we must ship them by rail.

Q. What is the output per year of the brewing interest in Evansville?

A. I suppose about \$700,000 or \$1,000,000. I think the manufacturing interests of the City of Evansville will run up to from seven to ten million dollars.

Q. You speak now of the general manufacturing interests?

A. All. We have ten large furniture factories. We have large milling interests. We have a very extensive hominy and grits mill that send all their manufacture to the sea coast cities. There is the distributing point for their product.

Q. What effect would the application of the law as passed by Congress, so far as the fourth clause is concerned, have upon your business?

A. It would have a very disastrous effect. It would cut us off entirely.

Q. From your southern trade?

A. Yes sir.

By **Mr. Stahlman**:

Q. Do you know anything about the nature or extent of the grain or milling business at Evansville?

A. Mr. Heilman is here, and if you will call him he can give you the particulars. He is one of the committee.

George P. Heilman appeared before the Commission, and having been duly sworn was examined as follows

By **Mr. Stahlman**:

Q. You reside at Evansville?

A. I do.

Q. What is the character of the business in which you are engaged?

A. I am engaged in milling.

Q. Shipping flour to the south?

A. No sir; making hominy grits and meal.

Q. Do you ship quite largely to southern coast points?

A. Yes sir; very largely.

Q. And the rates of transportation are lower from Evansville to southern coast points than to interior points?

A. They are.

Q. Can you stand any advance of rates to the coast?

A. I do not think we could stand any material advance. If rates were advanced materially I think it would cut us off from the distribution to coast points because of the fact that our old competitors who have a much more limited supply of grain than we have, would come in, and a very considerable portion of the season bar us out.

Q. Do you ship any grits and hominy to New Orleans?

A. We ship there very largely.

Q. You do not ship by rail, do you?
A. We ship by rail to New Orleans altogether.

Q. The rates are very low to New Orleans?
A. They are very low; yes sir.

Q. If they were advanced any the chances are the railroad would not get much of the business, would it?

A. No sir; the railroad could not get it if there was an advance of three cents a barrel.

Q. Do you ship to Mobile?

A. We ship to Mobile also; yes sir.

Q. The rates between Evansville and Mobile and New Orleans are lower than they are to intermediate points?

A. They are; yes sir.

Q. If the through rates were advanced to intermediate points approximately, do you think you could do any business in Mobile or New Orleans by rail?

A. No sir; we could not.

By **Mr. Rucker**:

Q. What is your output per year?

A. Our output last year was a little rising a hundred thousand barrels. This year it will be considerable larger.

Q. Do you know how many flouring mills there are in Evansville?

A. Eight or nine.

Q. Where is their principal trade?

A. Their principal trade for two years has been in the South.

Q. Do you know about how many barrels they manufacture during the year?

A. I can approximate it.

Q. As near as you can.

A. I think they make between a hundred and fifty and two hundred thousand barrels.

Q. Your father is very prominently connected with the iron business there, is he not?

A. He is.

Q. Do you know anything with regard to the business of manufacturing iron; as to how much business there is, and where it goes?

A. Yes. His business, however, does not go to sea coast points. It does not extend very far into the South.

Q. There are two large plough factories there, are there not?

A. There are.

Q. Where do those ploughs go?

A. Those ploughs, a great many of them, go to the South, but they don't go very far into the interior of the South.

Q. Do they not go into Texas?

A. They do go into Texas, considerable quantities of them; but the plough business of Evansville is confined to the territory, mainly, adjacent to the Mississippi River.

W. W. Shelby appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Stahlman**:

Q. You reside at Henderson, Kentucky, do you not?

A. Yes sir.

Q. What business are you engaged in?

A. Tobacco and milling.

Q. You are a miller of grain?

A. Corn goods.

Q. You make meal and flour, do you?

A. Grits.

Q. And ship to the South?

A. Yes sir.

Q. Coast points?

A. Nine tenths of my goods go to coast points.

Q. If the rates were advanced, what effect would it have on your business?

A. Unless they were advanced on northern millers we would have to quit. It is barely a living as it is.

Q. The northern millers do not all ship your way, do they?

A. No sir. There are two or three large mills in Baltimore and in Indianapolis there are two or three. They enjoy now, I think, lower rates of freight than we do to northern points.

Q. The Baltimore mills have lower rates to the coast than you have?

A. There are times when they can ship goods to the south as ballast; that is, my broker so reports to me, and it has been done in fact. We can't stand any higher rates than we now pay.

Q. As to your tobacco business and the tobacco trade of Henderson generally: Please explain.

A. Ours is a peculiar business. It is what we call stemming. We are stemmers. We pull the stems from the leaf. We prepare solely for the English market and export altogether. The City of Henderson owns two thirds of all the strips sent to England. The reason we stem it is because of the high duty in England. It is some seventy-eight cents a pound. All the dark tobacco grown in the United States is exported; every bit of it. There are three grades grown, "burly", "cigar-leaf" and "dark". The burly is used by the American people. The dark tobacco is all exported to England, Germany and the different regions.

Q. Henderson is having a right prosperous trade in that line?

A. Yes sir; it is the largest stemming point in the United States.

Q. Is there much grain shipped to the South from Henderson?

A. Oh, yes sir; I ship a good deal myself.

Q. That goes South?

A. Yes sir; Henderson is really the center of the Ohio Valley. Take fifty miles below and fifty miles above, and fifty miles behind, and she covers the belt.

Q. With any fair adjustment Henderson ought to do a good business?

A. It ought to do a splendid business. My business has doubled since this law was passed. It has cut off rebates at St. Louis, and enabled me to do something.

Q. Then this law has done you good?

A. Yes sir; I am loading five cars a day now, and a month ago I was loading two.

Q. You are not getting any rebates on your shipments, are you?

A. I never could get them, but St. Louis could. They were selling goods where I couldn't sell them, and I was one hundred and fifty miles nearer than they were; and the only presumption I had was that they were getting rebates. I could think of nothing else.

Q. You ship a good deal of grain to the coast?

A. Yes sir; I have a boat of my own, and when I am not engaged in bringing corn to my own mill, I buy grain and send it off.

Q. If your rates on grain to the coast were advanced approximately to the rates to the interior at Atlanta and Augusta, what effect do you think it would have?

A. Mine is wholly coast business, and I don't think we could do anything at any of those distributive points. Take Charleston. She will take nearly one hundred thousand barrels of grits. Augusta don't buy any grits. I do not sell three cars a year or a car a year at Atlanta. I do not sell a car a year at Montgomery. It is the coast points and the islands. We sell to the islands too. They use those grit goods altogether.

Q. The rates on grits and flour are practically the same?

A. They are the same; yes sir.

The **Chairman**. Is there anything more?

The **Witness**. Here is a memorial by our people. It is signed by all those interested in transportation at several places on the road between Henderson and Nashville.

Q. You have some petitions from local stations?

A. Yes sir; our people are interested—most of them. In a word, our people control the strip trade.

Q. Your people are interested in this question?

A. Yes sir. Last year I shipped my strips on your cars, by the Chesapeake & Ohio, to Norfolk and London. We are expecting that route to develop fully this year and sent at least half our strips that route last year. With proper encouragement, it being nearer to us than any other sea coast point, we expect probably the larger part will go that way this year.

U. W. Armstrong appeared before the Commission and having been duly sworn was examined as follows

By **Mr. Rucker**:

Q. What is your business?

A. Furniture.

Q. Where do you reside?

A. Evansville, Indiana.

Q. How many furniture factories are there in Evansville?

A. Fifteen furniture and furniture specialties.

Q. What is the amount of the output of furniture about as near as you can estimate it?

A. About \$1,000,000.

Q. Is it shipped away from there?

A. Yes sir.

Q. In what direction?

A. Most of it, I should judge, is shipped away from there under the fourth clause; at least one half of it would come under the head of the long haul.

Q. What States does it go to; all the Southern States?

A. Yes sir.

Q. As far as Texas?

A. What I have reference to, the long haul, would be beyond the Tennessee line, in the southeast and southwest, to Texas.

Q. What proportion of it goes south of Evansville?

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A. I would judge five sixths of it.

Q. In what States?

A. In all the Southern States. It covers the entire southern territory.

Q. Is there any trade to California?

A. There is not much to California.

Q. What other industry in wood is there there?

A. There are three large plough factories there.

Q. I am speaking of wood. How many saw mills have you?

A. I don't know as I could tell.

Q. About how many, as near as you can come at it?

A. My judgment is at least eight or nine.

Q. Do you know how much they saw per day?

A. Some of them about 100,000 feet and some of them not quite so much. There is two or three that probably would average 75,000 feet a day.

Q. Most of that material goes South, I suppose?

A. No sir; the lumber goes east.

Mr. Stahlman. I have a petition which was left with me by some gentlemen from Paris, which I would be glad to have filed with the Commission. It represents the business interests of Paris, Tennessee.

Benjamin F. Mitchell appeared before the Commission, and having been duly sworn was examined as follows

By **Mr. Cummins**:

Q. Where do you live?

A. At Louisville, Kentucky.

Q. What is your business?

A. I occupy the position of General Freight Agent of the western division of the Newport News & Mississippi Valley R. R.

Q. That is the line of road known as the Chesapeake, Ohio & Southwestern, between Louisville and Memphis, is it not?

A. Yes sir.

Q. State whether you are acquainted with the signatures of the principal persons in business at the various way stations along that line of railroad.

A. I am; yes sir.

Q. Do you know the principal shippers at the various intermediate noncompetitive points there?

A. I do.

Q. As well as those at Louisville, Paducah, Memphis, and the principal competitive points?

A. Yes sir.

Q. Tell the Commission whether the bundle of petitions I hold in my hand contains the names of nearly all the shippers of freight at your intermediate stations as well as a very fair representation of those at Louisville, Paducah, and Memphis.

The **Witness**. Is it the lot of petitions I gave you?

Mr. Cummins. Yes sir.

A. Yes sir, they do.

Mr. Cummins. I want to present a number of petitions. They are all pretty much in the same phraseology, and come from Louisville, Paducah, and from every intermediate noncompetitive way station along the line of that railroad between Louisville and Memphis.

As the witness has said, they contain the signatures of nearly all the shippers of freight along that line of road, all asking the Commission to suspend the fourth section of the Law, so far as that road is concerned.

By the **Chairman**:

Q. How were those petitions obtained?

A. They were obtained by sending them to agents, and the agents asking the people to give us their signatures if they were willing to do so.

By **Mr. Cummins**:

Q. Please state to the Commission at what points, if at all, your line of road meets with competition by water carriers?

A. We are effected by water transportation from Louisville west fifty miles, particularly at West Point, located upon the Ohio River and Salt River. We then come in competition at Rockport with Green River; then at Eddyville with the Tennessee; at Kuttawa with the Cumberland; at Paducah, Ky., with the Ohio; at Obion, Tenn., with the streams tributary with the Mississippi; at Woodstock with the Mississippi River, and thence to Memphis.

Q. And also at Dyersburg?

A. At Dyersburg, with the Mississippi River also.

Q. If I understand your tariff, that you have filed with the Commission, you make lower rates to those points than you do to intermediate noncompetitive points; is that true?

A. We do, from the fact that we are forced to make our rates lower to competitive points to meet the rates offered by steamboat transportation, or else not vary the business.

Q. Is that making of a lower rate at those points through any desire on the part of yourself or the management of that road to foster and build up the business of those places at the expense of other noncompetitive or way points?

A. No sir; it is simply to carry our share of the business and protect the interests of our local stations east and west in either direction, giving the local people upon the line of our road the benefit of the lowest rate that can be made by using competition with the river, giving each point, east and west, the local rate that belongs to it.

Q. Have you any special rates in favor of any person or any locality, except as thus controlled by this water competition?

A. We have no special rates furnished to anyone. All rates we make less than the tariff are for the benefit of all shippers, and are special to none. In other words, we have no specials for individuals.

Q. Please state to the Commission the respective tonnage, local and through, of your line of road during the past calendar year.

A. I would have to ask what you desire to get at?

Q. How many tons of through freight do you carry, and how many tons of local freight do you carry?

The **Chairman**. You can have those statistics made and handed in afterwards.

Mr. Cummins. You can give us the respective amounts, and tell us which are the larger.

The **Witness**. The local business is much

the largest; that is, as between the local and through, the local is the largest.

Q. How much larger? Was it not double your through business?

A. More than double.

Q. Can you not tell the Commission what your average local rate earns you per ton per mile?

A. About two and three quarters cents.

Q. How much were your earnings upon through freight carried per ton per mile?

A. One dollar and eighty-four cents.

Q. I mean the rate per ton per mile?

A. Oh, I have given the wrong figures. I should have said .669 of a cent.

Q. Nearly .7 of a cent?

A. Yes sir; I had the wrong paper.

Q. You say your local tonnage was more than double that of your through tonnage?

A. Yes sir.

Q. You say your receipts on local freights were more than double, or say treble, that of your through receipts?

A. Yes sir.

Q. Tell the Commission whether, if you have to grade either your through rates up to your local, or your local rates down to your through, to bring the two together, which could be done and in what way you could level them, practically speaking.

A. We would certainly be compelled to grade our through business up to our local. We could not afford to sacrifice our local for our through freight. We consider the work on through business about one half what it is on local, and we can afford to do it for much less than we can afford to do the local business.

Q. What you mean is that the cost of service is about one half, in carrying the through freight, of what it is in carrying the local freight?

A. Yes sir.

Q. Have you been along that line of road and through that country often enough to be able to state to the Commission whether or not you are so acquainted with the volume of business in the local territory through which it runs that you could, by any inducement in reducing local rates to the basis of through rates, so increase the volume of local business as to repay the losses in the rates by such reduction?

A. That would be an absolute impossibility, for the business does not exist there. We could not increase the local, and could not increase the through business sufficiently to compensate us for the loss on the local, if the rates were reduced to compare with the rates on through business.

Q. I believe your revenue from the handling of through freight during the past was somewhat over \$400,000 out of a total earnings from freight of from \$1,200,000 to 1,400,000?

A. Yes sir.

Q. Suppose you advance your through rates to your local, how much of that through business would you retain?

A. We would not retain any of it. We would not expect people to ship by us at double what it would cost them to ship by other routes.

Q. What would be the effect on that line of

road if it were to lose that through line of business?

A. It would simply bankrupt, sir.

Q. State to the Commission whether or not the larger portion of your through freights are not loaded by the shipper, or do not come to you in loaded cars from your connections, and go on loaded cars to your connections beyond your line?

A. That is generally the case; we rarely handle our through business. It is handled almost entirely by the shipper, or by our connections. We do nothing but hitch on to it and haul it from one place to another.

Q. Is it not a fact that the trunk lines north of the Ohio River are trying to enforce the long and short haul rule of charging less for any long haul than for any intermediate short haul?

A. That is the information we gather from them and their tariffs demonstrated that such is the case.

Q. Will not the effect of enforcing such a rule as that be to put the weaker and shorter lines at the mercy of the trunk lines?

A. Yes sir; and I think that is their desire.

Q. What is the size of Paducah, Ky., as to population?

A. About 15,000.

Q. As between these competing lines (your road and the river) which is the controlling factor?

A. The river lines make the rates at all times, and we either have to follow them or come near to them, or we lose the business. The water lines name the rates of transportation.

The Chairman. It is not necessary to spend time on that.

Q. Please state whether or not, immediately upon the passage or going into effect of this Act of Congress, the river lines with whom you are in competition did not at once advance their rates?

A. They did sir.

Q. As soon as you made competitive rates to those points again what was their course?

A. They reduced their rates to meet us.

By Commissioner Morrison:

Q. By through rates you mean rates to all competitive points, do you not?

A. Yes sir.

Q. And to competitive points you haul about one fourth as much to the local points?

A. Our through business consists of what business we haul from Louisville to Memphis, and at the same time what we receive from our connections.

Q. You only mean on your road from one end to the other?

A. On our road from Louisville to Memphis.

Q. You do not count any of those points between Memphis and Louisville?

A. We consider the river points competitive points, because we come in competition with the river lines. We do not call that through business, though.

Q. How do you regard that in the estimate of your revenue?

A. That is local.

By Commissioner Walker:

Q. If freight comes to Memphis and is not
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delivered to any other road, do you call that local?

A. We call that local, although our rates are less in such cases, to meet competition by river.

Q. It does not make any difference what the rates are in determining whether it is local or through, does it?

A. It is local on our line.

Q. It is local if it goes off at a station on your line, or comes on at a station on your line; and it is through, if it is delivered to some other carrier?

A. Yes sir.

Logan H. Roots appeared before the Commission, and having been duly sworn said:

My name is Logan H. Roots. I live in Little Rock, Arkansas. My principal business is that of a banker, interested, however, in manufactures and other industries. I was sent here as one of a committee from the City of Little Rock, but upon reaching here we were told that the citizens were not expected to make the applications, and now we have the pleasure of saying that an application is made by the Memphis & Little Rock Railroad for a suspension of the fourth section in so far as it relates to business coming to our city. Our city has had a prosperous growth, and we were budding into one of those real estate booms there about six weeks ago, but about a month ago there came a sort of frost that blighted us. A large cloud overshadowed us. We did not know exactly what the trouble was at first. Our wholesale merchants were compelled to draw off their commercial travelers. Our flouring mill, quite a manufacturing establishment, had to stop. Our large cooperage establishment found itself unable to proceed with its business until there came by you a suspension of the effect of this clause so far as it related to the transcontinental routes, as its shipments are largely to California. Under these circumstances our Board of Trade called a meeting of all the business men, and they selected a committee, of which I was made chairman, to interview you at the first favorable opportunity, with a view to having you make a suspension of that clause so far as it related to the transportation over the railroads coming to Little Rock. As other testimony will be adduced in behalf of this application, I shall not detain you only to speak of one or two especial reasons why we think Little Rock should have the suspension in behalf of the railroads entering there. I do not mean in behalf of the railroads coming there, but that the railroads should make it in behalf of Little Rock and its tributary points. While the railroads have always treated us with reasonable and considerate care to foster our industries, we are not here to plead on behalf of the railroads, but on behalf of ourselves. When I say ourselves I do not mean the people of Little Rock, because we would not ask for Little Rock that which we did not think would be beneficial to the whole State. But our people have gone to Little Rock, and have there invested their money in wharves and in warehouses. They have brought together there that which is necessary for the

conduct of business at a business center. They have far more capital than is necessary for a mere local trade. They have warehouses and other appliances that would be wholly unnecessary were it confined to the smaller area of business to be done at a provincial town. They have fostered the outstanding communities. They have cared for them when they could not be cared for at more distant points, and they have become dependencies upon this place. We think that all of these citizens who have become dependent on Little Rock as a distributing center, as well as we ourselves, have a right to say that we have established this as a distributing center, and that no power of Congress ought to have the right to destroy that which we have thus created. I am not going to dwell long upon any one topic at this late hour. I claim that the citizens of Arkansas have established this distributing center, and that this bill enforced will destroy it, and thereby destroy that which we have created. In addition to that, I claim not only our created rights, but our inherent rights. We went there and settled upon the bank of that river. We are entitled to the benefits which that river gives us for transporting, for ingress and egress of supplies. *Commissioner Bragg* knows that the all-wise Providence has been very liberal in supplying Arkansas. We have a great many valuable sources of wealth and sources of health that other States do not have. We have springs, for example, that are unsurpassed in the world, the Eureka Springs and the Hot Springs. We say without fear of contradiction that the Congress of the United States has just as much right to go and cement the springs over at Hot Springs and Eureka Springs as they have a right to stop the flow of the Arkansas River. We say the enforcement of this Interstate Commerce Bill in effect dams up the Arkansas River, and destroys it so far as we are concerned as a source of transportation. Then we say without fear of contradiction that we have the inherent right, located upon that spot, to have the benefit of the transportation which that river gives. I have heard several intimations today "You can have it, because all they have to do is to reduce the rates between."

I ought to have mentioned, in speaking of our accrued rights, that when our little city had less than five thousand people, she voted \$100,000 in bonds to the aid of this railroad which has been such a source of expense and trial to its owners from that day to this. In addition to that \$100,000 which that city voted, for which she taxed herself and the interest on it, and has paid in full for the benefit of having this Memphis & Little Rock Railroad, her citizens came forward and as far as was in their power they aided and donated toward the construction of this line of railroad. That line of railroad goes for forty miles where it almost might as well go through a tunnel, so far as its business is concerned. For that forty miles it is perhaps as expensive a road to maintain as there is in the United States. The other eighty odd miles has local business upon it which is four times the amount of the through business from Memphis and Little Rock. It don't need any argument upon my part to show that that road with that expensive portion to

maintain, and with that large proportion of local business in comparison with the through business, if she must sacrifice that which is necessary for her maintenance, either on the through business or on the local business, must sacrifice the through business. Steamboats run from this point directly to Little Rock, down the Mississippi, and up the Arkansas, and *vice versa*, thus competing directly with that line for through business. Now if you say to that line "You must not take freight to Little Rock at a rate which will compete with the steamboat line unless you will take it to all intermediate points for that" you virtually say to that line "You must not take any business for Little Rock." We thereby lose either the benefit of the railroad, for which our people have paid their money, or we lose the benefit of the river route. We say that losing the railroad is about equal to losing the river. You say they might raise their prices. Well, it has already been demonstrated. Every person in the city knows that the steamboats will cut under, but when there comes a limit to what they can put their prices at, the steamboats will come up to it, regardless of how much that is. However high they put it, the steamboats will necessarily follow the lead. They will do so because they are like everybody else. They want to make all the money they can.

One other point. In our city we have various manufactures. For example, we have a mill to which I alluded that brings wheat from abroad, grinds it into flour and sells it in that community. That mill is stopped because it cannot pay for that wheat the price that other people can pay for it nearer a market. I have heard several allusions today to the fact, "Well, that must be to somebody else's detriment." On the contrary, the man gets more for that wheat when he comes to the competition of the Little Rock mill to buy from him, and the party who buys the flour gets it at a less rate, so that strange and anomalous as it may seem by this system, the seller gets more, and the consumer gets it at a less price. So I might speak of every industry, which with us is an industry that either sends its products far abroad, or procures its material from far abroad. I have spoken of the mill which buys its wheat at a distance. Our cotton mills, which get their cotton at home, have to ship their product away. If they cannot have a rate to enable them to compete with the manufacturers of the East, of course their business cannot be conducted with profit. And yet I say in every instance where the product goes abroad, or where that which is manufactured comes from abroad, by the maintenance of these competing rates, in every instance it gives the producer more, and at the same time gives the consumer the product at a less price.

There are many things I might talk about in a general way, but I am going to confine myself entirely to our interests right here in Little Rock, because it is for Little Rock and not for any railroad or any other community I am here to say a word. I claim that whenever legislation or anything else interferes to make a man pay more for that which he wants to consume, or prevents the producer getting as much for that

which he wishes to sell, it is in the wrong direction, and the longer it travels in that way the more damage will be done; and the sooner therefore it is stopped, the sooner justice will be done. I might talk all night, but there are just three points in behalf of Little Rock that I want to present to this Commission: First, that we have acquired the right of competition in Little Rock. Second, that we have the inherent right given us by the God of nature, when he gave us that river bank to settle upon. Third, if you don't give us the competition, you thereby prevent us from having our just rights in securing for that which we have produced the most that can be obtained for it, and for that which we have to purchase the best price at which we can obtain it. With those three points, I hope this Commission, without waiting for the railroad to urge you, will give us the permission; because it was suggested to me, for example, that unless the railroads asked for it, you are not going to do it. Our railroads have got in such a clever sort of way listening to our reasonable requests, if they never asked for this at all and you granted it to the City of Little Rock, I would guaranty where our business men presented it to them they would so for acquiesce as to give us a concession in present rates. I am not so familiar with the Iron Mountain Road, although I have some financial interest in it; but I am sure when you have heard their statement on oath, that they cannot reduce their through rates and compete with the steamboats and maintain their railroad with their local rates reduced to that minimum, you will grant their request. Let me say in behalf of Little Rock that I find here but one exception in the whole State of Arkansas to a desire to repeal this clause. I might say more than one exception, because I know of several instances—that is, our furniture factories, which get all they make at home. They make their product at home and find their consumers there. Why do they want this law? For the simple reason that they expect to sell a bedstead for 50 per cent more than they did when they had competition from other places. What I have alluded to was those industries where it had to come in from abroad, or go abroad to find a market, I will admit that a manufacturing establishment which is entirely local as to the raw material and local in its market, will naturally be in favor of selling to the people for a good deal more than they sold before, and therefore want to keep out all competition possible. I did not intend to detain you as long as I have. As there is another member of the committee here, if you please go on and hear him, I would like to have him testify.

By **Mr. Weatherford**:

Q. I wish you would state the length of the Memphis & Little Rock Railroad and the number of different navigable rivers that it has to come in direct competition with.

The **Chairman**. That is stated here under oath.

By **Commissioner Bragg**:

Q. What is the population of Little Rock?

A. We claim about 25,000.

Q. Is it situated upon the Arkansas River?

A. It is situated upon the Arkansas River.

Q. About how far from its mouth?

A. About one hundred and seventy-five or two hundred miles.

Q. The Arkansas River is navigable up to Little Rock?

A. Yes sir; they have freight rates right there now.

Q. You have a line of packets running between Memphis and Little Rock?

A. There is not at present a line of packets running from Memphis to Little Rock. They run to Pine Bluffs, where they run what they call in this country deep draught boats, and there there is a railroad direct to Little Rock, forty miles.

Q. What railroads have you at Little Rock?

A. We have the Memphis & Little Rock, of which we are now speaking, and then going around by the west we have the St. Louis, Iron Mountain & Southern that comes from St. Louis.

Q. Where does it go after leaving Little Rock?

A. It runs on to Texarkana, and then connects with the Texas & Pacific. Then we have the Little Rock & Fort Smith Railroad, which goes from Little Rock to Fort Smith, up the Arkansas Valley. Then we have on the south as we come around the southern end of the St. Louis, Iron Mountain & Southern, coming from St. Louis—and we have what is called the Little Rock & Mississippi River & Texas, which runs from Little Rock to Arkansas City on the Mississippi River.

Q. Are those all the railroads that come into Little Rock?

A. If you will ask me that question twelve months hence I hope I can answer you about one half at present.

Q. What are your rates on cotton from Little Rock to New York?

A. One of our committee who is familiar with rates will be placed on the stand. I am not *au fait* on the rates.

Q. How long have you been living at Little Rock?

A. Fifteen years.

Q. What business are you engaged in there?

A. My principal business is banking. I am president of the First National Bank.

C. F. Penzel appeared before the Commission and having been duly sworn was examined as follows:

By **Mr. Roots**:

Q. You are another member of the committee that was appointed by the business men of Little Rock to call upon this Commission?

A. Yes sir.

Q. Will you please give your business?

A. I am principally engaged in the wholesale grocery business.

Q. Will you give them a little idea of the amount of business that you do in your grocery trade?

A. About \$800,000 a year.

Q. How long have you been in Little Rock?

A. Thirty-one years.

Q. I suppose you can tell us something about the city, its geographical position as to transportation lines, etc. Will you tell us something of its condition as to the natural transportation lines that were there thirty-one years ago?

The **Chairman**. I think we may take notice of those things. Those things are all as familiar to us as other facts in the geography are. I think we understand those matters without bringing them out in detail. Just assume that we do.

Q. Tell us what you know of Little Rock as a distributing center, which we claim it should be considered?

A. The natural advantages of Little Rock, by reason of the Arkansas River, and being centrally located, has given perhaps from the very outstart, the greatest commercial advantages to the city, and it is becoming the principal distributing point in the State.

Q. How as to its being affected by the Interstate Commerce Bill as a distributing center?

A. From the short experience we have had with the Interstate Commerce Bill, I can speak of our own business of course particularly, and from information from other houses, that in the last month our business has fallen off about 33½ per cent. Whether the entire falling off is attributable to the Interstate Commerce Bill I wouldn't venture to say, but from the best information I have from our traveling men who are on the road, a great portion of it has been by reason of competition from water points which before they could meet and they are not able to meet now.

Q. You speak of Little Rock. If it is bad for Little Rock is it good for all the other places in the interior?

A. I couldn't say that it was. Little Rock has accumulated some wealth and has concentrated a good deal of business there. One peculiar thing perhaps in the Southern States—I don't know whether it is so in the other States—the small country dealer sells the consumer, and is to a large extent dependent perhaps on the merchant who does a furnishing business. Those buyers are not able to go abroad where they have no standing and no credit. They are confined of course to the home trade. If the freight rates become so much higher to any of those trade centers, of course the merchant computes the cost by the first cost on the goods and his freight, and that is the way it goes to the consumer or smaller dealer. The increased freight rate necessarily enters in as a very important part of the cost price. Those consumers and smaller dealers whose commercial standing perhaps is insufficient, or who are dependent on credit at home, naturally have to pay more for their supplies, and in consequence they suffer as well as the trade centers. In other words, they are taxed more than they have been taxed heretofore.

Q. You have spoken as to mercantile interests. What manufacturing interests are you engaged in also?

A. I am engaged in a flouring mill there in connection with our business.

Q. How about the flour mill?

A. It is stopped entirely. We discharged our hands, and shut up the mill.

Q. Your friends, I know, are largely interested in lumber matters. How about the lumber interests, and how are they likely to be affected?

A. The lumber interest perhaps is something peculiar there. A good many small mills have started throughout this place, men without

very much capital, but who have sufficient lumber land, or sufficient money to start a saw mill—not sufficient capital to put in expensive machinery. Heretofore I believe the railroads have given concession enabling the small men to ship lumber into other States. There is a planing mill established there. Of course, if they have to pay the local rate now, and it is to be equally as high as from Little Rock—the same as from local stations—those small millers who have not got the means will be taxed whatever may be the difference in the freight rate, and in consequence, their profits will be that much smaller. It will crush out the smaller mills, and possibly build up the larger mills who have more expensive machinery.

Q. You have spoken of those interests in which you are directly interested. Do you feel that by asking for Little Rock this concession of rates you are thereby damaging the local rates?

A. As I stated before, the local points are largely dependent on Little Rock, for reasons that the trade of Little Rock is entirely confined to the State of Arkansas. I don't think we have a single merchant there who trades in any other State. Arkansas, as you know, is a thinly populated State. The towns are small, and while in some there are large buyers enough who can go abroad, the small buyers are not able to go abroad, and they suffer by it. Another thing perhaps will enter into the prosperity of our State, or to the injury of our place, and also to the injury of the producer. That is the cotton interest. Little Rock has this year received about 75,000 bales of cotton. Heretofore the railroads have been able to get a local rate out from Little Rock lower than from the way stations. Thus the producers or small dealers were able to pay local freight into Little Rock either by wagon or by railroad, and market their cotton there themselves, thereby saving all the commission, insurance, warehouse charges, etc. They go in and sell it and get their money for it right away and go off. I say they did not suffer any disadvantage in the freight rate, because the lower rates from Little Rock could be had, and they had the wagon transportation, or the river or the rail. If the Little Rock rates had to be equally as high as the local stations, those people are taxed whatever that arbitrary local may be into the city; or, if they don't want to stand that, they have to ship to some distant markets where they are exposed to all the charges of insurance, commission, etc., which they don't like, and are very often exposed to great inconvenience by not being able to get their money.

By **Commissioner Bragg**:

Q. From what point does Little Rock buy most of its goods?

A. In our line we have bought from Boston to San Francisco.

Q. It does a general trade with Boston, New York, Chicago, St. Louis and Memphis, does it?

A. Very little with Chicago, perhaps. I don't know as the Chicago market has ever entered into our territory to any great extent.

Q. Do you know what the freight rate is from Little Rock to New York on first class goods?

A. At the present rates since the law went into effect, I could not tell you. Prior to that we supplied ourselves very largely, fearing there would be quite a disarrangement in freight rates. My idea is that it is \$1.84 by one of the routes, partly water and partly rail.

Q. What route is that?

A. The Virginia & East Tennessee Air Line, taken by vessel to Norfolk.

Q. What is the Boston rate?

A. I couldn't say. I have not shipped anything from Boston. The old rates to New York were alike.

Q. Where did most of your cotton go last year?

A. I can only say by information. We don't handle any cotton ourselves at all. The principal cotton is brought there by agents or brokers, and has been shipped, I think, principally to the East. Some would be shipped to England.

Q. Do you know what proportion of the business went down the river, and what proportion of it went by rail?

A. I can't give you any information, because we are not engaged in that business. We don't handle a bale of cotton in our own business.

Mr. Roots. Seventy-five per cent of it went to the East by rail; about that.

Q. Do you trade much with St. Louis?

A. Some.

Q. What is the rate from Little Rock to St. Louis?

A. At present all rail \$1 per hundred.

Q. What is it to Memphis?

A. Seventy cents per hundred.

Q. What is it from Little Rock to Kansas City?

A. The rates I mentioned to you were on first class goods. There are no first class goods brought in from Kansas City. The only product we get from the West is grain, meal, flour and meat. Those are low class goods, fourth class goods, I believe, now. I believe the present rate on them is forty or forty-five cents; one line forty cents, and the other forty-five.

Q. Do you know what the rate on cotton was per bale from Little Rock to New York, last season?

A. No sir; I have no information about it.

Mr. Roots. The railroad company will have a traffic agent on the stand, and you can get that in detail.

By Mr. Weatherford:

Q. Please state if there are not several other committee men and merchants ready to testify, if there was time?

A. There are some others here.

The Chairman. Call any one whose testimony you deem important.

Mr. Weatherford. Their testimony will be substantially like his.

By the Chairman:

Q. What draught of steamers go up to Little Rock; what tonnage?

A. I couldn't give you anything about the tonnage of the steamers. That is something entirely foreign to me. We have at present a line running between Memphis and Pine Bluff. I believe they have several packets in Little Rock. We have one packet connecting with

those steamers. They intend to put some more steamers on under the present freight rates—according to the rumors I have heard.

Q. Do steamers run up there of a size corresponding to those on the Mississippi River?

A. We have no side-wheel steamers. The steamboat men claim that stern wheels are preferred to navigate that river. We had formerly very large sized steamers. I think one of the Arkansas River steamers took one of the largest loads of cotton into New Orleans that was ever taken into that port, some years ago.

Q. The largest sized steamers that run on the river, go up to Little Rock?

A. Stern-wheels; yes sir. The steamboats have not run very extensively on our river. Before we had any railroads there, we had large sized steamers running from Cincinnati, St. Louis and New Orleans.

Q. They can come up?

A. Yes sir.

D. Miller appeared before the Commission, and having been duly sworn was examined as follows:

By Mr. Weatherford:

Q. Please state where you live, the business you are engaged in and how long you have been there?

A. I live in Little Rock; I am the general freight and passenger agent of the Memphis & Little Rock Railroad; I have been there four years.

Q. Before the Interstate Law went into effect did you charge a higher rate for a short distance than a long distance, or not?

A. Yes sir.

Q. How does section four affect the making of these rates?

A. We have advanced our rates to competitive points to the basis of the local.

Q. Why did you not lower your local rates instead of advancing your rates to competitive points?

A. Because our earnings are not sufficient now to pay the interest on the cost of the property.

Q. Do these rates affect business going through these points?

A. Yes sir.

Q. What were your rates into Little Rock and Pine Bluff before this law took effect?

A. Our first class rate was fifty cents to both places from Memphis.

Q. Can you get any business to Pine Bluff at your new rates?

A. No sir.

Q. Does the same condition of affairs prevail to Devil's Bluff, and Newport, and White River, or not?

A. Yes sir.

Q. So that you can get no business at the new rates from any of those points?

A. Yes sir.

Q. Pine Bluff is on the Arkansas River, and Devil's Bluff and Newport are on the White River?

A. Yes sir.

Q. State whether or not they were very large shipping and distributing points where considerable business was done?

A. Yes sir.

Q. And under the present arrangement you can get no business at all there?

A. Only to Little Rock. We can get business to Little Rock.

By **Mr. Roots**.

Q. How has that affected steamboat rates?

A. They have all advanced the through rates.

By **Commissioner Walker**:

Q. You have advanced your rates?

A. Yes sir; to seventy cents now, whereas it was fifty cents before.

By **Mr. Weatherford**:

Q. Can you maintain your share of the Little Rock business against river competition now?

A. No sir.

Q. Will you state in general terms any other matter that occurs to you that would be beneficial in support of the petition to suspend the fourth section?

A. I don't think of anything else.

By **Commissioner Bragg**:

Q. Is there any competition at Little Rock between railroads, outside of steamboat competition?

A. Yes sir; there are three railroads there competing for the business, besides ours.

Q. Is there any competition between them at all?

A. Yes sir; there is competition from Kansas City and St. Louis, as against Memphis, for through business.

Q. Is that competition sharp between St. Louis and Memphis, at Little Rock?

A. Yes sir.

Q. Each line tries to get all it can?

A. Yes sir.

Q. Of that business?

A. Yes sir.

Q. Has the St. Louis & Little Rock Railroad advanced its rates since the Interstate Commerce Law went into effect?

A. Yes sir.

Q. At Little Rock?

A. Yes sir.

Q. I want to ask you a little something about the rates. What was the rate on a bale of cotton from Little Rock to New York, before the Interstate Commerce Law?

A. Seventy-eight cents a hundred pounds.

Q. What was it to New Orleans?

A. Forty-three cents a hundred.

Q. What was it to St. Louis?

A. Forty cents.

Q. What was it to Memphis?

A. Twenty-five.

Q. Was it the same to Boston as it was to New York?

A. No sir; five cents a hundred higher to Boston.

Q. Can you tell us about how many bales of cotton were received at Little Rock last season?

A. About 75,000 bales.

Q. Can you tell us about what proportion of that cotton was shipped by rail, and about what proportion of it by water?

A. It was all carried out of there by rail.

Q. Was any portion of it carried down to Pine Bluff to take a steamer, or down the river?

A. No sir.

Q. Do you mean the entire amount of cotton was carried out of there by rail last season?

A. Yes sir.

Q. The steamboats did not carry any of it? A. Not out of Little Rock.

Q. Can you tell about what proportion of it went by way of Memphis, and what proportion of it went by way of other lines?

A. About one third went by way of Memphis.

Q. How did the other two thirds go?

A. One third went through Arkansas City, and one third through St. Louis. It was about evenly divided.

Q. Where is Arkansas City situated?

A. It is about 165 miles south of Memphis on the Mississippi River.

Mr. **Roots**. Below the mouth of the Arkansas River.

Q. How did it get from Little Rock to Arkansas City?

A. By rail.

Q. Is Arkansas City situated on the Mississippi River, or on the Arkansas River?

A. On the Mississippi River.

Q. Near the mouth of the Arkansas River?

A. Yes sir. The boats carry no cotton out of Little Rock on account of the agreement. They agreed to take their cotton out at Pine Bluff, and leave Little Rock alone.

Q. There was an agreement between the railroad and the steamboats to that effect?

A. Yes sir.

Q. And the railroad would not take any away from Pine Bluff?

A. No sir.

Q. The agreement was that the railroad should have Little Rock, and the steamboats should have Pine Bluff?

A. And leave their local business alone.

Q. That was last season, was it?

A. Yes sir. They would come in another season and take the business.

Q. Has that agreement been kept up lately?

A. No sir.

Q. When did it cease to be observed?

A. The first of April.

Q. Last April?

A. Yes sir.

Q. They broke loose from each other then?

A. Yes sir.

Q. About the time the Interstate Commerce Law went into effect?

A. Yes sir.

By **Commissioner Schoonmaker**:

Q. How much cotton do you say is taken from Little Rock?

A. About 75,000 bales.

Q. How much from Pine Bluff?

A. Pine Bluff handles about 40,000 bales.

Q. Then the steamboats had the worst of it?

A. They were satisfied.

Commissioner **Schoonmaker**. They had to be, I suppose.

Mr. **Roots**. They won't get the worst of it now.

H. M. Cooper appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Roots**:

Q. Please state your business, what you manufacture, where your principal market is found, and what has been the result of the Interstate Commerce Law?

A. We are manufacturers of cooperage and cooper stuff. A large part of our product we have been shipping to San Francisco and California points, but since the Interstate Commerce Bill has gone into effect, the rates have necessarily been advanced so that our business is stagnant. I haven't shipped a car load there since the first day of April. The rate of freight from Little Rock to San Francisco has been fifty cents a hundred on staves, headings, etc. The present rate is \$1.40.

By the **Chairman**:

Q. Do you ship to intermediate points?

A. We ship to common points by railroad—to Los Angeles.

Q. Do you ship to points this side of the mountains?

A. No sir; not to any points this side of Los Angeles. We ship to points between Los Angeles and San Francisco.

Q. Then you were not paying rates to any points this side of California that were greater than the rates you paid there?

A. No sir.

Q. Was there anything in the law to prevent the arrangement you had from being continued?

A. I don't know that there is, but it is the fact that they have advanced from very low rate for a long haul; and cooperage and cooperage stuffs are a commodity that will bear a very light rate.

Q. What injures you is the advance in the freight rates?

A. It has stopped our business.

By **Mr. Roots**:

Q. Don't you understand that they had a higher rate to Arizona, and that the effect of the law was that they either had to reduce the rate to Arizona, or increase the rate to California?

A. I suppose that is the fact. I do not know, as I do not ship to those points.

By **Commissioner Walker**:

Q. They had a war of rates last year on the transcontinental roads, and so got the rates down to a very low figure.

A. Yes sir; the rates on the transcontinental roads were cut about a year ago. There was a war, and we shipped for about thirty cents a hundred. It was, I suppose, a rate that the railroads could hardly make anything at. It was a very low rate for a long haul.

By the **Chairman**:

Q. What have the rates been before?

A. We had been paying eighty-two cents, but they settled down to fifty cents. I suppose eighty-two cents is probably all that that class of goods would stand. I presume they are going out from Gulf Ports now, and seaboard ports by water routes.

By **Commissioner Schoonmaker**:

Q. You said the railroad officials told you they had necessarily advanced the rates to San Francisco?

A. I was so informed by the roads.

Q. Did the railroad officials tell you so?

A. Yes sir; it was so understood all over.

Q. Did they explain to you why they necessarily advanced the rates to San Francisco?

A. The intermediate points were having a higher rate, and the San Francisco rate had to be equal to the intermediate points.

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Q. They gave that reason to you?

A. Yes sir. It has some effect on our shipments to points in Texas on the Gulf.

O. C. Sharp, of Humboldt, Tennessee, and **G. B. Tyler**, of Owensboro, Kentucky, presented petitions from business men of their respective localities, and made oath to the truth of the statements therein contained.

At 7 P. M. the Commission adjourned until May 5, at 10 o'clock.

MEMPHIS, Tennessee, May 5, 1887.

The Commission met according to adjournment, **Commissioner Walker** absent.

J. T. Pettit of Memphis, appeared before the Commission and said:

Mr. Chairman and Gentlemen: As Chairman of the joint committee of our two exchanges, I have a petition and memorial which we wish to read to you, asking a permanent suspension of the fourth clause of the Interstate Commerce Law, so far as Memphis is concerned. If you will permit us we will read it. It will only take a few moments.

The petition and memorial were read,

By **Mr. Cummins**:

Q. Has that paper been verified by affidavit?

A. It has been sworn to by each member of the committee.

Mr. Cummins. Will that form of verification be sufficient, without putting the several signers thereto on oath before the Commission?

The **Chairman**. Yes sir. It is a very good form indeed.

R. F. Patterson appeared before the Commission and, having been duly sworn, was examined as follows:

By **Mr. Cummins**:

Q. State to the Commission what has been the effect upon the Memphis cotton market in the matter of the competitive rates on cotton to the eastern seaboard; whether it has been advantageous or disadvantageous to this point as a cotton market?

A. It has been a help to this cotton market.

Q. If in the readjustment of rates to what we call the long and short haul clause, so that no more is charged for any intermediate shorter haul than for any longer haul over the same line in the same direction, the charges for the carriage of cotton from Memphis to the eastern seaboard, should be advanced beyond what they now are, what would be the position of your market in that new condition of things?

A. It would affect us very disastrously, sir. It would force cotton that now comes to Memphis, either to the seaboard points, or to other points where it would strike a cheaper line of transportation.

Q. What would be the effect upon your river rates, if you knew, if the rail lines should be withdrawn from this competition for the eastern seaboard cotton?

A. I imagine they would be advanced very materially, as that was done on the 5th of April, as stated in our general petition. One lino did advance its rates nearly 100 per cent on the 5th of April.

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A. Yes sir.

Q. There are no more middle men now?

A. It goes usually direct to the mills or to the Continent.

Q. That is pretty much true of the entire South, is it not?

A. Yes sir.

Commissioner Morrison. Mr. Stahlman, I would like to ask you a question. Do you take cotton out of Memphis on your road for the East?

Mr. Stahlman. Yes sir.

Commissioner Morrison. Is there any place east of here at which you charge more for carrying the cotton to New York or distant markets than you do from Memphis?

Mr. Stahlman. From all points on our line. We have considerable cotton produced on our line between this point and Paris. It is a cotton line from this point to Paris.

Commissioner Morrison. And you charge more for taking cotton from those points?

Mr. Stahlman. Yes sir. The same is true, I take it of the Chesapeake & Ohio and the Memphis and Charleston. They are all cotton roads.

Commissioner Morrison. General Patterson said that so far as he knew you did not discriminate in favor of Memphis at all?

Mr. Stahlman. In bringing cotton to this market as against another market.

The Witness. That was the idea.

Mr. Stahlman. In favor of Memphis as against New Orleans or St. Louis or Nashville.

Commissioner Morrison. The discrimination you make is in favor of Memphis when the cotton goes the other way?

Mr. Stahlman. Not particularly.

Commissioner Morrison. That is a matter of argument, I suppose. The fact still exists that you charge more from some points east of here than you do here?

Mr. Stahlman. The competitive forces of course have effect.

Commissioner Morrison. Now I understand General Patterson to say that if they evened up, so as to charge as much from Memphis as they do from those other points between here and Paris, that is what would destroy the trade or be injurious to it.

The Witness. Yes sir.

Mr. Stahlman. I would like to state the situation exactly. At Memphis, as General Patterson has stated, we can load 100 car loads of cotton a day. The railroads do not load it. It is loaded at the expense of the Compress Company. We put our cars in, and in less than an hour, or two hours we can pull a train load out. This cotton is compressed here. At intermediate stations it comes to us in dray lots, two or three bales at a time. Sometimes it takes a day to fill a car. We load the cars ourselves.

Commissioner Morrison. And the cotton is not compressed.

Mr. Cummins. And therefore it only takes half the quantity to fill a car.

Commissioner Morrison. Then the circumstances are dissimilar.

The Chairman. I suppose they might be so considered.

Commissioner Morrison. There is a great difference between compressed cotton and that
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that you pick up on the road. Do you carry any compressed cotton from these eastern points at a higher price than you carry it from Memphis?

Mr. Stahlman. I don't think there is a compress on the line of the road. They are building one I think at Decatur.

Commissioner Morrison. Then there is no case where the circumstances are similar.

Mr. Cummins. So far as my road is concerned, there is no compress on the line.

The Chairman. What is the relevancy of putting in these rates?

Mr. Cummins. They are the rates of the trunk lines east from Louisville, St. Louis and Cincinnati.

The Chairman. But what relevancy have they? I understand there is no point east of here that takes this compressed cotton that is received and sent forward, at rates higher than are charged here.

Mr. Cummins. That is true; but interior points often might want the privilege of milling in transit, as the expression was used here yesterday; in other words to carry to Louisville, compress and carry beyond. That principle might be invoked. It has never yet been invoked that I have learned of.

The Chairman. It is in view of a possible case that you introduce these things.

Mr. Cummins. Yes. If the principle is recognized in regard to grain, it might be applied to cotton.

The Chairman. If it is applied to cotton, it would apply to cotton picked up, say 100 miles from here, brought to Memphis and then taken back over the road?

Mr. Cummins. Yes sir.

Mr. Stahlman. I don't think we have got altogether the true inwardness of this thing. I think an examination of the rates of transportation will develop the fact—

The Chairman. What rates do you speak of?

Mr. Stahlman. The cotton rates.

The Chairman. The present existing rates?

Mr. Stahlman. Yes sir; and the basis upon which rates have been fixed heretofore. The cotton shipped from Memphis to intermediate points in some cases is charged more than to further points, it being a rule, of course, what cotton from local points—

The Chairman. Cotton shipped from Memphis to what intermediate point?

Mr. Stahlman. Some of the spinning points, or some of the Canada points.

Commissioner Morrison. In Georgia or anywhere.

Mr. Stahlman. I am not sure. I think the facts show it.

The Chairman. What intermediate points have you in mind?

Mr. Stahlman. For instance, any spinning point in the East nearer than New York, or Portland, or Boston.

The Chairman. Is it not the case that the charges to the New England points have been based upon New York, and are substantially the same?

Mr. Stahlman. Largely upon Boston.

The Chairman. They are the same, are they not?

Mr. Stahlman. In some cases they are higher than Boston.

The Chairman. Have they been higher at any point through which the road would take the cotton to Boston?

Mr. Stahlman. I am not prepared to say.

The Chairman. I would like to ask Mr. Ogden about that. He knows all about it.

Mr. J. R. Ogden. Generally the rates to New England points are the same as to Boston. There are a few exceptions where locals are paid, but that is the general rule.

The Chairman. Where there are exceptions, are they not in cases that are off the line?

Mr. Ogden. They are off the lines.

By Mr. Cummins:

Q. Is it not a fact, General Patterson, that practically all the cotton shipped from Memphis is compressed prior to shipment?

A. Oh, yes sir; nearly all, if not all.

By Commissioner Schoonmaker:

Q. What are the local charges at Memphis upon a bale of cotton including the compressing?

A. Do you mean from the time it arrives here until it is put on board of the cars to be shipped?

Q. Yes sir.

A. Including one month's storage here—that is the general rule—and one month's insurance—

Q. I was about to observe, if there is any detail to it you might make up a statement.

A. I have it made up now in a very few words. Under the present rate of compressing up to the first of September, it costs \$2.49 a bale. Under the new rule compressing will be reduced from the first of September to ten cents per hundred. It is now twelve. It will cost \$2.87.

By Mr. Cummins:

Q. That includes the factor's charges, commissions etc.

A. Everything it costs the planter to sell his cotton and put it on board the cars, including the compressing.

By Commissioner Schoonmaker:

Q. What is the population of Memphis?

A. I suppose 75,000; about that. We claim that.

By Mr. Cummins:

Q. I understand that the charges of the railway lines for cotton carried to Memphis include delivery to the warehouse?

A. Oh yes sir.

Q. And they pay the drayage into the warehouse out of that charge?

A. That is from the railroads. The railroads deliver it to the sheds, and that is the cost to the planter of selling his cotton and putting it on board of the cars.

By Commissioner Bragg:

Q. Is there much competition at Memphis between the steamboats and railroads lines?

A. I should say very sharp competition.

Q. About what proportion of the cotton brought to the Port of Memphis is brought here by steamboat?

A. I would say not more than one quarter. I am not positive about that. I should say there was three quarters brought in by rail.

Q. About what proportion carried from the Port of Memphis is carried by steamboats?

A. The proportion carried out is less.

Q. About how much less?

A. Less than one quarter. More than three quarters I would say is carried out by rail. The exact amount I am not able to say.

Q. Is there any competition at Memphis between the railroad lines themselves irrespective of the steamboat competition?

A. Oh yes sir.

Q. Between what lines?

A. I think all lines running east. The four lines running east are competing for business as between themselves. There is no pool here.

Q. What lines are there?

A. The Chesapeake & Ohio, the Louisville & Nashville, and the Memphis & Charleston are the principal lines, and the Memphis & Birmingham also.

Mr. Cummins. I would state to Mr. Commissioner Bragg that on pages 10 and 11 you will find those figures exactly giving the proportion of the cotton coming in and going out, and on what lines of road, and by what river routes; and showing what are the shipments; by what rail lines they go out, and from what direction by river.

By Mr. Stahlman:

Q. There is another large and growing interest here, the milling interest and grain interest?

A. That is growing up. There has been a large mill built here within the last one or two years.

Q. And the provision trade is quite large?

A. Yes sir.

Q. And the shipping trade in all classes of merchandise?

A. Very large indeed.

Q. The cotton business has a tendency to help that class of business, and that class of business has a tendency so help the cotton business?

A. Everything is based upon cotton. Without the cotton business here this city would go down.

By the Chairman:

Q. Does the Board of Trade publish an annual report?

A. Yes sir.

The Chairman. If you will furnish that, it will save the necessity of going into particulars. All the questions of details of business we can get a good deal better from such a report than in any other way.

Mr. Stahlman. The point I desire to elicit is this: That while the cotton business is the most important element in the business at Memphis, and while perhaps it may be said that the cotton business is not so seriously affected by the long and short haul provision of the Act, that the other business which adds materially to the City of Memphis, the provision business, the merchandise and other business that very materially aids Memphis in holding her trade and cheapening the articles sold here, which the people need who ship their cotton here, is largely affected under the provisions of the Act.

The Chairman. I do not make the suggestion to cut the witness off from his evidence, but only to say that so far as the statistics of business are concerned, we can get them a good deal better from that report than in any other way.

The Witness. I will take pleasure in sending you several copies.

W. W. Schoolfield appeared before the Commission, and having been duly sworn, was examined as follows:

By Mr. Cummins:

Q. How long have you been living in Memphis?

A. Thirty one years.

Q. What is your business?

A. Wholesale grocer and cotton factor.

Q. State to the Commission from whence you draw your groceries that you sell in this market; from what other markets you bring them to Memphis, and where you get them from.

A. We get them from New York, Philadelphia, Boston and New Orleans. Meats we bring from the northwest, provisions from different points, and flour which we handle quite largely we get our principal amount from Illinois; the largest amount of flour that we handle.

Q. Flour milling is a comparatively new industry in Memphis, is it not?

A. Yes sir; comparatively so.

Q. Is it not a fact, however, that flouring mills with a capital of several hundred thousand dollars have been erected at this place within the last few years?

A. Yes sir; we have one large mill here which has been erected within the last year, I believe, or year and a half. We had one previous to that not so large.

Q. Please state to the Commission whether or not the rates charged by the rail carrier lines and water carrier lines competing into this market, have been beneficial or injurious to the building up of a trade center at this point?

A. They have been largely beneficial.

The Chairman. Take that for granted.

Q. I will ask you if you know from actual experience in the past what would be the effect if the enforcement of the long and short haul clause should induce the rail carriers to advance their through rates, upon the water carriers' rates to those points; whether they would be advanced correspondingly or not?

A. I think it would be very disastrous to our wholesale trade. To get our freight rates we have all the railroads coming into competition for freights which we bring here, as well as the river.

The Chairman. You may as well take it for granted that if the water carriers had an opportunity to put up their rates they would do so to any extent they thought best.

Mr. Stahlman. May I ask if you will also take for granted the fact that the rates of Memphis on western produce are less than to intermediate points.

The Chairman. Oh yes sir; I suppose that is so. If you say it is so, that is enough.

Mr. Stahlman. Yes sir. And also they are less from Memphis to southern coast points.

The Chairman. Your statement to that effect is just as good as the statement of forty witnesses.

Q. In your business, is it not a fact that you come into daily contact with farmers and merchants through all the country tributary to Memphis?

A. Yes sir.

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Q. In that daily intercourse with those people have you or not information direct and positive as to how they consider the local tariffs on these rail carrier lines into Memphis; exorbitant or reasonable?

A. There is a large number of them who have no complaints to make at all. The complaints, as a general thing, come from points that are noncompetitive that are close to competitive points.

Q. Is there not a general impression through the country that the rates are in themselves reasonable?

A. Yes sir.

Q. Is it not a further fact that the local rates for the carriage of merchandise into Memphis from the country tributary to it, and the supplies from Memphis to the purchasers, have been greatly reduced during a number of past periods?

The Chairman. That has been proved several times.

Commissioner Morrison. The price has been going down all along.

Mr. Cummins. We want to show we were keeping in good company.

By Mr. Stahlman:

Q. You supply with merchandise and provisions a large area of country tributary to Memphis?

A. Yes sir; our trade extends over a large territory.

Q. The local rates to such points are reasonable as compared with the local rates of railroads from other competing points, are they not?

A. Yes sir.

Q. If the rates to Memphis should be advanced what would be the result; it would result in an advance of the price of the products to the consumer or to the man who buys from you, would it not?

A. Yes sir; that would be the natural result.

Peter McIntire appeared before the Commission and, having been duly sworn, was examined as follows:

By Mr. Cummins:

Q. You are in business in Memphis?

A. Yes sir.

Q. How long have you been so engaged?

A. Our house has been established since 1846.

Q. Where does most of the sugar that your house handles here come from?

A. Principally from Louisiana.

Q. Do you handle that sugar from New Orleans sellers or from the planters direct?

A. I should fancy the principal portion of it was handled from the planters; shipments from the plantations.

Q. State to the Commission by what lines that sugar and molasses gets to you from the planters?

A. A large portion comes here by river and by rail. I suppose it is about equally divided.

Q. If you are advised, state to the Commission what would be the effect upon your handling of that sugar so received from the local planters, if the long and short haul rule should be enforced on the rail lines?

A. I think it would seriously affect the rail shipments. It would perhaps stop the entire shipments by rail if the rates were increased.

Q. Would that have any effect also upon your river rates?

A. Yes sir; I think they would be likely to advance, and probably it would affect the receipts by river.

Q. Is it not a fact that the sugar and molasses interest is of comparatively recent growth in this city; has it not grown to very much larger proportions in the last half dozen years?

A. Yes sir.

Q. Is not that due almost exclusively to the fact that the rail lines from Memphis penetrate that entire sugar growing country?

A. Yes sir; I think that has affected it.

Q. Please give us an idea as to the margin of profit on handling this business, so as to let us know whether any reasonable increase can be stood by this line of trade in the rate of freight; what effect would it have upon it?

A. Like all staples, it is handled on a very close margin, and in considering that we have recently erected large warehouses on the line of railroad which passes through the east bank of the sugar district on the upper coast, in order that we might afford to planters the benefits of our market and be enabled to handle the product in good shape promptly; and in that way they take advantage of the rail shipments on that side of the river. I think they have had a very satisfactory experience.

Q. The market has grown under this plan of dealing with it?

A. Yes sir.

Q. State where you market your sugar and molasses received from the Louisiana planters?

A. Principally to our large jobbers in the city. Of course we have trade at other points.

Q. In other States?

A. Yes sir.

Q. Even as far as Pittsburgh?

A. Yes sir; and Chicago.

Q. Tell us the number of cars per annum of sugar and molasses goods you are now handling?

A. Our general business in the three interests amounts to from twelve to fifteen hundred cars.

John L. Welford appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Cummins**:

Q. What is your business?

A. I am the manager of the Chickasaw Cooperage Company.

Q. About how much is your annual output at your factory?

A. It is about \$150,000.

Q. What effect on your business has the Interstate Commerce Act had; or if not already shown, what effect will it have so far as you may know?

A. Section 4, as I understand it, has been suspended as far as our trade now goes, and we have not felt the effect of it. We have the same rates that we had before. If those rates do not continue it would prohibit us entirely from shipping to the points that we want to reach.

Q. You would have to shut up shop?

A. Yes sir.

Q. You say your business amounts to about \$150,000 a year?

A. Yes sir.

Q. Is it not a fact that your industry has comparatively grown up in Memphis within the last few years?

A. Yes sir; about four years; a little over four years; between four and five years.

Q. Do you employ a large number of hands?

A. Yes sir.

Q. And furnish labor to a large number of people?

The **Chairman**. Yes; undoubtedly he does.

J. A. Godwin appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Cummins**:

Q. I believe you are interested in the dry goods trade of this town?

A. Yes sir.

Q. With what house?

A. B. Lowenstein & Brothers.

Q. That firm does a large wholesale and retail dry goods business here?

A. Yes, sir.

Q. About how much per annum?

A. In the neighborhood of \$3,000,000.

Q. Is it not in your department in that business to keep up with your freight rates on goods that you buy in eastern markets and ship here?

A. Yes sir.

Q. State to the Commission what effect if any, the adjustment of rates by rail carrier lines from New York and eastern points to Memphis has had upon your shipments of dry goods to this market?

A. As we understand it from the roads giving us a rate, the new rate, if the clause goes into effect—

The **Chairman**. To where; what rates do refer to?

The **Witness**. From New York to Memphis. The present rate as compared with the rate that will be given will increase the expense of our business about 1 per cent.

Q. That one per cent is now resting upon you under the suspension of this fourth clause?

A. I don't exactly understand that question.

Q. During a temporary suspension of the fourth clause by the Commission, you are still suffering to the extent of 1 per cent?

A. No sir; the suspension of the fourth clause gives us the rate we have had, \$1.02. We are now paying that rate.

Q. But prior to the suspension how was it?

A. Prior to the suspension they never put into effect the new rate at all.

Q. But the new rate was quoted to you?

A. Yes sir. The new rate as quoted to us will increase the expense about 1 per cent. The new rate is quoted at 35 per cent increase over the present rates.

By The **Chairman**:

Q. Who quotes such rates to you?

A. The Northern Dispatches; the Chesa-

peake & Ohio Road. That is the rate I figure on as being the coming rate.

By *Mr. Cummins*:

Q. Is it not a further fact that in your business you find it necessary already to commence making arrangements with water carriers by the sea ports?

A. We have already made some inquiry in that respect with that intention; yes sir. We have not made any arrangement yet.

Q. But you are preparing to ship your goods around that way?

A. We are preparing to make some arrangement if we can.

Harlow Dow appeared before the Commission and, having been duly sworn, was examined as follows:

By *Mr. Cummins*:

Q. How long have you lived here?

A. Thirty one years.

Q. What is your business?

A. I have been an active merchant all my life in Memphis and am now engaged especially in the coal oil business; nothing else except to publish Dow's City Directory of Memphis.

Q. You are not connected with the Standard Oil Company?

A. No sir; I have never been connected with the Standard Oil Company.

Q. You are a free trader?

A. An independent dealer in coal oil.

Q. I wish you would state to the Commission what effect, if any, the enforcement of this Interstate Commerce Law will have upon your coal oil trade?

A. I cannot say it would be disastrous because we have the river. It would cut off certain points almost entirely from business; very much reduce it and ruin it in certain points.

Q. Please illustrate it.

A. Since this Commission has been in session I have been to the C. & O. Depot and there are ten barrels of oil going to Dyersburg, Tennessee. Then also I have river communication, first by the Anchor Line of steamers, and next by the Forks of Deer River, a somewhat tortuous stream navigable for small boats which run nine months in the year. I shipped two weeks ago ten barrels to that point at \$1 a barrel, fifty cents on each boat. Nine months in the year the freight by rail is in round numbers \$2 a barrel. Ten barrels at the depot are now going there at that rate. The exact rate is a little less. I think \$4.85 I paid on that line two or three weeks ago when this boat was not running. I have orders to ship now, which I shall fill very soon. I have an order of fifteen barrels, and I should sell fifteen or twenty at \$1 a barrel. I have bills of lading from Marietta at fifty cents a barrel. That is upon the Ohio River, open six months in the year. The rate by rail has been since the 15th of last January, \$1.20. To guard against irregularities during the other months I had to bring here by rail twelve or fourteen barrels of oil and suffer the leakage on it—to avoid these railroad rates. For instance, I was in Covington the other day and the railroad rate there is \$1 a barrel by rail. At the five local points on that road, Covington, Ripley, Dyersburg and Newbern, the rate is first

class rate of freight, also including Dyersburg, amounting to a difference between first and fourth class rates, from sixty cents to \$1 a barrel at Newbern and Dyersburg is an intermediate point amounting to \$1.80. Of course, in selling to these intermediate points I have to lose my profit, or not sell. I will say this: On the roads which offer a lower class freight, for instance, fourth class by the Memphis & Charleston—were it not for those roads I would be driven from the business. That is open to all at fourth class rates of freight, while upon all the others it is first class to me; and I am prepared to substantiate it that the Standard Oil Company receives fourth class rates upon the Louisville & Nashville and the Chesapeake & Ohio Railroad.

Q. Is it not your well settled conviction that the life of your trade depends upon the Commission continuing the suspension of the fourth clause?

A. No sir; only under certain qualifications.

Q. State those.

A. I have stated certain facts here in regard to the river and rail communication. I care not what the rates are, high or low. All I want is, as the sun shines for all, the law for all. I know the Standard Oil Company don't pay those rates. Here is the river coming through. They received in the last month two or three hundred barrels of oil by river at those rates, while it is \$1.27 or thereabouts by rail. I know they carry the oil for the Standard Oil Company on these roads at fourth class rates. The ten barrels of oil going today on that road receives a rebate, and it is prohibited here, and the bills are made out in Cairo to avoid the law. I saw them on the road last Monday. I ship right along and am denied, and the rate here is paid in advance. I am prepared to show such documents as will establish that point.

Mr. Cummins. That is all I desire to ask this witness. (Laughter.)

By *Mr. Stahlman*:

Q. Are the points to which you ship and of which you complain all within the limits of Tennessee?

A. No sir.

Q. They are not in Tennessee?

A. No sir.

The *Chairman.* To what point do you address that inquiry? Do you want to go into an investigation of this Standard Oil matter now?

Mr. Stahlman. No sir.

The *Chairman.* Perhaps it would be better to take it up hereafter, if this gentleman is disposed to have it done.

Mr. Stahlman. I want to suggest in connection with that, as I have been doing heretofore—

The *Chairman.* It is not proper to go into that matter.

Mr. Stahlman. The Louisville & Nashville Railroad on all the business to which the gentleman refers, charges the same rate to the Standard Oil Company that it does to others.

The *Witness.* I am prepared to offer documents in contravention of that statement. I am prepared to offer them if you want them.

Mr. Cummins. There are a large number of gentlemen representing various interests in the commerce and trade of Memphis who are present in the room and whose testimony uniformly would be in corroboration of the statements to which you have already listened from these gentlemen who have appeared upon the stand this morning. I take it, however, to be unnecessary to consume your time further with listening to mere cumulative evidence, as that would be from every branch of trade and commerce here. In that view I will not call any of the other gentlemen to the stand.

The Chairman. Very well.

A. H. Moses appeared before the Commission, and, having been duly sworn, was examined as follows:

By Mr. Stahlman:

Q. Please give the Commission your place of residence, your business and the situation with respect to the matter we are now undertaking to investigate?

A. I reside at Sheffield, Ala., and am the vice president and general manager of the Sheffield Land, Iron & Coal Company, the promoters of that town. I appear to-day, however, as one of a committee of citizens appointed by the City Council of Sheffield to appear before this body. Two of my associates are still here and two others left last night, after remaining all day.

Q. Sheffield is located on the Memphis & Charleston Road?

A. Yes sir; and on the Sheffield & Birmingham Road and on the Tennessee River.

Q. The Louisville & Nashville Road is building a line to your town?

A. Yes sir.

Q. I will ask you flatly, are you for or against the enforcement of the fourth clause?

A. I have in my pocket a paper drawn by our committee which I think represents the views of the citizens, as far as we have been able to ascertain. We think we will be benefited by suspending that clause as to Sheffield.

Q. Are you all satisfied with the rates you are now paying?

A. I am not very familiar with the details of the rates. My line of business does not bring me in contact with them.

Q. That petition practically represents the sentiment of your people, does it not?

A. I think it does. Our committee were unanimous, and it was a very representative committee.

John Atherton appeared before the Commission and, having been duly sworn, was examined as follows:

By Mr. Stahlman:

Q. Please state to the Commission where you reside and what interests you represent in coming here?

A. I live in Louisville and have distillery property on the Knoxville Branch of the Louisville & Nashville Railroad, forty-five miles south of Louisville. I came here as a manufacturer, and also in a representative capacity, having been requested to come by a large number of citizens of Louisville as signers to petitions which I have in my hand. The petitions

were circulated among the shippers of Louisville in duplicate. I will say in explanation that it was not intended that the petitions should be circulated as petitions generally are, but to those interests that were large shippers and from the character of their business would be likely to feel the greatest amount of interest in this subject. One other point, if the Commission will pardon me a moment. The petition is very short, and simply confines itself to asking the permanent suspension of the fourth section in behalf of the Louisville & Nashville, and the Chesapeake, Ohio & Southwestern Roads, and then expresses the general judgment that it ought to be suspended throughout the country. There were no reasons inserted in the petition, thinking probably it would be permitted by the honorable Commission that the views that they entertain very generally on that subject, as well as such individual views as might result from individual experience of its merchants, might be stated. I can state them in a very few moments, if it is the wish of the Commission. They feel, so far as they expressed themselves at the meeting which was held—which was pretty largely attended by the signers to that petition—that the laws of competition which have brought about the network of railway and water transportation, will adjust the rates from time to time as the business necessitates, and as the growth of the different terminal points require modifications of those rates.

The Chairman. It might be well enough to say to you that we do not understand we have any power to suspend this law through the whole country. All your testimony bearing upon that question would be somewhat out of place. Our power is only to examine cases that are supposed to be exceptional. It is just as much obligatory upon us as it is upon any railroad company or private citizen.

The Witness. That was fully understood. I presume that part was inserted on account of the fourth section containing a clause that it should be suspended in such cases as were within the discretion of the Commission.

The Chairman. We have heretofore said to parties who wanted to bring before us their views in regard to the general policy of that provision as applied to the whole country, that that was something we could not look into at all.

The Witness. I fully understood that after we came up, but of course it was too late to change the petition that was drawn there. With reference to the business in the South, where a large amount of the jobbing business of Louisville is done, they of course feel very much as has been stated by a large number of witnesses here, that they were compelled to have lower rates to water competitive points in order to carry on their business; and of course they feel that it was a contest between the increase of those rates or the lowering of the local rates; and in the judgment of our people generally who are familiar with the interest of these railroads, it was not believed that it could be accomplished by a lowering of local rates, and consequently they felt it would result in an advance of through rates which would deprive them of a large amount of their Southern business. It is a considerable manufacturing

point, and the manufacturers are generally uneasy about orders for business.

By Mr. Stahlman:

Q. In so far as it applies to your particular business and the roads that have applied for relief under this section of the Act. You are a large consumer of grain, are you not?

A. Yes sir.

Q. How many bushels?

A. We have used as high as between five and six hundred thousand bushels; last year about three hundred thousand, and the year before that three hundred thousand.

Q. You are located at a local point on the Louisville & Nashville Railroad?

A. Yes sir.

Q. The product manufactured from this grain is shipped quite largely to points south of you?

A. We ship considerably to points south of us, and also to all points in the United States. To New Orleans we make a shipment and to Texas and southern points on the Louisville & Nashville Railroad and other roads.

Q. It is true in your case although you are located at a local station, that the rates to the longer points are made less than to intermediate points, is it not? For example, the rates to New Orleans are less than to Montgomery?

A. Yes sir.

Q. And it is the same way with the South Atlantic coast. The rates to Charleston are less than to Augusta?

A. Yes sir; that is true. We don't make as many shipments of freight there as in other directions, but, generally speaking, that is the situation.

Mr. Cummins. I have here petitions from some two hundred or more merchants and business men of Louisville. I will ask the witness to look over the list of names and state to the Commission whether those are the representative men of the trade of that city.

The Witness. (After having examined the petition.) I will state in answer to the gentleman's question that I recognize the names of nearly all the signers of this petition, living in the City of Louisville, as prominent business men and shippers.

Q. You have petitions from local points on the line of your road?

A. Yes sir; I have petitions from a great many; in fact, I will say the important local stations along the line of the Louisville & Nashville Railroad, as far south as Bowling Green, and as far north on the Knoxville branch as the Tennessee state line. I recognize the names of signers to all of those petitions, or almost all, as men I know personally.

Q. About what percentage of the business interests of Louisville have affixed their signatures to the petition asking for this relief?

A. I should say, taking the business men who ship long shipments, what might be called outside of the local territory around Louisville, probably 75 per cent of the heavy business that is shipped on what might be termed a long haul rate.

Q. Was there an effort made to get all of them?

A. No sir. The meeting was called and composed principally of heavy shippers who

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ship beyond the immediate locality to distant points.

George Gaulbert appeared before the Commission and, having been duly sworn, was examined as follows:

By Mr. Stahlman:

Q. You are a resident of Louisville?

A. Yes sir.

Q. What is your business?

A. Merchant and manufacturer.

Q. What branch of manufacturing?

A. White lead and paint.

Q. You have a pretty large business in the South?

A. Yes sir; quite a considerable business.

Q. Do you have any business with coast points and Gulf points?

A. Yes sir; to the Gulf coast I have considerable trade.

Q. Your rates to the intermediate points are higher than to those points?

A. I think so; yes sir.

Q. Is the competition pretty strong at the Gulf points?

A. Yes sir; we come in competition with both eastern and western markets.

Q. And the rates, as fixed, are practically what you need to enable you to meet the competition, are they not?

A. Generally so; yes sir.

Q. You don't think the City of Louisville has been discriminated against in favor of any other city?

A. Not that I know of.

Q. Do you import any of your paints or oil?

A. We do some importing; yes sir.

Q. The rates are very low, and competition fixes very low rates for you at times?

A. Yes sir; we usually get a pretty low rate.

Q. Have you made any shipments or received any consignment on which the rates were low? If so, please state what were the forces or elements that made the low rates?

A. We have recently had a rate of twenty-five cents, I think out of Liverpool to Louisville by the Chesapeake & Ohio Road, which was made in competition. We have been formerly making our shipments by way of New Orleans and bringing them up in that direction; but they gave us a rate to compete with the roundabout way they bring it in from Liverpool.

Q. The rail competition at the Gulf ports is getting to be so strong against the water competition that the rail lines coming from the easterly direction are obliged to reduce their rates to meet it

A. I think so; otherwise they would ship by New Orleans.

Frank Hartwell appeared before the Commission and, having been duly sworn, was examined as follows:

By Mr. Stahlman:

Q. You reside in Louisville?

A. Yes sir.

Q. What is your business?

A. Grain dealer and shipper.

Q. You ship to Southern points?
 A. Yes sir.
 Q. Your rates to distant points are lower than to intermediate points?
 A. Yes sir.
 Q. What proportion of your business goes to distant points, say coast points?
 A. We have shipped recently very little to coast points.
 Q. Notwithstanding the rates are very low to coast points, you are not able to compete successfully?
 A. We are not, sir. The rates are lower to coast points than to other points we are in the habit of shipping to.

Horace Pashaw appeared before the Commission and, having been duly sworn, was examined as follows:

By **Mr. Stahlman**:
 Q. You reside in Louisville?
 A. Yes sir.
 Q. What is your business?
 A. Wholesale flour dealer.
 Q. Do you ship at all to the South?
 A. Yes sir.
 Q. Your strongest competition is at the coast, and points tributary to the coast?
 A. Yes sir.
 Q. Your rates are lower to the coast than to the intermediate points?
 A. Yes sir.
 Q. Are you selling much to coast points?
 A. No sir; comparatively little.
 Q. You would be willing to shade your profits, in order to sell, if you thought that would induce trade?
 A. Yes sir.
 Q. Notwithstanding your willingness, and notwithstanding the low rates, you are able to do very little business?
 A. Yes sir.
 Q. The same applies to Mobile, Pensacola, and New Orleans?
 A. Yes sir.
 Q. Does not the water competition also affect you at Montgomery and Selma?
 A. Yes sir.
 Q. And the short route through Vicksburg down the Mississippi?
 A. Yes sir.

S. Zorn appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Stahlman**:
 Q. You are a resident of the City of Louisville?
 A. Yes sir.
 Q. Engaged in the grain business?
 A. Yes sir.
 Q. You ship largely to the South?
 A. Yes sir.
 Q. Are you doing much business at coast points?
 A. Very little this season.
 Q. The rates to coast points of course are less than to the interior?
 A. Yes sir.
 Q. When you had business at the coast did you not shade your prices?
 A. We generally sell lower there than at any other point.

Q. The same applies to Gulf points, Mobile, Pensacola, and New Orleans?

A. Yes sir.
 Q. You have competition to meet at Montgomery, at Vicksburg, etc., by the Alabama and Mississippi Rivers?
 A. Yes sir.
 Q. And at Selma also?
 A. Yes sir.
 Q. I will ask you to state if you think the Louisville & Nashville Railroad favors you above any other shippers particularly, or discriminates in your favor or in favor of the City of Louisville against any other city?
 A. The Louisville & Nashville Railroad never favored me that I know of.

Charles Ballard appeared before the Commission, and having been duly sworn was examined as follows:

By **Mr. Stahlman**:
 Q. You reside in the City of Louisville?
 A. I do.
 Q. What is your business?
 A. Manufacturer of flour and corn meal.
 Q. Your trade is largely in the South?
 A. It is.
 Q. You have pretty strong competition in your business?
 A. Yes sir.
 Q. Please explain the extent of the competition at the Gulf and coast points, and points tributary or immediately in the territory tributary.
 A. The competition has been so strong that we have ceased to solicit business at coast points.
 Q. You could not sell anything there at the present rates, even if you sold it without a profit, could you?
 A. Owing to the quality of our goods, we sell a little, of course, when they want good flour; but we sell very little.
 Q. You meet your competition in that way, do you?
 A. No sir; we don't attempt to meet competition at all at coast points.
 Q. What points sell flour against you, in that country?
 A. To coast points our competition is principally from points which reach the coast through Baltimore.
 Q. Are there any milling interests at Richmond, Virginia?
 A. A slight one; yes sir.
 Q. You have a good trade in the interior, where the rates of transportation are higher, have you not?
 A. Yes sir; in the Carolina territory we have.
 Q. Generally speaking, your competition is very strong?
 A. Yes sir; it is very strong.
 Q. How do you make any money with all the competition you have? Please explain to the Commission.
 A. By the quality of our goods and the magnitude of our output.
 Q. You make good goods and you make plenty of them?
 A. We attempt to run forty-five weeks in the year, night and day; and of course running

night and day the relative cost of production is very much lower.

Joseph LeCompte appeared before the Commission and, having been duly sworn, was examined as follows:

By **Mr. Stahlman**:

Q. Please state your place of residence.

A. Lexington, Kentucky.

Q. What is your business?

A. I am a merchant miller.

Q. You have a business in the South?

A. Yes sir.

Q. It requires lower rates from your point to coast points than it does to intermediate points, does it not?

A. Yes sir.

Q. I believe you have no water competition at Lexington?

A. No sir; we have not.

Q. The competition, then, in your business arises from competition between markets?

A. Competition between markets.

Q. And you have rail competition to the South?

A. Yes sir.

Q. Two lines?

A. Yes sir; we could have three lines.

Q. One of the lines between Lexington and Chattanooga is considerably shorter than the other, is it not?

A. Yes sir; very much shorter.

Q. Under the fourth section of the Act, if the rate should be fixed to intermediate points not higher than to terminal points, would the Louisville & Nashville Railroad, and the Nashville, Chattanooga & St. Louis Road be in the position of being compelled to reduce the rates for at least one hundred miles of its road, being that much more intermediate than the shorter route?

A. I don't understand the question exactly.

Q. The Louisville & Nashville Road from Lexington to Chattanooga is ninety-four miles further than the Cincinnati Southern from Lexington to Chattanooga?

A. Yes sir; and the point is that they would have to haul it that ninety-four miles for the same rate.

Q. And reduce the intermediate rates for ninety-five miles more than the other road would be obliged to do?

A. Yes sir.

Q. You have competition between Cincinnati and Lexington, have you not?

A. Yes sir.

Q. How many railroads?

A. Three.

Q. Is Lexington a pretty good business point?

A. It is a fair business point, situated right in the center of the blue grass region.

Q. How long have these competitive rates been established at Lexington?

A. Something like about five years.

Q. You have competition from the East to Lexington, too, have you not?

A. Yes sir.

Q. What lines?

A. The C. & O. and L. & N.

Q. Does the Cincinnati Southern, or the Cincinnati, New Orleans & Texas Pacific also run from Cincinnati to Lexington?

ENTER S.

A. Yes sir.

Q. And connect with the eastern lines?

A. Yes sir; there are three. The other two are the strongest competitors.

Q. What effect do you think the advance of rates to and from Lexington would have upon the general business of Lexington, including your own business?

A. I think it would have an injurious effect. That is not only my private opinion, but it is the opinion of the whole of Central Kentucky, Lexington, and of the neighboring towns. They had quite a mass meeting in Lexington, and appointed a delegation to attend this Commission, and for one reason or another they couldn't come; but I have brought petitions, not only from Lexington, but from neighboring towns that were sent in there to be sent down by the committee. Almost every one of those signers I know personally, and nearly all from the neighboring towns I know.

Q. Giving Lexington local rates would be very disastrous, in your opinion?

A. It would ruin the manufacturing that is now going on there and growing up.

Q. In which a large amount of money has been invested?

A. Yes sir: Lexington has improved very much in the last five years, especially since it has had railroad competition; since the C. & O. and Southern Road came through and gave us competition between the railroads.

Q. Your people do not think they ought to be deprived of the competition they have?

A. No sir; we have spent our money to get competition and we think we ought to have the benefit of it.

Q. How much money did Lexington spend in that way?

A. It spent over a million dollars.

By **Commissioner Schoonmaker**:

Q. What is the population?

A. 26,000.

George W. Decker appeared before the Commission and was duly sworn.

The **Chairman**. I am handed a petition with your name subscribed to it, and coming from Newport, Arkansas. I understand you desire to make some statement in regard to that petition. Please do so.

By **Mr. Cummins**:

Q. Tell the Commission what carrier lines your town has the advantage of?

A. We have the Iron Mountain Road, the Batesville & Brinkley Railroad, which connects with the Memphis & Little Rock, and we have the White River.

Q. So that you have two railroad lines and one river line?

A. Yes sir: that is with our eastern connections. We have the Batesville Branch of the Iron Mountain, but that does not enter into our business here at all.

Q. The Iron Mountain Road is a branch of the Missouri Pacific system and runs from St. Louis through your town to Little Rock?

A. Yes sir.

Q. Over the Batesville & Brinkley line you connect with the Memphis & Little Rock?

A. Yes sir.

Q. The White River runs south past your

A. K. Ward appeared before the Commission, and having been duly sworn was examined as follows

By **Mr. Cummins**:

Q. You live in Memphis?

A. Yes sir.

Q. What is your business?

A. I am secretary of the Memphis Fertilizer Company.

Q. Tell the Commission where it is you get the materials that you make into fertilizer?

A. The larger portion of it we get from Charleston. We get some chemical ingredients from New York.

Q. You make up the goods that you manufacture here in Memphis?

A. Yes sir. We get our cotton seed oil, part of it, that enters largely into the commercial fertilizers, from our home market.

Q. To what points do you sell that product?

A. The best portion of our trade is east in Connecticut and Massachusetts.

Q. What is the average annual value of the output of your factory?

A. We sell from six to eight hundred car loads.

Q. Tell the Commission the effect, if any has been felt by your trade and manufacture, under the working of this Interstate Commerce Act?

A. It has shut up our factory, sir. We had a contract with a Connecticut firm for a large amount of commercial fertilizers, which we didn't get filled before this bill went into effect. The contract was based upon a given rate of freight, and the goods were to be delivered in Connecticut. After this bill went into effect, the rate of freight was advanced to such an extent that we lost money by shipping the goods.

By the **Chairman**:

Q. Advanced where?

A. Advanced to eastern markets from Memphis.

Q. Where was the advance?

A. The advance was made by home companies.

Q. Beyond the Ohio River?

A. Yes sir.

The **Chairman**. We are not investigating that.

Mr. Cummins. That may be; but it shows the effect of the advance and how these carrier lines feel with regard to it—

The **Chairman**. We have nothing to do with that case and cannot have anything to do with it in any way. If the railroad companies over there comply with the law we have no jurisdiction. The investigation here should be confined to matters this side of the Ohio River.

Mr. Cummins. That is true; but it seems to me to be an element to be considered with regard to the effect of this law if it should be enforced upon the general trade and commerce of Memphis, when one very large industry has been suppressed.

The **Chairman**. They have a perfect right to do it over there, and we cannot interfere.

Mr. Cummins. I grant you that. It might not give this particular industry relief, but it

throws light upon how the workings of this law affect all our commerce.

The **Chairman**. We are not inquiring into the general working of the law. It is to be enforced. It is only a question of the suspension this side of the Ohio River. If the enforcement of the law north of the Ohio River destroys this man's industry, that is a thing very greatly to be regretted, but it is something we have no sort of control or influence upon; and no order we can make can influence it. We cannot inquire into it. It is not a matter under investigation before us. If they have adapted their rates there to the law, and it has an injurious effect upon this man, that is something we cannot help. If it has an injurious effect upon the City of Memphis, it is something we cannot help.

Mr. Cummins. I will try to discuss that a little further on, and I hope with better success.

The **Chairman**. Very well; if you want to discuss it, you may do it upon an assumption of the facts as you understand them to be.

Mr. Stahlman. There are three questions which I would like to determine before we go any further. One is whether or not in the judgment of the Commission, the application made by the Louisville & Nashville Railroad for relief under the operations of the fourth section of the Act is sufficiently explicit in this: That the special application for relief does not sufficiently set forth—whether it would be necessary to go into any further detail—whether we cannot undertake to elicit by proof the special application to the particular relief sought. I take it the petition is quite sufficient in that respect.

The **Chairman**. We have raised no question upon the form of the petition.

Commissioner Morrison. If we find it necessary to raise it afterwards, we will give you notice.

Mr. Stahlman. I take it you desire to take the testimony of any one who may be opposed to the relief sought by the railroad companies. I would like to ask if the Louisville & Nashville Railroad will be permitted to file testimony in the form of affidavits covering the cost of operating the road, the grades and all other facts incident to the operations of the road, and also an affidavit covering the general business of the road, the earnings, operating expenses and matters of that character.

The **Chairman**. I suppose you make an annual report. That is full enough upon all such matters.

Mr. Stahlman. I think not as between the local and through business. I don't think it is quite sufficiently explicit.

The **Chairman**. We have no objection in the world to your handing that in. **Mr. Cummins** can do the same if he desires.

Mr. Cummins. I am prepared to present it orally, if you will hear it that way.

The **Chairman**. I would rather you would put it in writing.

Mr. Stahlman. The Commission has been exceedingly patient with me. The Commission understands why patience with me has been

their statements, I would like for them to state the facts as to what the competition is, how far it is actual and how far it is sharp at points like Atlanta, Birmingham and other points where there is no water competition.

Mr. Stahlman. I was going on to take up all of those points, Birmingham, Montgomery, Chattanooga, etc., and to show how they became commercial centers. That was the object of the investigation.

Commissioner Bragg. I would like to have them further state how far the rates made by the rate committees of the Southern Railway & Steamship Association control competition, if at all, and how far competition controls those rates. I want it to be in the record.

Mr. Stahlman. Yes sir.

Mr. Cummins. In that same connection: You have upon your desk the names of half a dozen or more technical experts on behalf of the road I represent, the Louisville, New Orleans & Texas, and the names of witnesses on behalf of the Chesapeake & Ohio. We are prepared to present that testimony orally to the Commission at this session, or can present it in the form of written affidavits or depositions if the Commission prefer to have it in that shape.

The Chairman. Anything of the nature Mr. Stahlman proposes to bring out, you can hand in, in the same form.

Commissioner Bragg. We want all the statements sworn to.

Mr. Stahlman. Certainly.

Mr. Cummins. I was out of the room when Mr. Stahlman made his statement. Lest I may be mistaken in my understanding, I will state that my testimony will go to show the cost of operating the road, its capital cost, its actual money cost, what portion of its total earnings are derived from through and what from way business; the respective cost of handling in proportion to the amounts handled of through and way business; how the rates are thus adjusted, and how, on these lines, water competition is directly met and directly felt.

The Chairman. Very well. Let me say one thing in this connection. It must be apparent to you that the words "through and local business" have been used here in very different senses. When you use that term, be sure that you explain, so we shall not be misled by a different use.

Mr. Cummins. I will try in every case to be explicit; to have the witnesses state the grounds on which their opinions rest.

The Chairman. We shall be glad to have it all.

Mr. Cummins. I was handed, on yesterday a petition by Mr. Ryan, representing certain coal interests in Alabama. I expected to call him yesterday when Col. McHenry and Mr. Moores were on the stand and in the same connection. It is a petition that sets out in full their business, and the ground on which the competing carrier lines came into that territory. I have also received this morning from Eddyville, Kentucky, a local station on the Chesapeake & Ohio, a petition similar to those presented on yesterday from other non-competitive points on that line of road. I have also a petition signed by some twenty

persons and sworn to by one of the signers, representing, I might say, the entire commercial interests of the town of Greenville, Mississippi, which I desire to have filed as the petition from the merchants of Baton Rouge was filed yesterday, in support of the petition of the Louisville, New Orleans & Texas Railway Company which is pending before you. In that same connection, the witness, Mr. Mitchell (whom I introduced yesterday evening, the general freight agent of the Chesapeake, Ohio & Southwestern Railroad, a little bit out of the regular order of proceeding, so as to prevent any lapse of time) made one or two mistakes with regard to the figures which he gave the Commission, and which he desires to have corrected.

The Chairman. Very well.

Mr. Cummins. I have the corrections, and will hand them to the stenographer.

The corrections are as follows:

Coal, 208,127 tons.	Revenue per ton per mile,	.650
Local, 255,906 tons.	Revenue per ton per mile,	2.165
Coal and local, 464,033.	Revenue per ton per mile,	1.84
Through freight, 281,539.	Revenue per ton per mile,	.669

Mr. Stahlman. Conforming to the custom when those opposed to the applications have given their testimony, we should like to put in evidence something in rebuttal. I want to say now that in case the river question is not raised here in opposition, we shall ask, and be glad to have permission, to take up that question as to the relation of the railroad and the river, and will undertake to file with the river people a copy of such testimony as we may desire to file with the Commission.

The Chairman. We cannot, of course, assume to know what will be the course of the examination of witnesses in this case until they come forward. You will have the same opportunity to introduce evidence in rebuttal, if it should become necessary. Do we understand now you are through with your case?

Mr. Stahlman. Yes sir.

The Chairman. Then we will proceed to take up the evidence that shall be offered in opposition to the petitions that have been presented to us for a suspension. I hold in my hand a paper from the Board of Trade of the Town of Ackerman, Choctaw County, Mississippi, in the nature of a remonstrance against the granting of the orders prayed for. The facts are stated in some detail. The petition will go upon our files for consideration with the other documentary evidence. I have also a similar paper from a considerable number of persons in Paducah, Kentucky, residents of that city, who represent themselves to be large business dealers at that point. This paper also will go upon our files.

Are there any parties here desiring to produce witnesses to be examined orally in opposition to these applications; or does any person desire to give evidence in opposition? Parties representing the transportation interests upon the river inform us that they prefer to put their testimony and their arguments in print, and submit them to us at Washington. It is their right to do that if they prefer that

abandoned, we lost the landing at Port Gibson by the river, cutting through, and it threw the terminus of this road nearly four miles from the river. In high water the boats could come up there; but in the ordinary stage or a low stage of water, nothing but a very light boat indeed could come up there. It necessitated hauling it in wagons, or when we could run a light boat, with barges, putting it on barges and carrying it down to the landing.

Q. That change rendered the further operation of that line of road impracticable, and it was abandoned?

A. Yes sir; and this change necessitated in the carrying of freight increased the charges for carrying it.

Q. That same condition of things continued with regard to the river channel, did it?

A. Yes sir; only worse. The boats can hardly get in there at all, even at high water.

By Mr. J. W. Bryan:

Q. What is your occupation?

A. Land commissioner of the Louisville, New Orleans & Texas Railroad.

Q. That is the railroad that passes through Port Gibson?

A. Yes sir.

By Mr. Cummins:

Q. Do you think the truth of the statement you have made in response to the questions put to you, is affected at all by the fact that you are the land commissioner—

The Chairman. You need not ask that question.

Charles W. Drown appeared before the Commission and, having been duly sworn, was examined as follows:

By Mr. Bryan:

Q. You have heard the testimony of Mr. McGinnis in regard to the rates on cotton?

A. Yes sir.

B. You are connected with an association of steamboat men in New Orleans, I believe?

A. Yes sir; secretary of the Steamboat Association.

Q. What trade do they represent?

A. All the boats running to New Orleans.

Q. (Handing letter to witness.) Did you receive that letter?

A. I did.

Mr. Bryan. Will you please read it?

The witness read the letter.

By Mr. Cummins:

Q. Do you mean to state of your own knowledge the facts set forth in that letter to be true?

A. I do sir.

Q. You say those statements are true?

A. I say that Mr. Baldwin's letter states facts that I know ten or twelve years ago to have been true, because I was in that trade myself.

Q. Let us see what those facts are that you know to be true. State them.

A. That the road from Port Gibson ran not from Port Gibson to Grand Gulf, but it guaranteed a through rate \$1.50 a bale. The boat received seventy-five cents, and the railroad seventy-five cents. That state of affairs existed in 1875, and there is no reason to believe that there was any change since. In fact, I

have evidence to show that there have been no changes since.

Q. Where do you reside?

A. In New Orleans.

Q. And your interests are with the steamboat lines?

A. Yes sir.

Mr. Cummins. I think it right to correct a misapprehension. I should have done it in New Orleans when Mr. Bernhimer was on the stand. I think it my duty to do so—my duty to myself and to the other gentlemen also. The impression seems to exist among those people that I said before the Commission in Washington that they were getting their cotton carried now at a rate less by \$1 per bale than previous to the building of the Louisville, New Orleans & Texas Railroad. If I made such a statement, I was unconscious of it; and I think the stenographer's notes will bear out my recollection that I said no such thing; but only that they were getting their cotton carried at a less rate today than prior to the building of the Louisville, New Orleans & Texas Railroad. That information I got from the old superintendent of that line of road, Mr. McGinnis, and my statement was based upon that information.

I have examined the remonstrance by some of the citizens of Paducah against granting to the Newport News & Mississippi Valley, a lease of the Chesapeake, Ohio & Southwestern, any further suspension of the fourth clause. I can only say that the people there seem to have some little difference of opinion among themselves.

The Chairman. Are you going to take any testimony?

Mr. Cummins. No sir; a counter petition is already on file from a much larger number of the people of that town.

The Chairman. We understand then there are no further witnesses to be called.

Mr. Finley. There is a petition before you on behalf of Shreveport. The railroads and the parties presenting the memorial from Shreveport have given their testimony. The river interests were present at the session in New Orleans and have been present here. If it is their intention to give further testimony in writing, we would like to know it, and we would like to be furnished with copies.

Mr. Drown. That permission is granted. I will take pleasure in furnishing you with a copy of it.

The Chairman. Gentlemen, we seem to have concluded our business here. I think I may safely say on behalf of the Commission, that we have had a very agreeable and a very useful session. The testimony has been presented clearly, distinctly, and I may add rapidly on behalf of the parties; and I think we have received from it a great deal of valuable information. As we come to examine it with care, I trust it will conduce to a proper conclusion in the premises.

I have nothing further to add but to declare now that our session at this place is closed.

The Commission thereupon, at 12.15 P. M. adjourned.

advantage of their States and to the injury of the general business of the country which influenced Congress as much, or more than any other cause, to create and establish the Interstate Commerce Commission.

Mr. Depew has also explained in his testimony, how the steamers plying the Mississippi River, formed combinations with the Memphis & Charleston Railroad, which crosses the line of the Mobile & Ohio Railroad at Corinth, and the Kansas City, Memphis & Birmingham Railroad which crosses the line of the Mobile & Ohio Railroad at Tupelo, Miss. Such combination in both cases fixes the rate at Corinth and Tupelo, Miss.

The extent of the serious competition the Mobile & Ohio Railroad encounters from one end of its line to the other, both by water and rail, has been clearly and intelligently placed before the Commission by a map, which was made a part of Mr. Depew's testimony.

Mr. Depew has also very explicitly explained that if the Mobile & Ohio Railroad Company should attempt to readjust its rates between the noncompetitive and competitive points on its line with the view of putting them on a basis of something more like equality, by lowering the noncompetitive rates and raising the competitive rates, it would be equivalent to abandoning all competitive business. The Mobile & Ohio Railroad Company can only secure business at competitive points on its line at present rates by reason of the fact that the Commission has given it authority under temporary suspension to meet such competition.

Mr. Depew has specifically and positively testified that the Mobile & Ohio Railroad Company cannot afford to lose any of its business or revenue, without being forced into bankruptcy.

In respect to the relative cost of transporting and delivering local and through freight, we call the attention of the Commission to the testimony of Colonel Talcott. The reasons he gives for the great difference in the cost of transporting and delivering through competitive and local business seems to be conclusive.

This is one of the most intricate and complicated features of the railroad business, and is less appreciated by the public, because it is less understood. Every intelligent business man, however, readily concedes that every element entering into the cost of a business must be taken into consideration in order to conduct it successfully.

Colonel Talcott has explained, in his testimony, how a railroad can derive a profit from transporting and delivering through and competitive business carried at a much lower rate than for local business. This is one of the many reasons why Congress conferred the discretionary power upon the Commission to authorize railroads to participate in this competitive business at rates fixed by water, or by water and rail combinations which are beyond the jurisdiction of this Commission.

This testimony explains the exact situation at Mobile, Memphis, Humboldt, Rives, Columbus, Ky., Cairo, and St. Louis. The rates at these points are either fixed by the water ways, or by the combination of water and rail.

It has been shown by the testimony that un-

less this Commission suspends the operation of the long and short haul clause so as to authorize the Mobile & Ohio Railroad Company to meet the rates thus fixed, it cannot participate in the business at these respective points, which will deprive it of making a small profit thereon as explained by Colonel Talcott, and would to that extent relieve the noncompetitive or intermediate points.

The management of the Mobile & Ohio Railroad Company fully appreciating the responsibility placed upon the Commission by the provisions of the fourth section of the Act in respect to the long and short haul feature, and realizing that it was not fair to ask or expect this Commission to exercise the delicate discretionary power conferred by the Act, without presenting a case free of almost any doubt, brought to the consideration of this Commission in its petition, its past and present financial condition. It has proven the allegations of the petition in respect to its indebtedness and revenues, by the deposition of W. Butler Duncan.

In the deposition of Mr. Duncan it will be found that the amount of outstanding bonds, debentures and capital stock of this Company is \$31,970,600.

From his deposition it is shown that this amount represents the actual cost of the property; and as an evidence that this amount is accurate, and in no sense represents securities based upon fictitious values, it is stated by Mr. Duncan that at this date the Company could not replace the property for any less sum.

Mr. Duncan fully explains in his deposition how the original annual fixed charges were reduced from \$938,531 to \$480,000 per annum.

This accurate and complete information has been furnished this Commission, that it might know and appreciate the fact that this Company has not asked to be relieved from the operation of the long and short haul clause to make earnings to be applied to the payment of fixed charges created by securities representing fictitious values.

Mr. Duncan in his deposition explains how the through and local rates have been gradually reduced for several years past. His deposition shows one fact that we know will be regarded as important by this Commission; that is, that the reduction of local rates on noncompetitive business has, on an average, been greater in proportion than the through rates on competitive business.

The management of the Mobile & Ohio Railroad Company has not concealed anything from this Commission; but, on the contrary, it has brought to the knowledge of this Commission its entire financial and business affairs.

Throughout this important investigation, the management of the Mobile & Ohio Railroad Company has strictly followed the old maxim, "He who seeks equity must do equity."

The Mobile & Ohio Railroad Company has shown that it is brought into severe competition from one end of its line to the other, with water ways and rail lines beyond the control of this Commission.

We insist that we have shown by uncontradicted evidence that the Mobile & Ohio Railroad Company is entitled to a general suspen-

sion of the operation of the long and short haul clause, at all intermediate points on its line for the reason the condition of its traffic constitutes a "special case" within the meaning of the Act.

We have made a case which we claim justifies this Commission in granting an absolute and unconditional suspension of the long and short haul clause, and one that falls within the intention of Congress, when it conferred upon this Commission the unquestioned power to suspend this feature of the statute "after investigation in special cases;" for it was the deliberate intention of Congress that this statute should not be allowed to cripple or impair any common carrier subject to the Act in the United States. When all the evidence adduced in favor of the petition of the Mobile & Ohio Railroad Company is carefully examined, it evidences the wisdom of the law-making power in providing a remedy to prevent the certain disaster which would overtake the Mobile & Ohio Railroad Company, unless this Commission grants the relief that it is specifically authorized by the Act to grant in such cases.

This case falls within the remedial provision of the statute, and calls upon the Commission to give force and effect to the expressed intention of Congress.

On the other hand, if the Commission cannot accept this view of the case and give this Company full relief by suspending the operation of the long and short haul clause as an entirety, then we insist and urge upon the Commission to suspend the operation of the fourth section of the Statute in the following special cases, and authorize the Mobile & Ohio Railroad Company to meet competition with water lines wherever the rates are influenced or controlled, as at Mobile, Ala., Meridian, Tupelo, Columbus and Corinth, Miss., Columbus, Ky., Cairo and East St. Louis, Ill., without reducing its rates at intermediate points on its line.

We will conclude, feeling confident that we have presented the strongest possible case calling for the exercise of the authority with which this Commission has been clothed by Congress.

Re SOUTHERN RAILWAY & STEAMSHIP ASSOCIATION, *et al.**

1. The prohibition in the fourth section of the Interstate Commerce Act against a greater charge for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance, as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar.
2. The phrase "under substantially similar circumstances," in the fourth section, is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that for-

bid or permit a greater charge for a shorter distance.

3. The judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts to decide whether error has been committed, or whether the statute has been violated. And in case of complaint for violating the fourth section of the Act, the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions are substantially dissimilar.
4. The provisions of section 1, requiring charges to be reasonable and just, and of section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4, as they do in other cases.
5. The existence of actual competition, which is of controlling force in respect to traffic important in amount, may make out the dissimilar circumstances and conditions, entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer, in the following cases:
 - (a) When the competition is with carriers by water which are not subject to the provisions of the statute;
 - (b) When the competition is with foreign or other railroads which are not subject to the provisions of the statute;
 - (c) In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition.
6. When a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not.
 - (a) Nor is it sufficient justification for such greater charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof;
 - (b) Nor that the lesser charge on the longer haul has for its motive the encouragement of manufactures or some other branch of industry;

*See ante, 15, 17 and 76.

(c) Nor that it is designed to build up business or trade centers;

(d) Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up;

(e) The fact that long haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic.

(June 15, 1887.)

IN the Matter of the Petitions of the Louisville & Nashville Railroad Company *et al*, for relief under section 4 of the Interstate Commerce Act.

OPINION OF THE COMMISSION.

Cooley, Chairman:

The Louisville & Nashville Railroad Company was one of the first to apply for relief under the fourth section of the Act to regulate commerce, which, after declaring the general rule that more shall not be charged or received in the aggregate by a common carrier subject to the law, for the transportation of passengers or of the like kind of property, under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer, proceeds then to authorize exceptions, and confers upon the Commission certain powers in respect thereto.

From the first there have been two opinions regarding the proper construction of this provision for exceptions; one view being that no exception can be lawful unless made with the sanction of the Commission; and the other, apparently better supported on the words of the statute, that an order of relief is not required when the circumstances and conditions are substantially dissimilar, since the carrier, in acting upon them, would commit no breach of law, although it would be responsible in case it were found that the circumstances and conditions were misconceived or misjudged. Under this last view the order for relief would be needful only when the case was not one of plainly dissimilar circumstances and conditions, but in which, nevertheless, there might be reasons and equities that would sanction such greater charge.

The Commission is informed that the interstate roads north of the Potomac and the Ohio and east of the Missouri, with substantial unanimity, have conformed to the requirements of the fourth section by putting in force tariffs rearranged accordingly. Some friction was manifested for a time, arising largely from the discontinuance of special rates, favors and privileges, and from the adoption of new classifications; but where the fourth section has been thus made operative, very few instances have come to our attention of injury thereby occasioned.

The roads which anticipated especial injury to commerce from the strict enforcement of the law were principally those situated in the Southern States and the transcontinental lines. After a little time some of the north and south roads in the territory first mentioned found

themselves excluded to a certain extent, from business which they had previously handled; but these instances were not numerous, so far as the Commission is at present advised.

In the cases where loss of revenue to the roads and injury to the business of the country was most seriously anticipated, the railroad companies, although some of them took the ground that the statute contemplated that they would determine for themselves the exceptional cases in which they might make a lower charge for a longer haul, nevertheless were unwilling to incur the peril of so arranging their tariffs that they would in any instance conflict with the general rule which the Act prescribed, apparently deeming it more prudent to suffer temporary loss of traffic until the Act could receive authoritative construction than to subject themselves to heavy penalties in case it should finally be held that the general rule must be applied in every case until the authority of the Commission for making exceptions had been given.

The Louisville & Nashville Company was one of those which took this position, and upon its application a temporary order of relief was made. Following the making of that and of other like orders, the Commission proceeded to take a great amount of testimony bearing upon the question whether the several carriers relieved were warranted in making rates on their lines which were not in conformity to the statutory rule; and in doing so it invited light from all sources, and was glad to have the assistance, not only of the railroad companies, but of competing steamboat owners, of boards of trade, and of citizens generally, whatever might be their line of business.

The fullest opportunity has been afforded to any citizen of the United States who desired to be heard upon the matter, to present facts personally or by affidavit, and arguments *ex vivo*, in writing, or in print. The invitation has been quite largely accepted; the subject has been laid fully before us, and we have endeavored to give to it the consideration its importance demands.

In making the orders of temporary relief no opinion was expressed upon the question whether they were necessary for the protection of the carriers in case the circumstances and conditions were found to be in fact dissimilar. The railroad companies did not raise that question, but, as has been said, elected as a matter of prudence to apply for the preliminary order. No objection could well be taken to this course, provided it should prove to be practicable for the Commission to take up and in a reasonable time dispose of the several applications made to it; but it was almost immediately perceived that the number was to be so great that this would be quite out of the question. Each order for relief would necessarily be preceded by investigation into the facts, on evidence which, in most cases, would be best obtained along the line of the road itself. A single case might, therefore, require for its proper determination the taking of evidence all the way from the Pacific to the Atlantic, and this not merely the evidence of witnesses for the petitioning carrier, but of such other parties as might conceive that their interests or the interests of the public would be subserved

either by granting the relief applied for or by denying it.

If the Commission were to give to the petitions the time needed for their proper determination, it would be compelled to forego the performance of judicial and other functions which by the statute were apparently assumed to be of high importance; and even then its authority to grant relief would be performed under such circumstances of embarrassment and delay that it must, in a large measure, fail to accomplish the beneficial purposes which we must suppose the statute had in view. Assuming, as we must when the law provides for it, that it is important to the public interest that a privilege to charge more for the shorter haul than for the longer over the same line in the same direction, should be admitted in some cases, as had been the custom, the interruption of the privilege when the case was proper for it would presumptively cause mischief, and should not, therefore, be compulsory while the slow processes of an investigation were going on, especially as the particular investigation might itself be compelled to await the determination of many others.

Moreover, an adjudication upon a petition for relief would, in many cases, be far from concluding the labors of the Commission in respect to the equities involved, for questions of rates assume new forms, and may require to be met differently from day to day; and in those sections of the country in which the reasons or supposed reasons for exceptional rates are most prevalent, the Commission would, in effect, be required to act as rate makers for all the roads, and compelled to adjust the tariffs so as to meet the exigencies of business, while at the same time endeavoring to protect relative rights and equities of rival carriers and rival localities. This in any considerable State would be an enormous task. In a country so large as ours, and with so vast a mileage of roads, it would be superhuman. A construction of the statute which should require its performance would render the due administration of the law altogether impracticable; and that fact tends strongly to show that such a construction could not have been intended.

We have listened, with an earnest desire to reach a just conclusion, to all the arguments presented on the construction of the statute, by those appearing either to advocate or to oppose the applications, and after mature consideration we are satisfied that the statute does not require that the Commission shall prescribe in every instance the exceptional case and grant its order for relief before the carrier is at liberty in its tariffs to depart from the general rule. The terms of the statute clearly lead to the opposite conclusion. It declares:

"It shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of the like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance."

Here we have clearly stated what is unlawful and forbidden; and for doing the unlawful

and forbidden act penalties are then provided. But that which the Act does not declare unlawful must remain lawful if it was so before; and that which it fails to forbid the carrier is left at liberty to do without permission of any one. The charging or receiving the greater compensation for the shorter than for the longer haul is seen to be forbidden only when both are under substantially similar circumstances and conditions; and, therefore, if in any case the carrier, without first obtaining an order of relief, shall depart from the general rule, its doing so will not alone convict it of illegality, since if the circumstances and conditions of the two hauls are dissimilar the statute is not violated.

Should an interested party dispute that the action of the carrier was warranted, an issue would be presented for adjudication, and the risks of that adjudication the carrier would necessarily assume. The later clause in the same section, which empowers the Commission to make orders for relief in its discretion, does not in doing so restrict it to a finding of circumstances and conditions strictly dissimilar, but seems intended to give a discretionary authority for cases that could not well be indicated in advance by general designation, while the cases which upon their facts should be acted upon as clearly exceptional would be left for adjudication when the action of the carrier was challenged. The statute becomes on this construction practical, and this section may be enforced without serious embarrassment.

From the recital of the history of the framing of this section (which is given further on) it appears among other things that the proviso respecting orders for relief was devised by the senate committee which originally drafted the section, and that it was an essential part of it as first proposed; the prohibitory part of the section being then quite stringent, but a discretion being conferred upon the Commission to relieve against its operation.

Afterwards the words "under substantially similar circumstances and conditions" were inserted in the first sentence of the section. The proviso was perfectly intelligible, so long as the leading clause contained a hard and fast rule against charging more for the shorter than for the longer haul. It was then obvious that a discretion was left to the Commission in the matter of relaxing the rule when different circumstances and conditions rendered such relaxation in its judgment proper. Had the section passed as it then stood, the exercise of such a discretion might have been entered upon by the Commission with a distinct understanding of the task imposed, even though its adequate performance might have been out of the question; but modified as it now stands, the necessity for a relieving order is greatly narrowed, it being obvious that no order is needed to relieve against the operation of the statute when nothing is done or proposed which it makes unlawful.

If any serious doubt of the proper construction of the clause of the statute now under review should, after careful consideration of its terms, still remain, it would seem that it must be removed when section 2, in which the same controlling words are made use of is examined in connection. That section provides "That if

any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Here it will be observed that the phrase is precisely the same; and there can be no doubt that the words were carefully chosen, probably because they were believed to express more accurately and precisely than would any others the exact thought which was in the legislative mind. And in this section, as well as in section 4, the phrase is employed to mark the limit of the carrier's privilege; its privilege, too, in respect to the very subject matter with which section 4, where it is employed, has to do, namely: the charges for transportation service.

It is not at all likely that Congress would deliberately, in the same Act and when dealing with the same general subject, make use of a phrase which was not only carefully chosen and peculiar, but also controlling, in such different senses that its effect as used in one place upon the conduct of the parties who were to be regulated and controlled by it would be essentially different from what it was as used in another. But beyond question the carrier must judge for itself what are the "substantially similar circumstances and conditions" which preclude the special rate, rebate, or drawback, which is made unlawful by the second section, since no tribunal is empowered to judge for it until after the carrier has acted, and then only for the purpose of determining whether its action constitutes a violation of law.

The carrier judges on peril of the consequences; but the special rate, rebate, or drawback which it grants is not illegal when it turns out that the circumstances and conditions were not such as to forbid it; and as Congress clearly intended this it must also, when using the same words in the fourth section, have intended that the carrier whose privilege was in the same way limited by them should in the same way act upon its judgment of the limiting circumstances and conditions.

Most of the applications made to the Commission for relief may be said to be based upon a showing of dissimilar circumstances and conditions claimed to justify the larger charge for the shorter haul. The Commission was asked to find that such dissimilar circumstances and conditions existed, and the question was presented in a great variety of forms. Upon this question it was believed that investigation into the conditions of railroad service in the States south of the Ohio and east of the Mississippi would be particularly useful. In the system of rate making practiced in that section, the making of a greater charge on in-

terstate business to and from intermediate stations than to and from competitive points requiring a longer haul had been, it appears, substantially universal, and business men in the larger towns united with the carriers in asserting that the cessation of the practice would force a stoppage of trade to an extent that would be destructive of many considerable interests. That section, therefore, seemed to afford a proper field for an inquiry into the reasons supposed to justify the practice. When the investigation was concluded the reasons which had been advanced appeared to be substantially the following:

That the support and maintenance of a railroad ought properly to be borne by the local traffic for which it is supposed to be built, and the through traffic may justly be carried for any sum not below the actual cost of its own transportation.

That the cost of local traffic is greatest, and the charges for carrying it should be in proportion, and if they are so they will often result in the greater charge for the shorter haul.

That traffic carried long distances will much of it become impossible if charged rates corresponding to those which may properly be imposed on local traffic; and it must, therefore, be taken in recognition of the principle, accepted the world over, that traffic must be charged only what it will bear.

That the long hauls at low rates tend to build up manufactures and other industries without injury to the traffic upon which the rates are heaviest.

That charges on long hauls, which are less than the charges on shorter hauls over the same line in the same direction, are commonly charges which the carriers do not voluntarily fix, but which are forced upon them by a competition from whose compulsion there is practically no escape.

On some one or more of these reasons each of the applications was planted.

On the construction which we give to the statute, these several applications need not have been filed, and therefore they might now be withdrawn without further judgment. But although the carrier might have acted on the judgment of its managers, it would have been at the peril of the consequences; and as it elected not to assume the responsibility, but to apply to the Commission for a relieving order, it may be proper to consider the application on its merits, especially as the question, What is a case of dissimilar circumstances and conditions within the meaning of the law must in general be a mixed question of law and fact, upon which differences of opinion would be expected to arise.

It is manifestly important to the public interest, as well as to that of the railroads themselves, that mistakes shall as far as possible be avoided. It is also important that the general rule laid down by the statute be strictly complied with whenever compliance appears to be fairly practicable, and that carriers direct their attention more to the feasibility of coming into conformity with it, than to the possibility of finding reasons upon which to ground exceptions. They are therefore entitled to the benefit of such conclusions as we have already reached upon the general merits of their

applications, that they may be guided thereby in the preparation of their tariffs respectively. In giving these conclusions we limit ourselves strictly to the cases presented, and leave out of view such other grounds of relief, if any, as are not yet formally brought forward.

I. The fact that the shorter haul is of local traffic, and the longer is not, we cannot accept as making out a case of dissimilar circumstances and conditions within the meaning of the statute. The claim to that effect which was advanced in support of one of the applications rests upon a theory that railroads are constructed for the special accommodation of the traffic along their lines respectively, and that consequently that traffic may be relied upon for their support, and may fairly be charged with all the items of cost and maintenance. Traffic originating at a distance and taken over the line may on this theory be justly transported at any rates the carrier may consent to accept, not below the actual cost of movement, and the local shippers are not in position to complain that such rates, as compared with what they must pay, seem to discriminate unjustly.

But this theory has very little foundation in fact. It is not true, as a general rule, that railroads are constructed in exclusive reliance upon local traffic; on the contrary, through traffic is also contemplated, and is sometimes expected to yield returns even greater than that which the local traffic is likely to give. And whenever a road is constructed with special regard to local traffic, it is very likely to be the case that the local communities take upon themselves especial burdens in aid of the construction. When they do so they may justly claim that their traffic should be favored if discrimination of any sort is to be admitted. There are cases also in which roads have been constructed with special regard to long haul traffic, some of them with the aid of government grants, and in such cases the theory lacks all plausibility. Indeed, it may be said to become plausible in any case only when, after a road has been constructed, some new and unanticipated business is offered it for a long haul, but at rates relatively lower than the local traffic is charged. It may be neither unreasonable nor unjust to accept the lower rates for the long haul traffic in some cases on grounds stated further on; but it will not be because of any such inherent difference between long and short haul traffic as can make the latter chargeable with heavier burdens.

II. That the cost to the carrier of handling and transporting local traffic is greater than that of traffic carried long distances is a fact which may with greater reason, when the difference is considerable and clearly shown, be claimed to make out a case of dissimilar circumstances and conditions under the statute. Cost of the service is always an important element in the fixing of rates; and the evidence taken by the Commission tends to show, what indeed is well known and understood, that in proportion to amount and to the distance it is transported the cost of the local traffic to the carrier is considerably the greater. This fact fairly establishes in favor of the carrier an equity entitling it to make for the more onerous service a greater proportionate charge.

But it does not follow that the difference may be so great as to make the case an exception to the general rule the statute has prescribed. It is obvious that the statute intends that the greater charge for the shorter haul shall only be made in cases which on their facts are exceptional; and when the carrier shows the general fact that the local traffic is most expensive, he thereby proves not the exception, but the rule. To establish the exception it would be necessary to go further and make proof that in the case of the particular traffic the difference in cost would be exceptionally great. Such cases sometimes arise. They occur on water as well as on land, and vessel owners on the rivers make the greater charge for the shorter haul in the same direction in many cases, defending their doing so with good reason, on this very ground of greater cost, in making landings, etc. The carriers by land may sometimes justify the like charges with equal reason.

There is in the case, however, an inherent difficulty of no small moment. While cost, as has been said, is an element to be taken into account in the fixing of rates, and one of the very highest importance, it cannot, for reasons well understood, be made the sole basis, but it must in any case be used with caution and reserve. This is not merely because the word "cost" is made use of in different senses when applied to railroad traffic; it being often used to cover merely the expense of loading, moving, and unloading trains, but also because, in whatever sense the word may be used, it is quite impossible to apportion with accuracy the cost of service among the items of traffic. First of all, when it is undertaken there must be an apportionment between the passenger traffic and the freight traffic; and if we suppose this to be made with reasonable accuracy, there must then be a like apportionment between the different kinds and classes of freight. Freight comes to a road in infinite variety; some heavy, some light, some in large packages, some in small; some perishable or of special value and requiring peculiar accommodations and care; it is picked up in varying quantities at numerous stations, to be carried differing distances, sometimes on fast trains and sometimes on slow; the service is performed by men whose compensation differs, but the most of whom have something to do with all branches of the traffic, so that all assist in carrying it on over a road and by means of buildings, appliances, and equipment which have been provided for the whole. Any attempt to apportion the cost, therefore, would at the best and under the most favorable circumstances only reach an approximation. This is so well understood, the world over, that the propositions which from time to time have been made in other countries to measure the charges of the carrier by the cost of the carriage solely have always been abandoned after investigation.

We may well believe, therefore, that the Statute, in its provision against the greater charge for the shorter haul, did not intend that a difference in cost, which is practically universal, and could not possibly be arrived at with accuracy, should as a general fact be a governing consideration, to the extent that

would support the greater charge for the shorter haul in the cases in which such greater charge was in general prohibited. Where there are no circumstances to make the short haul exceptionally expensive to the carrier, or the long haul relatively inexpensive, a difference in rates which reason and fairness will justify may still be made within the limitation of the statute; but to make out the exceptional case, in which the general rule of the statute may be disregarded on the ground that the circumstances and conditions are not substantially similar, the difference in cost should itself be exceptional, and be capable of proof amounting to practical demonstration.

In support of one of the applications presented to us the carrier was able to make a showing of lower costs on long haul freight more clear and distinct than is commonly possible. The showing was that the through business on its 450 miles of road was transacted by different trains from the local; that these moved much more rapidly and carried vastly the most freight to the train; that the number of men required was much less in proportion, not only upon the trains, but for the station and terminal service, and consequently all the items of expense were much smaller. These facts, which were apparent to the customers of the road, together with the peculiarly effective water competition, which affected principally the through traffic, influenced intelligent men doing business at local stations to admit, in giving evidence, that it might be just, and even necessary in some cases, that the charge for the shorter haul should be the greater.

The disproportion, it was insisted, had been too great; but when the question is one of degree, regulation rather than prohibition must be admitted to be the appropriate remedy; and the carrier must keep in mind that if the right be established in any case to make the greater charge for the shorter haul, it is not a right to make a charge not just or reasonable in itself, or one which will work unjust preference between individuals, localities, or commodities. It is, on the other hand, a right grounded in justice, and must be so exercised that the result shall be equitable.

III. We have next the case of dissimilar circumstances and conditions supposed to be made out by a showing that property now transported long distances at very low rates could not be transported at all unless concessions in rates were made to it. This is a common fact in railroad transportation; the cases are to be met with in the traffic of all the long lines. The necessity for making concessions to long haul traffic in the case of articles whose value in proportion to bulk or weight is small, and especially in that of the necessities of life, which are handled in large quantities, and in the supply of which the most distant countries compete, has long been conceded wherever railroads exist. The household goods of immigrants to the West have been carried for them at very low rates, and the results of their agriculture have afterwards been taken for seaboard and European markets in recognition of the general principle that the traffic must not be charged rates beyond what it can bear.

This is a just and sound principle when justly applied; and the country may be said

not only to have acquiesced in its recognition, but to have desired and urged its application in a great variety of cases. Any suggestion that it was meant by the statute to abrogate it would scarcely be plausible, especially since, when not misapplied, it can harm no one, but may be, and often is, of great and manifest advantage, in enabling distant sections of the country to come into closer commercial relations, and to exchange to their mutual benefit their dissimilar productions, or to compete with each other in those which are similar.

But the cases must be very rare in which the larger charge in the aggregate for the shorter haul of the same kind of property over the same line in the same direction could be justified, when no other reason supported it than the fact that the traffic for the longer haul would bear no more. Manifestly, such a discrimination when not imperative on other grounds is unjust; and the injustice becomes oppression when the effect is to increase the burden upon the traffic which has the shorter haul. There is a plain limit to the application of the principle that property is to be carried at rates it will bear; and the limit is reached when the rates charged are so low that further reduction would necessitate an increase of the charges upon other traffic in order to make up to the carrier such loss as the reduction causes. If some common vegetable, worth but five cents a hundred pounds more at a market a thousand miles distant than it is where it is grown, were to be transported that distance for the sum named, the producer nearer the market, if subjected to a higher charge, would have a right to complain that not only did the discrimination reduce the market value of his produce, but that the acceptance of the unreasonably low rates from the distant producer had a tendency to increase the charge for the shorter haul, so as to make it not only relatively, but, when considered by itself, unreasonably, high.

It is a matter of public notoriety that a belief has prevailed to a considerable extent that long haul traffic was in many cases carried at a loss; that the carriers were enabled to take it by making the charges for short haul traffic greater than would otherwise be necessary or reasonable, and that this constituted an abuse that ought to be corrected by law. Persons who did not hold to this belief have, on the other hand, taken low charges on long haul traffic as a proper measure for all charges, and have insisted that if the railroads could accept the low charges for one class of business, they could and ought to do so for all classes. And this, as a rule, would be quite true if the railroads had it in their power to make the rates for all; which, however, is far from being the fact. There are many cases in which they have the option only to take the traffic at rates prescribed by its owners, or not to take it at all. But in respect to such cases, we must repeat, by way of emphasis, that a successful appeal cannot be made to the equity of the statute on the mere ground that long haul traffic will not bear higher rates, if in fact those it can bear, if accepted, will cause a loss to the carrier which must be made up on short haul traffic. To have one's property carried at a loss would not be matter of right, but of

favor; and favors in transportation are not to be granted to any one class, at the expense of any other.

IV. The greater charge for the shorter haul has been in some cases defended, on the ground that manufactures and other industries were thereby favored and built up. But a question likely to arise in such cases is whether that which is done for some is not at the expense or to the unjust prejudice of others. The statutes of some of the Southern States seek to encourage manufactures by permitting special rates to be made in their favor; and railroad companies, in some cases which were brought to our notice, have entered into contracts with parties proposing to establish large manufactories or otherwise engage extensively in business whereby, in consideration of the investment of some named sum in the proposed enterprise, they agree that favorable rates, which are specified, shall be given on its traffic for a term of years.

The purpose of such laws and such contracts is no doubt commendable, but the practical difficulty of giving them effect without prejudice to the interest of others is always found to be serious. Very often they tend to the benefit of large establishments and to the prejudice of small. Manufactures are infinite in variety and extent; and while it might be easy for those whose transactions were large to obtain the benefit of an impartial law made for the encouragement of all, the small establishments, sending out their goods in small lots and irregularly, might find the law practically of little or no value. The railroad companies, not unwilling to make the long time contracts for rates which contemplate a large business, would scarcely be expected to stipulate for them with the small establishments, which exist in variety in every town and hamlet.

As a matter of fact the laws and the contracts which are made for the benefit of manufactures usually contemplate not all kinds of manufactures, but only those leading and most prominent kinds which require large capital, and whose operations are on an extensive scale. Encouragement to these is of public advantage when it wrongs no one; but it is just as much the duty of the common carrier in making its low rates on long hauls to consider whom they may ruin, as whom they may build up; and while the carrier cannot be held responsible for the consequences which flow legitimately from tariffs impartially arranged, it cannot justify, on the ground of public benefit, the unequal rates which, however beneficial to some, may be equally mischievous to others.

A great establishment, strengthened by the favor of the public carriers until it acquires the power to crush competition and actually exercises that power, may by that very fact become an enemy to the civil State; and no benefit it can give to the public in the low prices of its commodities or otherwise can compensate for the general sense of wrong which those must feel who are injured by it, or for the sentiment which grows up in view of its operations, that the law fails to give the equality of right and privilege which it nominally promises. That some such great establishments have been fostered by the aid of the railroad

companies is commonly believed; and provisions against unjust discriminations in this statute had for their object, among other things, to bring this mischief to an end. The plausible excuse of public benefit, if it ever had force in such cases, has none now, for the statute forbids what public sentiment had already condemned.

It was shown by the evidence that the rates upon long hauls were such as would admit of the pine lumber of Mississippi being sold in Wisconsin in competition with lumber there cut, and of the iron of Alabama being carried through Pittsburgh to Eastern manufactories. If the lines originating in Wisconsin and Pennsylvania give to the producers of those States corresponding rates for the traffic in the other direction under similar circumstances, this will prejudice no one; but, on the contrary, may operate to the public advantage, provided always that the rates actually charged are compensatory. The petitioner in this case claims that in no case does it carry such long haul traffic at rates which fall below cost. By this, however, is meant only the cost of movement of the particular traffic, leaving out of view the fixed charges of the road, which must, in any event, be provided for, whether the long haul traffic is or is not taken.

This distinction between the cost of movement and the fixed charges often becomes of importance in such cases as that of the lumber trade just mentioned. That trade is new; the roads which take it were built without anticipating its springing up, and their managers made their calculation for business to meet the whole cost of operation in reliance upon such traffic as was then apparent or probable. The fixed charges of the road may, for purposes of illustration, be assumed to equal one half of the whole, the cost of movement of freight the other half. The rates laid were doubtless calculated to cover the whole, with a margin for profit, and were so laid that all traffic would contribute towards both fixed charges and cost of movement. But now comes this new business, and from the nature of the case low rates are a necessity to it; it can pay perhaps little if anything more than half what is paid by other traffic. But taking it will not increase perceptibly the fixed charges of the road, because those are made up of items that must be paid whether the traffic is large or small. What is added to the cost by taking it is simply the expense of its own handling and movement; and upon the supposition made, there might perhaps be gain to the road instead of loss, in taking it at anything above half the rates which are levied upon other traffic corresponding to its classification. It might, therefore, be carried at such rates without wrong to any one. But if it were carried at lower rates still, not only would the other traffic be left to pay the fixed charges and the cost of its own movement, but it would also, to some extent, be burdened with the cost of movement of the long haul traffic thus added to the business of the road.

The injustice of this would be very apparent, and it would become intolerable if some portion of the short haul traffic was competitive to the long haul traffic, and was so heavily taxed by higher rates as to make con-

innance impossible. It is very plain that an unrestricted power to make such rates is liable to infinite abuses, and that it may as easily be made use of to injure one enterprise as to build up another. In the earnest and sometimes unreasoning rivalry of railroad companies, it has no doubt often been employed as much to give mere volume to business as for any anticipated net revenue; and the wrongs have in such cases far exceeded any possible advantages that could accrue either to the roads themselves or to the public.

It cannot be supposed that in any case the true interest of a road will be prejudiced by its being held strictly to the rule that excessively low rates on some traffic are not to be compensated for by excessively high rates on other traffic. And if rates are so graded as to violate the statutory general rule, it cannot be accepted as justification for the higher rates on the shorter haul that the lower rates on the longer haul had encouragement to manufacturers or other industries for their motive.

V. The chief ground on which the applicants pressed for relief from the long and short haul clause of the statute was that competition forced the railroad companies to make rates to and from connecting points to the level of which it was not possible to bring the charges at noncompetitive points, because the doing so would cause such reduction of revenues as would force roads into bankruptcy and ultimately into suspension. It was, therefore, as was said, inevitable that in a great number of cases the greater charge should be made for the shorter haul; and nothing but putting a stop to competition by law would prevent it. This it was insisted the new law does not attempt or intend. On the contrary, the importance of competition in fostering and regulating the internal commerce among the States is clearly noted.

In the sixth section carriers are permitted to reduce their rates at any time, but are forbidden to raise them except after giving ten days' notice. In the fifth section the pooling of freight is forbidden, unquestionably because the practice was regarded as having a tendency to prevent or check competition. The Act studiously omits to bring the steamboats and other independent water lines within its control, and must, therefore, have contemplated the continuance not only of competition, but of those things which competition renders inevitable. The existence of competitive forces to an extent that the railroad companies at competitive points are unable to control, it was therefore argued, would make out a case of circumstances and conditions so dissimilar to those prevailing at noncompetitive points as might justify the making of the greater charge for the shorter haul which was in general prohibited.

The competition which was brought to our attention as having this imperative force was, *first*, the competition of railroads with water ways; *second*, the competition of railroads with other railroads which are not subject to the provisions of the "Act to Regulate Commerce"; *third*, the competition with each other of railroads which are subject to that Act; *fourth*, the competition of business or trade centers with each other, operating indirectly upon the roads

which form their channels of trade; and, *fifth*, the competition of business interests in like manner operating upon the roads, by whose assistance the business is carried on.

This fifth species of competition has already been remarked upon to some extent, and it has been seen that it will not justify a railroad company in discriminating between its own customers to an extent that would create an exception to the general rule the statute prescribes. We pass it now without further remark. The others demand at our hands due consideration.

I. It was fairly shown before us that instances exist, and may be found, along the routes of petitioner's lines in the States of Kentucky, Tennessee, Georgia, Alabama, Mississippi, and Louisiana, where the competition of water ways forces down the railroad rates below what it is possible to make them at non-competitive points and still maintain the roads with success or efficiency. The reason is that the carriers by water can perform the service at very much less cost than the carriers by land. The general fact is that railroad rates for the transportation of property must approximate closely those which are made between the same points by steamer; and the steamer rates are generally, if not invariably, much below what the railroads can afford to accept upon all their business.

In such cases if competition is maintained, more must be charged at interior points than can be obtained at the points of competition; and if the competitive rates are such as are productive of some gain, however slight, the non-competitive points are likely to receive indirect advantage therefrom, while the competitive points have the larger and more direct benefit, and are afforded a choice of agencies in transportation whose rivalry may fairly be expected to keep the cost down to a minimum. The interior points may have no ground for complaint in such a case, provided the rates they are charged are in themselves just and reasonable, even though the effect be that in some cases more is charged for the short than for the long haul over the same line in the same direction. This general fact is recognized the world over; and of English railways it has been often remarked that some of them would be deprived of much of their value if they were not allowed to meet water competition by such concessions, at the points of contact, as the competition would compel.

The only question that fairly arises in regard to it is whether the competition is kept within proper bounds. Vessel owners produced evidence before us to show that the railroads put down their rates to a ruinous point in their determination to take the competitive traffic at all hazards, and eventually to crush out competition; and railroad managers retorted with evidence that the blame for unremunerative rates was upon their rivals. But the question of relative fault is not important now. Low rates are a necessity of the situation; and if railroads compete with water transportation either on the ocean or on the navigable rivers, they have no choice but to accept such rates.

To compel the roads to observe strictly the general rule laid down by the fourth section would necessitate their abandonment of some

classes of business in which their competition with water transportation is now of public importance. Vessel owners, who appeared before us to oppose the applications made for relief, put their opposition in some cases explicitly on the ground that denying the applications would enable the vessel men to put up their own rates. This was to be expected, and is far from being blameworthy, if in fact their business is not now reasonably profitable; but it is suggestive of the fact that the interest of the public and that of any class of public carriers is not in all respects identical.

It is more than probable that the complaints made by the vessel owners against certain of the railroads are to some extent well founded; that the railroads have not only made the rates at points of competition with vessels much too low, in order that they might at all events obtain the business, but that this has been done in disregard alike of right and of true policy. This is only saying that in their wars of rates with vessel owners they have sometimes shown the same recklessness as in like wars among themselves; but the fact still remains that they must either be allowed to compete with vessel owners and make low charges for the purpose, or they must leave vessel owners in possession of the business without the check upon charges which competition would afford.

The question here is whether this limitation of competition was intended by the statute; or, on the other hand, did Congress intend that the existence of competition might in some cases make out the dissimilar circumstances and conditions which would support a greater charge for the shorter haul, even though it might be over the same line in the same direction, the shorter being included in the longer distance?

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The minority of the committee, four in number, opposed the substitution, and in their report the following passage occurs:

Nor do the minority favor the provision prohibiting a greater charge for a shorter than a longer haul, as it was shown to a satisfactory degree, as we think, in the hearing that, where two competing points were connected by water as well as rail, it was impossible for the railroads to secure the traffic unless they made their rates as low as the water rates, and that while they might be able to do this on a portion of their traffic, it would be destructive of their interests to reduce all their rates to those which were forced upon them between certain points by the competition of the water routes.

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It is obvious therefore that, in the House as well as in the Senate, it was understood that the existence of competition was intended to be included in the margin of discretion provided for by the Senate measure. The question as to this point was distinctly marked; the debate, so far as this section was concerned, was upon that basis. On July 30, 1886, the substituted bill was agreed to and passed on the part of the House. A conference committee was appointed, and at the second session of the Congress that committee agreed upon a report, which was presented to the Senate December 15, 1886. By this report the fourth section of the senate bill was amended so as to read as it now stands.

The work of the conference committee was very elaborately and carefully performed. The two bills which were referred to it presented very clearly the views which had prevailed in the two Houses respectively, on the general subject of relative charges on long and short haul traffic, the house view of an inflexible rule, forbidding absolutely the greater charge for the shorter haul, and the senate view that the rule should be subject to exceptions when the circumstances and conditions required it.

The conference committee accepted deliberately the senate view, and presented it, in the report to the two houses. In the Senate the report, before adoption, was discussed, and what was proposed by it on this point of vital interest was very distinctly brought out and made prominent; and in the House, where also the report was adopted, nothing which was said by anyone indicated that the situation was otherwise understood.

It is impossible to resist the conclusion that in finally rejecting the "long and short haul clause" of the house bill, which prescribed an inflexible rule, not to be departed from in any case, and retaining in substance the fourth section as it had passed the Senate, both Houses understood that they were not adopting a measure of strict prohibition in respect to charging more for the shorter than for the longer distance; but that they were, instead, leaving the door open for exceptions in certain cases, and among others in cases where the circumstances and conditions of the traffic were affected by the element of competition, and where exceptions might be a necessity if the competition was to continue water competition was beyond doubt especially in view.

In thus deliberately making provision for competition, even though it might be necessary to allow for the purpose exceptions to the general rule laid down in the statute, Congress must be supposed to have done so because the public interest required it. That competition is the life of trade is one of the most generally accepted of maxims; among its principal benefits is the protection it gives against extortionate charges. But legitimate, open, and fair competition was meant; not everything that has been done under the name of competition, and which in many cases has been equally destructive of public and of private right. Among the common abuses have been the granting of special favors in exceptional rates, rebates, drawbacks, etc., all of which are now expressly prohibited by law when they assume the form of unjust discrimination. There has

England. The peculiarity of the competition is that the business on the roads respectively is started in opposite directions when destined to the same point, so that on east bound traffic from Pittsburgh, the haul by one road is shorter than from Youngstown, and longer by the other. As the Pennsylvania Road has the shorter line, it is in position to determine what the rates shall be, and the longer line has no option but to conform to them. In making them, the leading road gives to Pittsburgh lower rates than to Youngstown, as it justly should do, in recognition of the geographical position. But the other road must do the same, although over its line the traffic between Youngstown and the seaboard will have the shorter haul.

There is nothing unreasonable or unjust in this; and if the longer line were to attempt a change which should reduce the rates from Youngstown to the level of those of Pittsburgh it would, in doing so, only open a war of rates in which all the advantages would be with its rival. Finding itself in this dilemma it applied to the Commission for an order permitting a greater charge to be made on traffic to and from Youngstown, than is made on that to and from Pittsburgh, and its application is strenuously opposed by the Pennsylvania Road, which insists that competition by this roundabout route is illegitimate and ought not, therefore, in any manner to be aided.

Whether this position is sound the Commission may determine hereafter. It is sufficient to say of the case at this time, that it is one, and not a solitary, instance, in which a strict application of the general rule laid down by the statute must be fatal to competition. If the competition in itself is illegitimate, it may be right to permit its destruction. But it is not admitted by those interested in the road just mentioned, that its case is of this nature. It is shown that it was constructed by Pittsburgh capital, for the express purpose of the competition; and it appears that although the route is indirect, the competition has given it considerable business, and large investments have been made in reliance upon its continuance.

One fact obvious on the statement of this case is that the wrong against which the long and short haul clause of the statute is aimed is not to be found in it. When the greater charge for the shorter haul over the same line in the same direction is spoken of, the natural suggestion to the mind is of a line leading with some directness to the place to which the traffic is destined; and there seems to be in such greater charge a manifest unfairness, since it deprives the place of shipment nearest the destination of its proper advantage of situation. But in the case stated the position is the opposite to this; the greater charge for the shorter haul preserves the proper advantage of situation, and has in itself no element of injustice to localities. It is the situation which forces upon the road an unequal charge which is, nevertheless, not unfair; and a strict application of the statute must compel the surrender of what is now competitive traffic to the older and more direct route whose very conformity to the general rule precludes conformity by the competitor.

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There are other cases in the country, of roads now taking part in competitive traffic which the peculiarities of situation will compel them to abandon if the long and short haul clause of the statute is strictly applied. This, to some extent, might be the case with certain north and south roads, like the road from Cincinnati to Toledo, and that from New Albany to Chicago, which have heretofore engaged considerably in east and west bound traffic which they deliver to or receive from other roads crossing them, or at their terminals. In many cases these roads have been accustomed to make the greater charge for the shorter haul simply because the direction they run compels it; but in doing so they may wrong no one, because the rates are not determined by them, but by the direct east and west lines, and are made with regard to relative distance. Both the roads named now have applications pending for relief from an embarrassment for which they are not themselves responsible; and they aver, with plausibility at least, that the public interest will suffer if they are shut out from such share in competition as they have hitherto taken.

We do not pass upon these cases finally, at this time, and therefore do not undertake to say of them that they constitute cases in which the competition of roads subject to the federal law creates the dissimilar circumstances and conditions which make up an exceptional case. But this brief reference to the facts is suggestive of a possibility, at least, that the exceptional case may exist; and if it does exist, a strict enforcement of the general rule might be found quite as injurious to the public interests as to those of the railroads which would thereby be shut out from competition.

IV. Whether the competition of towns which are trade centers or distributing points can, in any case, make out the dissimilar circumstances and conditions independent of the competition of the carriers, is a question which may be said to be presented by the evidence taken, but not with such distinctness as to call for an expression of opinion at this time. The pre-eminence of such trade centers in the territory reached by the petitioner's roads, is peculiar, and has probably been increased by the concessions in rates which the railroads have made to them, while making less concessions, or none at all, to less important stations. This condition of affairs tends to perpetuate itself; and the disparity of rates as between competitive and noncompetitive towns, the former being the "trade centers," must have had some influence to increase steadily the disparity in growth and prosperity.

By some of the witnesses before us this was bitterly complained of, while by others it was defended as being best for both classes of towns. The smaller towns in this part of the country, it was said, are dependent on the trade centers for their supplies, and they get, indirectly, the benefit of low rates to the distributing points, in lower prices than could otherwise be given to them. In proportion, also, as the distributing points are prosperous, they can, and do, extend to the dealers at other points, credit and indulgence. The prevalence of such ideas, and the acting upon them in making freight tariffs, gives to railroad

would support the greater charge for the shorter haul in the cases in which such greater charge was in general prohibited. Where there are no circumstances to make the short haul exceptionally expensive to the carrier, or the long haul relatively inexpensive, a difference in rates which reason and fairness will justify may still be made within the limitation of the statute; but to make out the exceptional case, in which the general rule of the statute may be disregarded on the ground that the circumstances and conditions are not substantially similar, the difference in cost should itself be exceptional, and be capable of proof amounting to practical demonstration.

In support of one of the applications presented to us the carrier was able to make a showing of lower costs on long haul freight more clear and distinct than is commonly possible. The showing was that the through business on its 450 miles of road was transacted by different trains from the local; that these moved much more rapidly and carried vastly the most freight to the train; that the number of men required was much less in proportion, not only upon the trains, but for the station and terminal service, and consequently all the items of expense were much smaller. These facts, which were apparent to the customers of the road, together with the peculiarly effective water competition, which affected principally the through traffic, influenced intelligent men doing business at local stations to admit, in giving evidence, that it might be just, and even necessary in some cases, that the charge for the shorter haul should be the greater.

The disproportion, it was insisted, had been too great; but when the question is one of degree, regulation rather than prohibition must be admitted to be the appropriate remedy; and the carrier must keep in mind that if the right be established in any case to make the greater charge for the shorter haul, it is not a right to make a charge not just or reasonable in itself, or one which will work unjust preference between individuals, localities, or commodities. It is, on the other hand, a right grounded in justice, and must be so exercised that the result shall be equitable.

III. We have next the case of dissimilar circumstances and conditions supposed to be made out by a showing that property now transported long distances at very low rates could not be transported at all unless concessions in rates were made to it. This is a common fact in railroad transportation; the cases are to be met with in the traffic of all the long lines. The necessity for making concessions to long haul traffic in the case of articles whose value in proportion to bulk or weight is small, and especially in that of the necessities of life, which are handled in large quantities, and in the supply of which the most distant countries compete, has long been conceded wherever railroads exist. The household goods of immigrants to the West have been carried for them at very low rates, and the results of their agriculture have afterwards been taken for seaboard and European markets in recognition of the general principle that the traffic must not be charged rates beyond what it can bear.

This is a just and sound principle when justly applied; and the country may be said

not only to have acquiesced in its recognition, but to have desired and urged its application in a great variety of cases. Any suggestion that it was meant by the statute to abrogate it would scarcely be plausible, especially since, when not misapplied, it can harm no one, but may be, and often is, of great and manifest advantage, in enabling distant sections of the country to come into closer commercial relations, and to exchange to their mutual benefit their dissimilar productions, or to compete with each other in those which are similar.

But the cases must be very rare in which the larger charge in the aggregate for the shorter haul of the same kind of property over the same line in the same direction could be justified, when no other reason supported it than the fact that the traffic for the longer haul would bear no more. Manifestly, such a discrimination when not imperative on other grounds is unjust; and the injustice becomes oppression when the effect is to increase the burden upon the traffic which has the shorter haul. There is a plain limit to the application of the principal that property is to be carried at rates it will bear; and the limit is reached when the rates charged are so low that further reduction would necessitate an increase of the charges upon other traffic in order to make up to the carrier such loss as the reduction causes. If some common vegetable, worth but five cents a hundred pounds more at a market a thousand miles distant than it is where it is grown, were to be transported that distance for the sum named, the producer nearer the market, if subjected to a higher charge, would have a right to complain that not only did the discrimination reduce the market value of his produce, but that the acceptance of the unreasonably low rates from the distant producer had a tendency to increase the charge for the shorter haul, so as to make it not only relatively, but, when considered by itself, unreasonably, high.

It is a matter of public notoriety that a belief has prevailed to a considerable extent that long haul traffic was in many cases carried at a loss; that the carriers were enabled to take it by making the charges for short haul traffic greater than would otherwise be necessary or reasonable, and that this constituted an abuse that ought to be corrected by law. Persons who did not hold to this belief have, on the other hand, taken low charges on long haul traffic as a proper measure for all charges, and have insisted that if the railroads could accept the low charges for one class of business, they could and ought to do so for all classes. And this, as a rule, would be quite true if the railroads had it in their power to make the rates for all; which, however, is far from being the fact. There are many cases in which they have the option only to take the traffic at rates prescribed by its owners, or not to take it at all. But in respect to such cases, we must repeat, by way of emphasis, that a successful appeal cannot be made to the equity of the statute on the mere ground that long haul traffic will not bear higher rates, if in fact those it can bear, if accepted, will cause a loss to the carrier which must be made up on short haul traffic. To have one's property carried at a loss would not be matter of right, but of

tinuance impossible. It is very plain that an unrestricted power to make such rates is liable to infinite abuses, and that it may as easily be made use of to injure one enterprise as to build up another. In the earnest and sometimes unreasoning rivalry of railroad companies, it has no doubt often been employed as much to give mere volume to business as for any anticipated net revenue; and the wrongs have in such cases far exceeded any possible advantages that could accrue either to the roads themselves or to the public.

It cannot be supposed that in any case the true interest of a road will be prejudiced by its being held strictly to the rule that excessively low rates on some traffic are not to be compensated for by excessively high rates on other traffic. And if rates are so graded as to violate the statutory general rule, it cannot be accepted as justification for the higher rates on the shorter haul that the lower rates on the longer haul had encouragement to manufacturers or other industries for their motive.

V. The chief ground on which the applicants pressed for relief from the long and short haul clause of the statute was that competition forced the railroad companies to make rates to and from connecting points to the level of which it was not possible to bring the charges at noncompetitive points, because the doing so would cause such reduction of revenues as would force roads into bankruptcy and ultimately into suspension. It was, therefore, as was said, inevitable that in a great number of cases the greater charge should be made for the shorter haul; and nothing but putting a stop to competition by law would prevent it. This it was insisted the new law does not attempt or intend. On the contrary, the importance of competition in fostering and regulating the internal commerce among the States is clearly noted.

In the sixth section carriers are permitted to reduce their rates at any time, but are forbidden to raise them except after giving ten days' notice. In the fifth section the pooling of freight is forbidden, unquestionably because the practice was regarded as having a tendency to prevent or check competition. The Act studiously omits to bring the steamboats and other independent water lines within its control, and must, therefore, have contemplated the continuance not only of competition, but of those things which competition renders inevitable. The existence of competitive forces to an extent that the railroad companies at competitive points are unable to control, it was therefore argued, would make out a case of circumstances and conditions so dissimilar to those prevailing at noncompetitive points as might justify the making of the greater charge for the shorter haul which was in general prohibited.

The competition which was brought to our attention as having this imperative force was, *first*, the competition of railroads with water ways; *second*, the competition of railroads with other railroads which are not subject to the provisions of the "Act to Regulate Commerce"; *third*, the competition with each other of railroads which are subject to that Act; *fourth*, the competition of business or trade centers with each other, operating indirectly upon the roads

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which form their channels of trade; and, *fifth*, the competition of business interests in like manner operating upon the roads, by whose assistance the business is carried on.

This fifth species of competition has already been remarked upon to some extent, and it has been seen that it will not justify a railroad company in discriminating between its own customers to an extent that would create an exception to the general rule the statute prescribes. We pass it now without further remark. The others demand at our hands due consideration.

I. It was fairly shown before us that instances exist, and may be found, along the routes of petitioner's lines in the States of Kentucky, Tennessee, Georgia, Alabama, Mississippi, and Louisiana, where the competition of water ways forces down the railroad rates below what it is possible to make them at noncompetitive points and still maintain the roads with success or efficiency. The reason is that the carriers by water can perform the service at very much less cost than the carriers by land. The general fact is that railroad rates for the transportation of property must approximate closely those which are made between the same points by steamer; and the steamer rates are generally, if not invariably, much below what the railroads can afford to accept upon all their business.

In such cases if competition is maintained, more must be charged at interior points than can be obtained at the points of competition; and if the competitive rates are such as are productive of some gain, however slight, the noncompetitive points are likely to receive indirect advantage therefrom, while the competitive points have the larger and more direct benefit, and are afforded a choice of agencies in transportation whose rivalry may fairly be expected to keep the cost down to a minimum. The interior points may have no ground for complaint in such a case, provided the rates they are charged are in themselves just and reasonable, even though the effect be that in some cases more is charged for the short than for the long haul over the same line in the same direction. This general fact is recognized the world over; and of English railways it has been often remarked that some of them would be deprived of much of their value if they were not allowed to meet water competition by such concessions, at the points of contact, as the competition would compel.

The only question that fairly arises in regard to it is whether the competition is kept within proper bounds. Vessel owners produced evidence before us to show that the railroads put down their rates to a ruinous point in their determination to take the competitive traffic at all hazards, and eventually to crush out competition; and railroad managers retorted with evidence that the blame for unremunerative rates was upon their rivals. But the question of relative fault is not important now. Low rates are a necessity of the situation; and if railroads compete with water transportation either on the ocean or on the navigable rivers, they have no choice but to accept such rates.

To compel the roads to observe strictly the general rule laid down by the fourth section would necessitate their abandonment of some

classes of business in which their competition with water transportation is now of public importance. Vessel owners, who appeared before us to oppose the applications made for relief, put their opposition in some cases explicitly on the ground that denying the applications would enable the vessel men to put up their own rates. This was to be expected, and is far from being blameworthy, if in fact their business is not now reasonably profitable; but it is suggestive of the fact that the interest of the public and that of any class of public carriers is not in all respects identical.

It is more than probable that the complaints made by the vessel owners against certain of the railroads are to some extent well founded; that the railroads have not only made the rates at points of competition with vessels much too low, in order that they might at all events obtain the business, but that this has been done in disregard alike of right and of true policy. This is only saying that in their wars of rates with vessel owners they have sometimes shown the same recklessness as in like wars among themselves; but the fact still remains that they must either be allowed to compete with vessel owners and make low charges for the purpose, or they must leave vessel owners in possession of the business without the check upon charges which competition would afford.

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When the effect of the proposed prohibition is considered with reference to the whole internal commerce of the United States, and especially with reference to the necessity of preserving the prevailing cheap rates for long distance transportation, there is reason to fear that the result of rigidly enforcing the proposed

regulation would be to stifle competition in numberless cases where it now exists and is to the general public interest, and perhaps to deprive the country of the benefits of the low through rates now and for years given to and from the tide water, without practical or appreciable advantage to intervening points.

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Upon application to the Commission appointed under the provisions of this Act, such common carriers may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time make general rules covering exceptions to any such common carrier in cases where there is competition by river, sea, canal, or lake, exempting such designated common carrier from the operation of this section of this Act; and when such exceptions shall have been made and published they shall have like force and effect as though the same had been specified in this section.

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The formal discussion of the measure was commenced April 14, 1886, the chairman of the select committee opening the debate by a speech in which he said concerning the fourth section:

It is agreed that this is the principle that should be observed as a general rule. The committee found, however, that the principle was not of universal application; that there were cases in which the railroads were compelled to make lower rates for longer than for shorter distances by the great law of competition, which is stronger than any law we can make, and that in some cases it would be a great hardship to the public as well as the railroads to rigidly enforce the general principle.

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The minority of the committee, four in number, opposed the substitution, and in their report the following passage occurs:

Nor do the minority favor the provision prohibiting a greater charge for a shorter than a longer haul, as it was shown to a satisfactory degree, as we think, in the hearing that, where two competing points were connected by water as well as rail, it was impossible for the railroads to secure the traffic unless they made their rates as low as the water rates, and that while they might be able to do this on a portion of their traffic, it would be destructive of their interests to reduce all their rates to those which were forced upon them between certain points by the competition of the water routes.

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It is obvious therefore that, in the House as well as in the Senate, it was understood that the existence of competition was intended to be included in the margin of discretion provided for by the Senate measure. The question as to this point was distinctly marked; the debate, so far as this section was concerned, was upon that basis. On July 30, 1886, the substituted bill was agreed to and passed on the part of the House. A conference committee was appointed, and at the second session of the Congress that committee agreed upon a report, which was presented to the Senate December 15, 1886. By this report the fourth section of the senate bill was amended so as to read as it now stands.

The work of the conference committee was very elaborately and carefully performed. The two bills which were referred to it presented very clearly the views which had prevailed in the two Houses respectively, on the general subject of relative charges on long and short haul traffic, the house view of an inflexible rule, forbidding absolutely the greater charge for the shorter haul, and the senate view that the rule should be subject to exceptions when the circumstances and conditions required it.

The conference committee accepted deliberately the senate view, and presented it, in the report to the two houses. In the Senate the report, before adoption, was discussed, and what was proposed by it on this point of vital interest was very distinctly brought out and made prominent; and in the House, where also the report was adopted, nothing which was said by anyone indicated that the situation was otherwise understood.

It is impossible to resist the conclusion that in finally rejecting the "long and short haul clause" of the house bill, which prescribed an inflexible rule, not to be departed from in any case, and retaining in substance the fourth section as it had passed the Senate, both Houses understood that they were not adopting a measure of strict prohibition in respect to charging more for the shorter than for the longer distance; but that they were, instead, leaving the door open for exceptions in certain cases, and among others in cases where the circumstances and conditions of the traffic were affected by the element of competition, and where exceptions might be a necessity if the competition was to continue water competition was beyond doubt especially in view.

In thus deliberately making provision for competition, even though it might be necessary to allow for the purpose exceptions to the general rule laid down in the statute, Congress must be supposed to have done so because the public interest required it. That competition is the life of trade is one of the most generally accepted of maxims; among its principal benefits is the protection it gives against extortionate charges. But legitimate, open, and fair competition was meant; not everything that has been done under the name of competition, and which in many cases has been equally destructive of public and of private right. Among the common abuses have been the granting of special favors in exceptional rates, rebates, drawbacks, etc., all of which are now expressly prohibited by law when they assume the form of unjust discrimination. There has

also been favoritism between places and communities as a result of violent competition; but this also is no longer permissible.

Other similar wrongs will be referred to further on; but the wars of rates, under the excitement of which traffic is carried at a loss, to be made good by excessive charges on other traffic at other times, is not the least of those from which the public has suffered. And these wars are as indefensible when vessel owners are their objects as when made between the railroads themselves, and are not to be justified on any pretense of competition. Water transportation is entitled to such traffic as in fair rivalry and at fair prices it can take, and the railroads in competition with it must recognize this right and not recklessly attempt to preclude its exercise. It is true that while the roads are obliged to publish their tariffs, and the carriers by water are not, the former are at a disadvantage in the competition; but possibly the law in this regard may be amended if justice shall be found to require it.

Every railroad company ought, when it is practicable, to so arrange its tariffs that the burden upon freights shall be proportional on all portions of its line and with a view to revenue sufficient to meet all the items of current expense, including the cost of keeping up the road, buildings, and equipment, and of returning a fair profit to owners. But it is obvious that, in some cases, when there is water competition at leading points, it may be impossible to make some portion of the traffic pay its equal proportion of the whole cost. If it can then be made to pay anything toward the cost, above what the taking of it would add to the expense, the railroad ought not, in general, to be forced to reject it, since the surplus, under such circumstances, would be profit.

As has been tersely said by M. de la Gournerie, formerly inspector general of bridges and railways in France, "A railroad ought not to neglect any traffic of a kind that will increase its receipts more than its expenses;" and long haul traffic which can only be had on these terms, may sometimes be taken without wronging any one, when, to carry all traffic, or even the major part of it, at the like rates, would be simply ruinous.

But we desire to apply generally to every kind of competition herein discussed the observation above made, that when competition leads to the transportation of property below actual cost, fairly computed, it ceases to be legitimate. Fair and reasonable competition is a public benefit; excessive and unreasonable competition is a public injury. Competition is to be regulated, not abolished. The other sections of the law of themselves imply ample authority for its regulation, and, in connection with the fourth section, support the interpretation that it is wholly inadmissible to press competition to a point where expenses are increased beyond the increase of income.

II. The question whether railroad competition with other railroads which are not subject to the control of this law, can present a case of dissimilar circumstances and conditions, within the meaning of section 4, may possibly be one of greater doubt. The classes of roads not thus subject, and whose competition might be severe, are the Canadian roads and roads which

are entirely within the control of a single State. As regards the latter, it is not improbable that cases exist of roads not restrained by any long and short haul clause corresponding to the federal statute, which are so situated in respect to rivals coming under the law of Congress as to be able to monopolize to the public detriment the traffic at important points of competition, unless the latter are given equal freedom of action.

We do not understand, however, that any of the pending applications are of this nature; and we therefore leave such cases to be considered when they shall be presented more directly. Competition with Canadian roads may, it is believed, present a case of dissimilar circumstances and conditions. Whenever such roads compete with roads in the United States for business between one part of our country and another, a state of circumstances arises and exists as to such business which justifies American roads in meeting such competition by a corresponding reduction of rates, without regard to the fact that in so doing the rates between the terminals may be reduced below rates to and from intermediate places which are otherwise reasonable and just in themselves. The fact that American roads are left free to meet such competition is of itself an assurance that no extensive war of rates is likely to be engaged in by the Canadian roads, or, if engaged in, to be long pursued.

III. The competition with each other of the railroads which are subject to the federal law, can seldom, as we think, make out a case of dissimilar circumstances and conditions within the meaning of the statute, because it must be seldom that it would be reasonable for their competition at points of contact to be pressed to an extent that would create the disparity of rates on their lines which the statute seeks to prevent. But we cannot now assume that no case has arisen or can hereafter arise, which, on its own peculiar facts, and in consideration of its special equities, can be deemed to present a just claim under the statute.

First, it may be observed here that in some parts of the country it is not easy to separate railroad competition altogether from competition by the water ways.

Water competition is not limited in force strictly to the points of contact of water and rail lines, but extends its influence to an indefinite distance therefrom, qualifying to greater or less extent the all rail rates. But passing that consideration by, it will be found on investigation that cases will exist in which, unless the force of strictly railroad competition is allowed to create exceptions under the statute, an existing competition which is supposed to be of public interest must come to an end. And where that is the case the strong lines will in general be gainers at the expense and sometimes to the destruction of those which are weaker.

One such case is that of the railroad extending from Pittsburgh, Pa., parallel to the Pennsylvania Railroad as far as Youngstown, and thence to Ashtabula, Ohio, where, through connection with the Lake Shore, it gives to the people of Pittsburgh and Youngstown competition with the Pennsylvania Road in their business to and from New York and New

England. The peculiarity of the competition is that the business on the roads respectively is started in opposite directions when destined to the same point, so that on east bound traffic from Pittsburgh, the haul by one road is shorter than from Youngstown, and longer by the other. As the Pennsylvania Road has the shorter line, it is in position to determine what the rates shall be, and the longer line has no option but to conform to them. In making them, the leading road gives to Pittsburgh lower rates than to Youngstown, as it justly should do, in recognition of the geographical position. But the other road must do the same, although over its line the traffic between Youngstown and the seaboard will have the shorter haul.

There is nothing unreasonable or unjust in this; and if the longer line were to attempt a change which should reduce the rates from Youngstown to the level of those of Pittsburgh it would, in doing so, only open a war of rates in which all the advantages would be with its rival. Finding itself in this dilemma it applied to the Commission for an order permitting a greater charge to be made on traffic to and from Youngstown, than is made on that to and from Pittsburgh, and its application is strenuously opposed by the Pennsylvania Road, which insists that competition by this roundabout route is illegitimate and ought not, therefore, in any manner to be aided.

Whether this position is sound the Commission may determine hereafter. It is sufficient to say of the case at this time, that it is one, and not a solitary, instance, in which a strict application of the general rule laid down by the statute must be fatal to competition. If the competition in itself is illegitimate, it may be right to permit its destruction. But it is not admitted by those interested in the road just mentioned, that its case is of this nature. It is shown that it was constructed by Pittsburgh capital, for the express purpose of the competition; and it appears that although the route is indirect, the competition has given it considerable business, and large investments have been made in reliance upon its continuance.

One fact obvious on the statement of this case is that the wrong against which the long and short haul clause of the statute is aimed is not to be found in it. When the greater charge for the shorter haul over the same line in the same direction is spoken of, the natural suggestion to the mind is of a line leading with some directness to the place to which the traffic is destined; and there seems to be in such greater charge a manifest unfairness, since it deprives the place of shipment nearest the destination of its proper advantage of situation. But in the case stated the position is the opposite to this; the greater charge for the shorter haul preserves the proper advantage of situation, and has in itself no element of injustice to localities. It is the situation which forces upon the road an unequal charge which is, nevertheless, not unfair; and a strict application of the statute must compel the surrender of what is now competitive traffic to the older and more direct route whose very conformity to the general rule precludes conformity by the competitor.

INTER 8.

There are other cases in the country, of roads now taking part in competitive traffic which the peculiarities of situation will compel them to abandon if the long and short haul clause of the statute is strictly applied. This, to some extent, might be the case with certain north and south roads, like the road from Cincinnati to Toledo, and that from New Albany to Chicago, which have heretofore engaged considerably in east and west bound traffic which they deliver to or receive from other roads crossing them, or at their terminals. In many cases these roads have been accustomed to make the greater charge for the shorter haul simply because the direction they run compels it; but in doing so they may wrong no one, because the rates are not determined by them, but by the direct east and west lines, and are made with regard to relative distance. Both the roads named now have applications pending for relief from an embarrassment for which they are not themselves responsible; and they aver, with plausibility at least, that the public interest will suffer if they are shut out from such share in competition as they have hitherto taken.

We do not pass upon these cases finally, at this time, and therefore do not undertake to say of them that they constitute cases in which the competition of roads subject to the federal law creates the dissimilar circumstances and conditions which make up an exceptional case. But this brief reference to the facts is suggestive of a possibility, at least, that the exceptional case may exist; and if it does exist, a strict enforcement of the general rule might be found quite as injurious to the public interests as to those of the railroads which would thereby be shut out from competition.

IV. Whether the competition of towns which are trade centers or distributing points can, in any case, make out the dissimilar circumstances and conditions independent of the competition of the carriers, is a question which may be said to be presented by the evidence taken, but not with such distinctness as to call for an expression of opinion at this time. The pre-eminence of such trade centers in the territory reached by the petitioner's roads, is peculiar, and has probably been increased by the concessions in rates which the railroads have made to them, while making less concessions, or none at all, to less important stations. This condition of affairs tends to perpetuate itself; and the disparity of rates as between competitive and noncompetitive towns, the former being the "trade centers," must have had some influence to increase steadily the disparity in growth and prosperity.

By some of the witnesses before us this was bitterly complained of, while by others it was defended as being best for both classes of towns. The smaller towns in this part of the country, it was said, are dependent on the trade centers for their supplies, and they get, indirectly, the benefit of low rates to the distributing points, in lower prices than could otherwise be given to them. In proportion, also, as the distributing points are prosperous, they can, and do, extend to the dealers at other points, credit and indulgence. The prevalence of such ideas, and the acting upon them in making freight tariffs, gives to railroad

managers a power of determining, within certain limits, what towns shall be trade centers, and what their relative advantages; and while it may be, as they assert it is, that in deciding upon rates under the pressure of the competition of trade centers they endeavor to do justice between them, yet, as they do not, at the same time, feel a like pressure from noncompetitive points, it is obvious that justice to such points is in great danger of being overlooked, and it is altogether likely that it is so to some extent.

One result is that towns recognized by railroad managers as trade centers come to be looked upon as towns with special privileges, and other towns strive for recognition as such, and complain, perhaps, of injustice, when they fail. It was made very clear, by the evidence produced in behalf of the railroads, that the exceptionally favorable rates which were given to certain localities, were, in some cases, given to build up trade centers; and as they had had that effect and large establishments had been located at such centers, invited by the favoring rates, it was urged that there would be injustice in now compelling the roads to go back to the rule of equality.

Of this it may be said: *first*, that as between different localities, it is no sound reason for discriminating in favor of one against another that the purpose is to build up the favored locality as a trade center; and *second*, if the discrimination has existed and has had its effect, the fact that large establishments have thereby been encouraged is no reason why the injustice should be perpetuated. This statute aims at equality of right and privilege, not less between towns than between individuals, and it will no more sanction preferential rates for the purpose of perpetuating distinctions than of creating them.

These general views will indicate as far as we deem at this time necessary the bounds within which the railroad managers must limit their action in making charges which are greater in the aggregate for the transportation of passengers or of the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance. With responsibility to the law and to the restraining power of the Commission in case the bonds are exceeded, it may confidentially be expected that all carriers will bring themselves into conformity with the general law so far as it may be found reasonably practicable, and that the occasions for special interference will not be numerous.

Our observation and investigations so far may lead to the conclusion that strict conformity to the general rule is possible in large sections of the country, without material injury to either public or private interests; and that in other sections the exceptions can be and ought to be made much less numerous than they have been hitherto, and that when exceptions are admitted, the charges should be less disproportionate. Very many of the roads, as we are informed, have so arranged their tariffs as to make no exception whatever; and where that has been proved to be reasonably feasible, return to the former custom cannot be tolerated. In any case in which a company fails to bring its tariffs into conformity with the gen-

eral rule, if parties whose interests are thereby unfavorably affected complain, it must be prepared to justify its action by a showing of circumstances and conditions which render it just and reasonable.

In the views above expressed the members of the Commission, after full consideration are unanimous.

The order for temporary relief which was made in favor of the petitioner, will be allowed to remain in force until the day originally limited for its expiration; and in the meantime its officers will have the opportunity to make thorough revision of its freight and passenger tariffs, in order to bring them as nearly as may be reasonably feasible into harmony with the general rule of the statute and with the views expressed in this opinion. That they may be brought much nearer to conformity than they now are without the sacrifice of any substantial interest, we have very little question; and as business adapts itself to the new principle established by Congress, it will no doubt be found that exceptions can safely and steadily be made less and less numerous.

The other applications for relief under this section which remain to be disposed of are as follows: fifteen are by the Richmond & Danville Railroad Company, the East Tennessee, Virginia & Georgia Railroad Company, and other members of the Southern Railway & Steamship Association, which is an association of railroad and steamship companies operating lines of transportation in the territory south of the Ohio and Potomac, and east of the Mississippi River. Eleven are by other railroad lines in the same territory, the Mobile & Ohio, "Queen & Crescent," Illinois Central, and others. Two are on behalf of companies in Louisiana and Texas. Seven are presented by the various transcontinental lines. One is in favor of the New York, New Haven & Hartford and other companies operating short lines in Connecticut, Rhode Island, and Massachusetts, which also seek relief against alleged water competition. One is filed by the Delaware & Hudson Canal Company, and another by the Rome, Watertown & Ogdensburg Railroad Company, in the State of New York, asking relief in respect to Canadian competition. Four are presented in behalf of the Pittsburg & Lake Erie, the Cincinnati, Hamilton & Dayton, and two other roads similarly situated. One by the Mason City & Fort Dodge Company, a north and south road in the State of Iowa. Four are in behalf of certain roads in the vicinity of Peoria. Two are in behalf of roads in Southern Illinois, relating to their connection south of the Ohio. Three are by the Wisconsin Central and two other roads in Wisconsin and Minnesota. One by the New York, Philadelphia & Norfolk, in Delaware. One by the Memphis & Little Rock, in Arkansas; and one by the Detroit, Grand Haven & Milwaukee, in the State of Michigan.

The temporary orders which have been made on some of these petitions will in like manner be permitted to remain in force until the expiration of the time originally limited in each. No further order will be made upon any of the petitions, for although some two or three of the cases may not, by the facts recited in the ap-

plications for relief, be brought strictly within the principles above discussed, yet they all present what are claimed to be different circumstances and conditions adequate to authorize exceptions to the general rule; and if the petitioners are persuaded that the fact is as they represent, they should act under the statute accordingly.

The points that are intended to be decided at this time are as follows:

First. That the prohibition in the fourth section against a greater charge for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance, as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar.

Second. That the phrase "under substantially similar circumstances and conditions," in the fourth section is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section, carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance.

Third. That the judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts, to decide whether error has been committed, or whether the statute has been violated. And in case of complaint for violating the fourth section of the Act, the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions are substantially dissimilar.

Fourth. That the provisions of section 1, requiring charges to be reasonable and just, and of section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4 as they do in other cases.

Fifth. That the existence of actual competition which is of controlling force, in respect to traffic important in amount, may make out the dissimilar circumstances and conditions entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer, in the following cases: 1, when the competition is with carriers by water which are not subject to the provisions of the statute; 2, when the competition is with foreign or other railroads which are not subject to the provisions of the statute; 3, in rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition.

Sixth. The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to

such greater charge is way or local traffic, and that which is given the more favorable rates is not.

Nor is it sufficient justification for such greater charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.

Nor that the lesser charge on the longer haul has for its motive the encouragement of manufacturers or some other branch of industry.

Nor that it is designed to build up business or trade centers; nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up.

The fact that long haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic.

(May 23, 1887.)

CHICAGO & ALTON R. R. CO.,

v.

PENNSYLVANIA R. R. CO.

CHICAGO, ROCK ISLAND & PACIFIC R. CO.,

v.

NEW YORK CENTRAL & HUDSON RIVER R. R. CO.

MR. William Brown, in behalf of the Chicago & Alton Railroad, filed charges before the Commission, against the Pennsylvania Railroad Company of violation of the third section of the Interstate Commerce Act.

He charged that the Pennsylvania Company had unlawfully given preference and advantage to the Chicago, Burlington & Quincy Railroad, in the interchange of passengers at Chicago, and denied the Chicago & Alton reasonable facilities for the interchange of passenger traffic. This is alleged to be the result of an unlawful combination on the part of the Pennsylvania and other companies to coerce the public.

Mr. Brown also filed, in behalf of the Chicago, Rock Island & Pacific Railroad Company similar charges against the New York Central & Hudson River Railroad Company.

The Commission, after hearing Mr. Brown's statement, entered an order for the Companies, against which the complaints are made to appear and make answer in ten days.

(May 24, 1887.)

BOSTON & ALBANY R. R. CO.,

v.

BOSTON & LOWELL R. R. CO. *et al.*

THE Boston & Albany Railroad Company, by its general traffic manager, filed with the Commission a complaint against the Bos-

ton & Lowell Railroad Company, the Concord Railroad Company, the Northern Railroad Company, the Central Vermont Railroad Company and the Grand Trunk Railroad Company, charging that these Companies, under the name of the National Dispatch Line, have issued schedules of joint rates to Detroit and other points in the West, where they come in competition with the Boston & Albany Company and its connections, which are less than those of the latter companies to the same points; while at the same time a certain combination of roads, including a part of the roads in the National Dispatch Line, viz.: The Boston & Lowell, Concord, Northern and Central Vermont Railroad Companies, maintain higher rates to St. Albans and other intermediate points than the Dispatch Line charges to terminal points.

Re SUSPENSION OF THE FOURTH SECTION.

MR. Green, of Buffalo, representing the Lake Shore & Michigan Southern Railroad and the Pittsburg & Lake Erie Railroad Companies, made an argument before the Commission in support of the petitions of those companies for relief from the fourth section of the Act. He asked to be permitted to haul freight from Pittsburg to eastern points at the same rates made by the Pennsylvania Railroad Company to those points, although those rates may be lower than from some intermediate points from Youngstown easterly.

Mr. John Scott, attorney for the Pennsylvania Railroad Company, said he had never known an application so indefinite as that under consideration. It would, if granted, leave the companies at liberty to fix their local rates at an indefinite number of points without reference to geographical location.

John Newell, President and Manager of the Lake Shore Company, and President of the Pittsburg & Lake Erie Company, said that he had heard no complaint of the local rates, and it was desirable that these rates be maintained while the through rates are reduced in order to secure Pittsburg business going to New York.

D. S. Gray, of the western division of the Pennsylvania Railroad Company, opposed the application. In answer to a question by Commissioner Walker, he said that the rates of the Pennsylvania Railroad Company had been adjusted in conformity with the terms of the Law, and the result up to the present time had been satisfactory.

J. T. Brooks, representing the Pennsylvania Railroad interests, said that favorable action upon the application of the Lake Shore would be an invitation to every road in the United States to come here and upon similar equitable grounds to ask relief.

James Reed, representing the Pittsburg, Lake Erie & Western Railroad, made a plea for a suspensory order in the case of that road as affecting traffic west of Pittsburg.

T. A. Delamater, General Superintendent of the Meadville & Louisville Railroad Company, appeared to request a suspension of the long and short haul clause so far as it affects east-

ern business on that road, so as to meet trunk line rates.

(May 27, 1887.)

MISSOURI & ILLINOIS TIE & LUMBER CO., v.

CAPE GIRARDEAU & SOUTHWESTERN R. R. CO.

THE Commission received a petition from the Missouri & Illinois Tie & Lumber Company, of Cape Girardeau, Mo., charging the Cape Girardeau & Southwestern Railroad Company with discriminating against them, and in favor of T. J. Moss, a competitor, in the matter of furnishing cars for the transportation of ties and lumber, to such a degree as to give Moss a complete monopoly of the railroad tie and lumber business on the line of the defendant's road.

(May 31, 1887.)

Re SUSPENSION OF THE FOURTH SECTION.

THE Atlantic & North Carolina Railroad Company filed an application for a suspension of the fourth section as far as it affects Morehead City and Kingston, N. C., averring that at both those points the water competition will ruin its business unless the relief sought is granted.

T. H. Barrett, President of the State Farmers' Alliance of Minnesota, transmitted a long list of requests by the executive committee of the alliance, looking to a vigorous enforcement of the Interstate Commerce Law, especially that part relating to the long and short haul.

William H. COUNCIL

WESTERN & ATLANTIC R. R. CO.

A COMPLAINT was received from William H. Council, a colored man, directed against the Western & Atlantic Railroad Company, in which he avers that on account of his color he was forcibly ejected from a first class car, after having paid for a first class ticket. He asks that the Commission award him \$25,000 damages, and such other relief as it may deem proper.

(June 1, 1887.)

Re MILK TRAFFIC. *

THE Commission received the answer of the New York, Ontario & Western Railroad Company to the complaint of Nathaniel W. Howell and others, that the rates charged for the transportation of milk from Orange County, N. Y., to Jersey City are unreasonable and unjust.

The answer makes a general denial of the charge of the complaint, and furthermore denies that the company transports milk at any

*See ante, 24.

less rate for any one person, company or corporation than for another, or that it subjects any particular person, corporation or locality to any undue prejudice or disadvantage, or that it gives any special rate to any shipper of milk.

(June 8, 1887.)

RE SUSPENSION OF THE FOURTH SECTION.

THE Commission received a protest from Woodruff Sutton, of the firm of Sutton & Co., New York City, against the granting of the application of the transcontinental railroads for a permanent suspension of the fourth section of the Law.*

Sutton & Co. are engaged in transporting freight from New York and Philadelphia to San Francisco and Portland, in clipper ships; and the author of protest declares that the transcontinental roads made war against the clippers, instead of the latter making war against the railroads. He asserts that it has been the custom of the railroads to require shippers of freight from New York to the Pacific Coast to enter into written contracts to ship all freight by the railroads, and that as an inducement contractors were charged only six cents per pound, while noncontractors were charged twelve cents per pound.

Mr. Sutton asserts that the effect of the transcontinental roads combining against the clipper ships has been to reduce the number of firms engaged in the latter business from eight to two, and that now only the cheapest and coarsest grades are shipped by clippers. He expresses the opinion that the Pacific Mail Steamship Company is interested with the transcontinental roads in this effort to procure a permanent suspension of the fourth section; and in the interest of the clippers and of other shippers he protests against such suspension.

(June 17, 1887.)

CHICAGO & ALTON R. R. CO.

PENNSYLVANIA R. R. CO. et al.

HEARING before the Commission.

Mr. Brown, for the Chicago & Alton R. R. Co.—

Explained that the burden of the complaint is that the Pennsylvania Railroad Company and the Pennsylvania Company have violated the Interstate Law in three particulars: In the first place it is alleged that the Pennsylvania Company has refused to accord to the complainant equal facilities and advantages with other roads; in the second place it has subjected the complainant to undue disadvantage; and in the third place it is charged that the defendants have not afforded all reasonable facilities for the interchange of traffic and passengers.

Therefore the complainant asks that the Pennsylvania Railroad Company and the Pennsylvania Company be required by the Commission to afford these facilities.

Mr. Scott, for the Pennsylvania Co.—

*See ante, 26, 27.

Gave in detail the complaint. Mr. Scott stated the position of the Pennsylvania Railroad Company, giving in detail a history of the negotiations between the companies leading up to the refusal to exchange traffic. He held that the Commission must hold as the supreme court had held in the case of *Atchison, Topeka & Santa Fe R. R. Co. v. Denver & New Orleans R. R. Co.* 110 U. S. 687 (Bk. 28, L. ed. 291), that a road is not bound to go beyond its own lines for the purpose of making facilities.

The broad general question was whether the Commission would enable a few lines to continue a system which can only result in actual demoralization among the officers of other companies; whether the good morals of the railroad companies of the country and the interests of the general public do not require that this practice of permitting the officers of one company to pay commission to the agents of another company for the purpose of securing traffic shall have put upon it the seal of the Commission's reprobation.

A controversy arose when Mr. Brown attempted to secure an admission that the Pennsylvania Railroad Company is a member of the Eastern Association, succeeding what was formerly known as the Eastern Pool, which managed Castle Garden and required the western roads to pay a commission of ten cents for the sale of their tickets. Finally, Mr. Scott admitted that his Company was a member of the association, while refusing to admit the truth of the charges against the association.

Mr. Scott offered to present testimony of railroad men to show the demoralizing effect of the practice of paying commissions to agents on sales of tickets, but Mr. Brown objected to the competency of the evidence—saying that he could produce any amount of testimony of an opposite character. In answer to the contention of Mr. Scott that the commission practice is an offense against morality, he declared that it was not the function of the Commission to enforce good morals.

The Commission decided to admit the testimony offered by the counsel for the Pennsylvania Railroad Company, and President Roberts was sworn. He said that he had found the practice of paying commissions to be a great wrong to the public and an evil in railroad management. Several years ago the Pennsylvania Railroad Company had endeavored to stop the practice, but as the other roads continued it the result had been that the Pennsylvania Road lost heavily in traffic and was forced to again pay commissions.

When the Interstate Commerce Bill passed the company had seen an opportunity to put a stop to the practice, and co-operating with the Chicago, Burlington & Quincy had ordered the agents to refuse to accept commissions. The sole reason for refusing to sell the tickets of the Chicago & Alton was the declining of that company to agree not to interfere with the agents of the Pennsylvania Railroad Company.

Mr. Brown inquired if the Castle Garden Association does not require the western railroads to pay 10 per cent for tickets sold over their lines.

Mr. Roberts replied that the roads deriving traffic from Castle Garden were assessed an

amount based upon their revenue from the source to pay the expenses of the association; but this had no relation to the payment of commissions to agents.

Commissioner Morrison inquired if he had not known before the passage of the law that the practice was unlawful.

The witness admitted that he had, and added that the Pennsylvania Railroad Company had discharged an important agent and spent \$120,000 in the effort to discontinue the commission practice in 1883.

The next witness called by the Pennsylvania counsel was George R. Blanchard, commissioner of the Central Traffic Association. He said he was certain of the evil results of the payment of passenger commissions and could thoroughly support what President Roberts had said about its demoralizing effects. The practice had gone so far that cases had been known where the agents made an arrangement with conductors by which the tickets were not punched but were resold to the agents. The scalpers were paid fees by commissions, and their offices were the hot-beds—the brood nests—of every form of railway corruption. Continuing, the witness said that of the total railroad mileage, 85 per cent of the companies assented to the terms of the circular agreeing to refrain from paying commission.

E. A. Ford, general ticket agent of the Pennsylvania Company, and J. R. Wood, general passenger agent of the same company, also testified.

General Manager C. H. Chappell, of the Chicago & Alton, then took the stand and said that all of the roads running west of Chicago had agreed upon a stated amount of commission upon tickets sold. Witness believed this tended to prevent discrimination and cutting of rates. As a result, all of the roads were put upon an equal basis.

Mr. Scott wished to be informed as to the object of all of the roads running west from Chicago paying the same amount of commission to an agent of the Pennsylvania Company under orders to sell their tickets.

The witness replied that the commission was an inducement to the agent to sell through tickets, to explain the different routes to the buyer of tickets, and to take some interest in the business of the western road.

General Passenger Agent James Charlton,

of the Chicago & Alton, testified that twelve of the roads with which his road had done business last year had boycotted it because of its refusal to sign the agreement. Witness never had an agent who ventured to cut rates without his permission.

Mr. Brooks asked what the witness would think of the propriety of the officers of one line seeking to tempt the agents of another line to violate instructions.

The witness had no opinion on the subject; has not thought of it, but would not do it himself.

"Don't you know it is a reprehensible piece of conduct?" inquired Mr. Brooks.

Mr. Brown took exception to the question, however, and it was not allowed to stand.

With this testimony both sides announced that their evidence was all in, and the counsel for both sides summed up for their respective companies. The Commission took the matter under advisement.

SWIFT & Co. *et al.*

v.

BALTIMORE & OHIO R. R. Co. *et al.*

Swift & Co. and Armour & Co., Chicago, together with the East St. Louis Dressed Beef Company, Nelson Morris & Co., and George H. Hammond & Co., presented a petition to the Commission complaining against unjust discrimination and excessive charges at the hands of the Baltimore & Ohio, Chicago & Grand Trunk, Indianapolis & St. Louis, Lake Shore & Michigan Southern, Chicago, St. Louis & Petersburg, Pittsburg & Fort Wayne and Michigan Central Railroad Companies.

It is alleged that the unjust rates complained of are fixed by an agreement between the owners of railroad lines to destroy competition, and that the purpose of the combination is to prevent the petitioners from obtaining reasonable rates. It is also alleged that for the transportation to the East of dressed beef, sheep and hogs, thirty-five cents per 100 pounds more is demanded than for the transportation of other meat provisions, although the conditions are the same, except that the carriers' liability is less in the first instance.

UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF FLORIDA.

Re PETITION OF C. H. MALLORY & Co. *et al.*, in

Cutting *v.* Florida Railway & Navigation Co.

Under the Interstate Commerce Act all charges made by the receiver of a railroad, in respect to such business as falls under the head of interstate commerce, for any services in the transportation of passengers or property, or for receiving, delivering, storing or handling property, must be reasonable and just; and such receiver may not discriminate in his rates, charges and facilities for or against either of

two connecting steamship lines, but should give to both equal rates and facilities for trade and travel, for equal service, from all points.

(April 12, 1887.)

PETITION by C. H. Mallory & Co. and the New York & Texas Steamship Company, for an order directing H. R. Duval, Receiver of the Florida Railway & Navigation Company, appointed by the court, to desist from discriminating against the petitioners' steamship line in favor of the Clyde line.

The steamships of the petitioners' line and of the Clyde line both connect with the

railroad in question, and are competitors for its business.

The answer of the receiver alleged that the railroad is without means to earn revenue or to discharge its duty as a public carrier, unless it can have the assistance of and a connection with a line of steamships; that its business will not support two lines of steamships; that the service offered by the Clyde line is superior to that of the petitioners' line, and that it is essential to the interest of the railroad that the receiver should have the right to discriminate between the two lines, and that he had discriminated for that reason; but it further alleged that since the Interstate Commerce Act came into operation he had reformed his tariff, and that it was his intention to make no discrimination in the future.

Mr. Horatio Bisbee, for petitioners.
Messrs. John A. Henderson and Hart-ridge & Young, for respondent.

Settle, J., delivered the following opinion:
This petition was filed on the 21st day of

March, 1887, which was before the Interstate Commerce Act went into effect. The answer of the Receiver, H. R. Duval, was filed on the 4th day of April, 1887, in which he submits that he has reformed his tariff of rates, and intends to comply, in all respects, with the provisions of the Interstate Commerce Act.

In view of this answer, I deem it unnecessary and inexpedient at this time to do more than to give to the Receiver of the Florida Railway & Navigation Company some general instructions in respect to such of his business with the parties to this petition as falls under the head of interstate commerce:

1. All charges made for any service in the transportation of passengers or property, or for receiving, delivering, storing or handling property, must be reasonable and just.

2. He will not discriminate, in his rates, charges and facilities, for or against the Clyde line or the Mallory line, but will give to both equal rates and facilities for trade and travel, for equal service, from all points.

UNITED STATES SUPREME COURT.

HENRY S. BARRON, *Plff. in Err.*,
v.

GEORGE W. BURNSIDE, Sheriff of LINN
COUNTY, IOWA.

(From Lawyer's ed. U. S. Reports, Bk. 30.)

1. The jurisdiction of the federal courts depends upon and is regulated by the laws of the United States, and it cannot be affected by state legislation.
2. A corporation is a citizen of the State by which it is created and in which its principal place of business is situated, so far as its right to sue and be sued in the federal courts is concerned, and within the clause of the Constitution extending the jurisdiction of said courts to controversies between citizens of different States.
3. The Iowa Act of April 6, 1886, seeking to make the right of foreign corporations to transact business in that State dependent upon their surrender of the right to remove causes to the federal courts, is invalid.

(Argued March 18, 21, 1887. Decided April 11, 1887.)

IN ERROR to the Supreme Court of the State of Iowa. *Reversed.*

The history and facts of the case appear in the opinion of the court.

Messrs. W. C. Goudy and J. J. Herrick, for plaintiff in error:

The Statute of 1886, if enforced, will deprive the Chicago and Northwestern Railway Company of its property without due process of law.

The franchise to operate a railroad company is property. And to deprive such a company of the right to use its property is, in effect, to deprive the company of the property itself.

Morawetz, *Priv. Corp.* 2d ed. § 982; *Mem-*
INTER S.

phis & L. R. R. Co. v. Berry, 112 U. S. 619 (28: 887); *New Orleans etc. R. R. Co. v. Delamare*, 114 U. S. 509 (29: 244).

The right to remove a cause coming within the provisions of the Act of Congress is one existing under the Constitution and Laws of the United States, and any Act of a State Legislature which seeks to destroy or impair that right is void.

Home Ins. Co. v. Morse, 87 U. S. 20 Wall. 450 (22: 385); *Doyle v. Continental Ins. Co.* 94 U. S. 543 (24: 148); *Baltimore & O. R. R. Co. v. Cary*, 28 Ohio, 208.

But it is claimed that the *Doyle Case* justifies the Act of legislation now in question, and that the Chicago and Northwestern Railway Company, being a corporation of another State, could be excluded from the State of Iowa, or that any condition could be imposed upon the right to do business in the State.

There is a difference between the Wisconsin and Iowa Statutes. The one collided with no provision of the Constitution; the other did.

It is said in *Lafayette Ins. Co. v. French*, 59 U. S. 18 How. 407 (15: 451), that: "A corporation created by Indiana can transact business in Ohio only with the consent, express or implied, of the latter State. This consent may be accompanied by such conditions as Ohio may see fit to impose; and these conditions must be deemed valid and effectual by other States, and by this court, provided they are not repugnant to the Constitution and laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle or maxim of justice which forbids condemnation without opportunity for defense."

The power of the State to exclude a foreign corporation is not denied, that principle having been clearly established by the decision of the Supreme Court of the United States with reference to insurance companies; but the power is not an unlimited one. Whenever it collides with the Constitution of the United States

eral courts, in the same manner, and to the same extent, as is now authorized by law.

"Sec. 2. No foreign corporation which has not in good faith complied with the provisions of this Act, and taken out a permit, shall hereafter be authorized to exercise the power of eminent domain, or exercise any of the rights and privileges conferred upon corporations, until they have so complied herewith and taken out such permit.

"Sec. 3. Any foreign corporation sued or impleaded in any of the courts of this State upon any contract made or executed in this State or to be performed in this State, or for any act or omission, public or private, arising, originating or happening in the State, who shall remove any such cause from such state court into any of the federal courts held or sitting in this State, for the cause that such corporation is a nonresident of this State or a resident of another State than that of the adverse party, or of local prejudice against such corporation, shall thereupon forfeit and render null and void any permit issued or authority granted to such corporation to transact business in this State; such forfeiture to be determined from the record of removal, and to date from the date of filing of the application on which such removal is effected; and whenever any corporation shall thus forfeit its said permit no new permit shall be issued to it for the space of three months, unless the executive council shall for satisfactory reasons cause it to be issued sooner.

"Sec. 4. Any foreign corporation that shall carry on its business and transact the same on and after September 1, 1886, in the State of Iowa, by its officers, agents, or otherwise, without having complied with this statute, and taken out, and having a valid permit, shall forfeit and pay to the State for each and every day in which such business is transacted and carried on, the sum of one hundred dollars (\$100), to be recovered by suit in any court having jurisdiction. And any agent, officer or employee who shall knowingly act or transact such business for such corporation when it has no valid permit as provided herein, shall be guilty of a misdemeanor, and for each offense shall be fined, not to exceed one hundred dollars (\$100), or imprisoned in the county jail not to exceed thirty days, and pay all costs of prosecution.

"Sec. 5. All Acts and parts of Acts inconsistent with the provisions hereof are hereby repealed; *Provided*, That nothing contained in this Act shall relieve any company, corporation, association or partnership from the performance of any duty or obligation now enjoined upon them or required of them or either of them by the laws now in force."

The information on which the warrant of arrest was issued was as follows:

"State of Iowa, } ss:
"Linn County, }

"Before C. W. Burton, Justice of the Peace in and for Rapids Township.

"The State of Iowa, }
" u
"Henry Barron. }

"The defendant is accused of the crime of knowingly transacting a portion of the business of the Chicago & Northwestern Railway

Company within the State of Iowa, when such railway company has no valid permit to do business in the State of Iowa, as provided in chapter 76 of the Laws of the 21st General Assembly of said State of Iowa, and taking effect September 1, 1886.

"For that the said defendant, on the 5th day of October, 1886, at the City of Cedar Rapids, in the county and State aforesaid, well knowing the Chicago & Northwestern Railway Company to be a foreign corporation organized under the laws of Illinois, and not a corporation organized under the laws of Iowa, and well knowing that the said Chicago & Northwestern Railway Company was such foreign corporation for pecuniary profit other than for carrying on mercantile or manufacturing business, to wit: for the operating of a line of railroad, and well knowing that said railway company has failed, neglected and refused to file its articles of incorporation with the Secretary of State of the State of Iowa, and has neglected and refused to request the issuance to such Chicago & Northwestern Railway Company of a permit to transact business in said State of Iowa, and well knowing that said railway company has no permit to do business in said State of Iowa, as required by said chapter 76 of the Laws of Iowa, passed by the 21st General Assembly aforesaid, did knowingly act as a locomotive engineer for the transaction of the business of said Chicago & Northwestern Railway Company within the State of Iowa, by running a locomotive engine, with a passenger train attached thereto, through the Township of Rapids, in the county and State aforesaid, contrary to law, and the statute in such case made and provided.

J. H. Preston.
"Subscribed and sworn to by J. H. Preston before me, this 5th day of October, A. D. 1886.

[Notarial Seal.]

E. C. Preston.

Notary Public in and for Linn County, Iowa."

Barron, having been arrested, applied to the Supreme Court of the State for a writ of *habeas corpus*, by a petition setting forth various facts as showing that his imprisonment was illegal, and praying that his petition might be tried before the supreme court. The writ was issued, a return was made to it by the sheriff, and the case was heard upon an agreed statement of facts, the only material ones, in the view we take of the case, being, that the Chicago & Northwestern Railway Company was and is an Illinois corporation, operating railroads in Iowa, and claiming to do so under the authority of statutes of that State, and that Barron, "at the time he was arrested, was in the employment of the Chicago & Northwestern Railway Company, and engaged as an engineer on a locomotive in running a passenger train, which was made up at Chicago, in the State of Illinois, and was destined to Council Bluffs, in Iowa, and that said train was carrying passengers and the United States mails received at different points in the State of Illinois, and destined to points in the State of Iowa and beyond, and also from points in the State of Iowa to other points in the same State," and that he was arrested while he was engaged in controlling the engine on the train while it was running. It was admitted that the company had not complied with the Iowa statute by taking out the required permit.

On the hearing before the state court it was urged, among other things, that the Statute of Iowa is void as an attempt to interfere with the jurisdiction of the federal courts, as established by the Constitution of the United States and Acts of Congress. The court upheld the validity of the statute.

The statute manifestly applies to the Chicago & Northwestern Railway Company, as an Illinois corporation. The first section provides that a foreign corporation, desiring to continue the transaction of its business in Iowa, is required, on and after September 1, 1886, "to file with the Secretary of State a certified copy of its articles of incorporation duly attested, accompanied by a resolution of its board of directors or stockholders, authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this State engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this State; said application to contain a stipulation that said permit shall be subject to each of the provisions of this Act; and thereupon the Secretary of State shall issue to such corporation a permit in such form as he may prescribe, for the general transaction of the business of such corporation; and, upon the receipt of such permit, such corporation shall be permitted and authorized to conduct and carry on its business in this State."

The initial step required is a resolution authorizing the filing of the copy of the articles of incorporation, and authorizing service of process in the manner specified, and requesting the issue of the permit, the application to be accompanied by a stipulation that the permit shall be subject to each of the provisions of the Act. This proceeding is a unit. The filing of the articles of incorporation and the provision in regard to service of process are to be authorized by the same resolution which requests the issue of the permit, and this request or application is to contain the stipulation above mentioned. These various things are not separable. They are all indissolubly bound up with the application for a permit, which is to be subject to every provision of the Act. The permit cannot be issued unless such a stipulation is given, and the corporation is not to be permitted to carry on its business in the State unless the permit is issued to it and received by it.

Section 8 of the Act provides that if the permit is issued, and the foreign corporation (being thereafter sued in a court of Iowa, upon a contract made or executed in Iowa, or to be performed in Iowa, or for any act or omission, public or private, arising, originating or happening in Iowa) shall remove the suit from the state court into any federal court in Iowa, because the corporation is a nonresident of Iowa, or a resident of a State other than the State of the adverse party, or because of local prejudice against the corporation, that fact shall forfeit the permit and render it void, such forfeiture to be determined from the record of removal, and to date from the filing of the application on which the removal is effected.

Section 4 imposes a penalty of \$100 a day on the corporation for carrying on its business in Iowa without having complied with the statute, and having a valid permit, and provides

that any agent, officer or employee who shall knowingly act, or transact such business, for the corporation, when it has no valid permit, shall be guilty of a misdemeanor, and for each offense shall be fined not to exceed \$100, or be imprisoned in the county jail not to exceed thirty days, and pay all costs of prosecution.

It is apparent that the entire purpose of this statute is to deprive the foreign corporation, in suits such as those mentioned in section 8, of the right conferred upon it by the Constitution and laws of the United States, to remove a suit from the state court into the federal court, either on the ground of diversity of citizenship, or of local prejudice. The statute is not separable into parts. An affirmative provision requiring the filing by a foreign corporation, with the Secretary of State, of a copy of its articles of incorporation, and of an authority for the service of process upon a designated officer or agent in the State, might not be an unreasonable or objectionable requirement, if standing alone; but the manner in which, in this statute, the provisions on those subjects are coupled with the application for the permit and, with the stipulation referred to, shows that the real and only object of the statute, and its substantial provision, is the requirement of the stipulation not to remove the suit into the federal court.

In view of these considerations, the case falls directly within the decision of this court in *Home Insurance Co. v. Morse*, 87 U. S. 20 Wall. 445 [22:365]. In that case, which was twice argued here, a Statute of Wisconsin provided that it should not be lawful for any foreign fire insurance company to transact any business in Wisconsin unless it should first appoint an attorney in that State, on whom process could be served, by filing a written instrument to that effect, containing an agreement that the company would not remove a suit for trial into the federal court. The Home Insurance Company, a New York corporation, filed the appointment of an agent, containing the following clause: "And said company agrees that suits commenced in the State Courts of Wisconsin shall not be removed by the acts of said company into the United States Circuit or Federal Courts." A loss having occurred on a policy issued by the company, it was sued in a court of the State. It filed its petition in proper form for the removal of the suit into the federal court. The state court refused to allow the removal, and, after a trial, gave a judgment for the plaintiff, which was affirmed by the Supreme Court of Wisconsin. The company brought the case into this court, which held these propositions: *First*, The agreement made by the company was not one which would bind it, without reference to the statute. *Second*, The agreement acquired no validity from the statute. The general proposition was maintained, that agreements in advance to oust the courts of jurisdiction conferred by law, are illegal and void, and that, while the right to remove a suit might be waived, or its exercise omitted, in each recurring case, a party could not bind himself in advance, by an agreement which might be specifically enforced, thus to forfeit his rights at all times and on all occasions, whenever the case might be presented.

In regard to the second question, the proposition laid down was that the jurisdiction of

the federal courts, under article 3, section 2, of the Constitution, depends upon and is regulated by the laws of the United States; that state legislation cannot confer jurisdiction upon the federal courts, nor limit or restrict the authority given to them by Congress in pursuance of the Constitution; and that a corporation is a citizen of the State by which it is created, and in which its principal place of business is situated, so far as its right to sue and be sued in the federal courts is concerned, and within the clause of the Constitution extending the jurisdiction of the federal courts to controversies between citizens of different States. The conclusions of the court were summed up thus: 1, the Constitution of the United States secures to citizens of another State than that in which suit is brought an absolute right to remove their cases into the federal court, upon compliance with the terms of the removal statute; 2, the Statute of Wisconsin is an obstruction to this right, is repugnant to the Constitution of the United States and the laws made in pursuance thereof, and is illegal and void; 3, the agreement of the insurance company derives no support from an unconstitutional statute, and is void, as it would be had no such statute been passed. For these reasons the judgment of the Supreme Court of Wisconsin was reversed, and it was directed that the prayer of the petition for removal should be granted.

The case of *Doyle v. Continental Insurance Co.* 94 U. S. 535 [24:148], is relied on by the defendant in error. In that case this court said that it had carefully reviewed its decision in *Home Insurance Co. v. Morse*, and was satisfied with it. In referring to the second conclusion in *Insurance Co. v. Morse*, above recited, namely: that the Statute of Wisconsin was repugnant to the Constitution of the United States, and was illegal and void, the court said, in *Doyle v. Continental Insurance Co.*, that it referred to that portion of the statute which required a stipulation not to transfer causes to the courts of the United States. In that case, which arose under the same Statute of Wisconsin, the foreign insurance company had complied with the statute, and had filed an agreement not to remove suits into the federal courts, and had received a license to do business in the State. Afterwards, it removed into the federal court a suit brought against it in a state court of Wisconsin. The state authorities threatening to revoke the license, the company filed a bill in the Circuit Court of the United States, praying for an injunction to restrain the revoking of the license. A temporary injunction was granted. The defendant demurred to the bill, the demurrer was overruled, a decree was entered making the injunction perpetual,

and the defendant appealed to this court. This court reversed the decree and dismissed the bill. The point of the decision seems to have been that, as the State had granted the license, its officers would not be restrained by injunction, by a Court of the United States, from withdrawing it. All that there is in the case beyond this, and all that is said in the opinion which appears to be in conflict with the adjudication in *Insurance Co. v. Morse* [supra] must be regarded as not in judgment.

In both of the cases referred to, the foreign corporation had made the agreement not to remove into the federal court suits to be brought against it in the state court. In the present case no such agreement has been made; but the locomotive engineer is arrested for acting as such in the employment of the corporation, because it has refused to stipulate that it will not remove into the federal court suits brought against it in the state court, as a condition of obtaining a permit, and consequently has not obtained such permit. Its right, equally with any individual citizen, to remove into the federal court, under the laws of the United States, such suits as are mentioned in the third section of the Iowa Statute, is too firmly established by the decisions of this court to be questioned at this day; and the State of Iowa might as well pass a statute to deprive an individual citizen of another State of his right to remove such suits.

As the Iowa Statute makes the right to a permit dependent upon the surrender by the foreign corporation of a privilege secured to it by the Constitution and laws of the United States, the statute requiring the permit must be held to be void.

The question as to the right of a State to impose upon a corporation engaged in interstate commerce the duty of obtaining a permit from the State, as a condition of its right to carry on such commerce, is a question which it is not necessary to decide in this case. In all the cases in which this court has considered the subject of the granting by a State to a foreign corporation of its consent to the transaction of business in the State, it has uniformly asserted that no conditions can be imposed by the State which are repugnant to the Constitution and laws of the United States. *Lafayette Ins. Co. v. French*, 59 U. S. 18 How. 404, 407 [15:451, 452]; *Ducat v. Chicago*, 77 U. S. 10 Wall. 410, 415 [19:972, 973]; *Home Ins. Co. v. Morse*, 87 U. S. 20 Wall. 445, 456 [22:365, 369]; *St. Clair v. Cox*, 106 U. S. 350, 356 [27:222, 225]; *Phila. Fire Assn. v. New York*, 119 U. S. 110, 120 [30:342, 345].

The judgment of the Supreme Court of Iowa is reversed, and the case is remanded to that Court, with an instruction to enter a judgment discharging the plaintiff in error from custody.

SUPREME COURT OF VERMONT.

STATE of Vermont

v.

Baxter PRATT.

(From 4 New England Reporter, p. 367.)

That part of Rev. Laws, § 3952, which requires a license from a person peddling tea, the growth of a foreign country, is in conflict with the Federal Constitution, art. 1, §§ 8, 10.

INTER 8.

(Orleans—Decided May 28, 1887.)

INFORMATION filed against respondent for peddling without a license. Heard on an agreed statement, September Term, 1885, Orleans County, Ross, J., presiding. The respondent was adjudged guilty. Reversed.

The case is stated in the opinion.

Mr. George W. Cahoon, for respondent:

The statute (Rev. Laws, § 8952) is unconstitutional.

Welton v. State, 91 U. S. 275 (Bk. 23, L. ed. 347); *Brown v. State*, 12 Wheat. 436 (35 U. S. bk. 6, L. ed. 684); *Waite, Ch. J.*, in *Hall v. DeCuir*, 95 U. S. 485 (Bk. 24, L. ed. 547); *State Tonnage Tax*, 12 Wall. 204 (79 U. S. bk. 20, L. ed. 870); *Sherlock v. Alling*, 93 U. S. 99 (Bk. 23, L. ed. 819); *Philadelphia & R. R. Co. v. Commonwealth*, 15 Wall. 284 (82 U. S. bk. 31, L. ed. 164); *Cook v. Commonwealth*, 97 U. S. 566 (Bk. 24, L. ed. 1015); *Guy v. Baltimore*, 100 U. S. 434 (Bk. 25, L. ed. 743); *Howe Mach. Co. v. Gage*, 100 U. S. 676 (Bk. 25, L. ed. 754); *Tiernan v. Rinker*, 102 U. S. 123 (Bk. 26, L. ed. 108); *Mobile v. Kimball*, 102 U. S. 691 (Bk. 26, L. ed. 238); *Webber v. Virginia*, 103 U. S. 844 (Bk. 26, L. ed. 565); *Walling v. People*, cited in *Albany L. J. Vol. 33, No. 13, 254*; *State v. Furbush*, 72 Maine, 493; *Western U. T. Co. v. Texas*, 105 U. S. 460 (Bk. 26, L. ed. 1067); *Brown v. Houston*, 114 U. S. 622 (Bk. 29, L. ed. 257).

Mr. C. A. Prouty, State's Attorney, for the State.

Powers, J., delivered the opinion of the court:

Revised Laws, § 8951, imposes a penalty upon persons who become peddlers without a license. Section 8952 provides that "A person going from town to town, or from place to place in the same town, on foot or otherwise, carrying to sell or exposing for sale goods, wares, or merchandise, the growth or manufacture of a foreign country * * * shall be deemed a peddler."

The respondent, among other things, carried from town to town and exposed for sale tea; and he is thus prosecuted for peddling without a license. It is answered that so much of section 8952, *supra*, as requires a license from persons peddling tea—an article of foreign growth,—is in conflict with the Federal Constitution, and therefore void.

The Constitution, in article 1, § 8, declares that Congress shall have power "to regulate commerce with foreign nations and among the several States;" and, in section 10, that "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports." In article 6 it is declared that "This Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding;" and in article 3, § 2, "The judicial power [of the United States] shall extend to all cases in law and equity arising under this Constitution." The construc-

tion, therefore, given to the clauses of the Constitution above referred to, by the Supreme Court of the United States, is conclusive upon the court.

In *Brown v. State*, 12 Wheat. 436 [35 U. S. bk. 6, L. ed. 684], it was held that a tax upon the sale of an article was in legal effect a tax upon the article itself, and that the law of the State of Maryland requiring persons to take out a license for selling imported goods in the original package was in conflict with the Constitution, in that it purported to tax an import and sought to regulate commerce with foreign Nations. The opinion of Marshall, *Ch. J.*, in that case is exhaustive, and it has stood for more than a half a century as the settled and unquestioned doctrine of the subject.

In *Welton v. State*, 91 U. S. 275 [Bk. 23, L. ed. 347], decided in 1875, the question again arose upon a statute of Missouri which required a license of peddlers selling goods not the growth, produce, or manufacture of that State, and it was argued that the license fee was a new tax upon the occupation or calling of the peddler, and not upon the goods themselves. But the court said: "Where the business or occupation consists in the sale of goods, the license tax required for its pursuit is, in effect, a tax upon the goods themselves." The court held that the Missouri Statute was in conflict with the Constitution, as an attempted regulation of commerce between the States. It permitted the free sale of goods which were of the growth or manufacture of Missouri, but taxed the sale of those of the growth of other States.

The same rule obviously must apply to a statute which permits the free sale of goods of Vermont growth or manufacture, but taxes the sale of those grown in foreign countries; inasmuch as the clause giving to Congress the power to regulate commerce specified interstate and foreign commerce in the same section.

Under our system of dual government, wherein two existing jurisdictions are exerted over the same territory and people, it is of the highest importance that legislation in each be restricted to the proper boundaries that circumscribe it. Free intercourse and travel between the States and with foreign countries can be safely regulated only by that jurisdiction that looks to the general interests of the nation as a whole, rather than the separate advantage of a particular locality. The clauses of the Constitution referred to are couched in clear and explicit language; and the cases cited are directly in point.

The judgment of the County Court is reversed, and judgment upon the agreed facts is rendered, that the respondent is not guilty and that he be discharged.

ADDRESS BY SENATOR CULLOM.

SENATOR Shelby M. Cullom, one of the authors of the Interstate Commerce Law, at a recent session of the Illinois Grain Merchants' Association, at Springfield, Ill., delivered the following address on the Law. As a brief explanation of the design of the Act, bearing upon its construction, its source will add both interest and value to its matter:

I may be allowed to say in the outset that since the passage of the Law I have so far been silent in relation to the Act or its effect upon the country, preferring to wait for a time after the Law had been in force and until

the Commission appointed to enforce it had got fairly to work in the performance of their responsible duties. The Law has not yet been in force quite three months; yet in this brief time the business of the country and the rail-

roads have, in a large degree, adjusted themselves to the new Law; and, I may be mistaken, but I venture to say that I doubt not that you gentlemen and the farmers with whom you have to deal feel that you have so far been benefited by the Act.

The enactment of that Law at the last session of Congress marked the beginning of a new era in railway administration, and was the culmination of a memorable and long continued struggle for supremacy between the people of this country and the combined power of the railway corporations which the people brought into being, but which have assumed to be independent of control by the power that created them. This was the real issue, although it was ingeniously involved in innumerable side issues, and all the powerful influences possessed by vast aggregations of capital were arrayed together with the common purpose of preventing the Federal Government from assuming to control the operations of the railroads subject to its authority.

The contest which has been waged of late years in Congress was but a continuation of the struggle inaugurated here in Illinois and in neighboring States years ago, and which finally resulted in the notable triumph achieved by the people in the decisions by the United States Supreme Court in the so-called "*Granger Cases*" and in the establishment of state railroad regulation. Whatever may be found upon trial to be the merits or demerits of the new Law, I consider its enactment a great victory for the people, because its passage was a declaration by the Congress of the United States of its power over the subject under the Constitution, and that hereafter the power of the general government will be used to see that these great highways of traffic are conducted upon honest business principles for the common good, instead of, as in many cases, for the benefit of such localities and individuals or corporations as their managers might see fit to build up and favor.

It cannot be denied, and men engaged in the conduct of railroads will not deny, that in the management of the business of railroads there has not been exercised that regard for the rights of the people that there should have been.

The new Law is confessedly an experiment. Those who are responsible for its terms have never been disposed to claim that it was perfect, but it represented their best judgment after careful investigation. To put it in a little different way: it was the best Bill to which the two Houses of Congress could agree. It could not reasonably be expected that the intricacies and complications of the railroad problem which have puzzled the wisest minds of this and other Nations for years could be solved at the first attempt, but a good beginning has been made; a long stride in advance has been taken; and if we hold fast to the great advantages already gained, time and experience will render further progress safe and certain. The Act will not be repealed, and if any persons or corporations are imagining that it will, they may as well dismiss that expectation. Its substantial provisions have come to stay, because the people will find out, I trust.

if they have not already, that they are in the interest of the general welfare.

This new Law is often represented by those with whose accustomed privileges it has interfered, to be a vague, ambiguous, bungled affair, which its promoters did not understand and could not explain. This was the fashionable mode of attack upon the measure while it was pending in Congress, but that mode of attack has become less popular since the Law went into force, and those interested have been obliged to study its provisions. As a prominent railroad man said to me the other day, referring to such statements: "We quit saying that some time ago; we know too well what it means." So far as my observation goes, it is those who are attacking the Law and seeking to overthrow it who profess to find difficulty in understanding its meaning. It is in their way. They want to get rid of it. The true ground of objection on the part of such critics is to be found in the purposes and not in the alleged ambiguity of the Law.

The fact is that there is nothing particularly new, novel, or startling in its provisions. Similar provisions are found in the constitutions and statutes of many of the States, and in the laws of other countries. Much of the language used in the most important sections has a settled meaning, having been judicially construed either in this country or in England; and this is specially true of some of the phrases which have been most generally attacked as meaningless and ambiguous. Briefly stated, the great purpose of the Law is to prevent unjust discrimination,—about all the wrong doing by common carriers in dealing with people. The Law requires that all charges shall be reasonable and just; it prohibits all kinds of unjust discriminations between individuals; it prohibits undue or unreasonable preferences or advantages in favor of persons or places or any particular description of traffic. It requires reasonable and equal facilities to be extended by each railroad to others for the interchange of traffic, and it prohibits pooling.

Surely there is nothing unreasonable or outrageous in these requirements. They simply apply the cardinal principles of the Declaration of Independence to the management of railroads by declaring that all men shall be equal in the eye of the railroad manager, and that all who are situated alike shall be treated without fear or favor.

The need of such a declaration has been shown more plainly than ever before by the nature and character of the complaints made against the enforcement of the Law. The entire system of railroad management has been honeycombed with discriminations—some justifiable, but more wholly without excuse. The new Law, to a large degree, revolutionized the methods of railway ratemaking that previously prevailed, and it was to be expected that when it went into operation it would seriously disturb the existing conditions of business. The object of the Law is to secure the greatest good to the greatest number, and this could not be accomplished without interfering with the interests of those who were the recipients of undue and unreasonable advantages. It was necessary that those who had previously been

especially favored should be denied these privileges for the common good. The readjustment of business to the changed condition of affairs, brought about when the Law took effect, has taken place with very much less friction or commercial disturbance than I had anticipated.

The prohibition of a greater charge for a shorter than for a longer haul is objected to, on the ground that it is an interference with the natural laws of trade and of trade centers. My answer to this is that for many years past the railroads of the country have so absolutely controlled our internal commerce that we have no means of knowing what are the natural channels of trade, or what would be the effect of the natural laws of trade upon many, at least, of the present recognized commercial centers.

What the critics of the Law call the natural centers of trade are centers created by railway favoritism, which has diverted trade from its natural channels into artificial ones, at the expense of less favored localities. So far the chief opposition to the Law by the railroads has been directed against its fourth section, which provides for the longer distance on the same line and in the same direction, etc. This section was attacked with such earnestness and by so many railroads and combinations of roads, immediately after the Law took effect and the Commission was appointed, that the Commission was induced to make orders in several cases suspending the operation of that section as to certain roads, or rather to grant relief to certain roads from the operation of that section of the Law in the transaction of their business.

The Commission has been somewhat severely criticised in certain quarters for so doing. It has recently given notice that the relief will not be continued after the specified time expires. I thought the Commission was straining the authority granted to it, in its action in granting relief; and if it had the power it was perhaps a mistake to exercise it to the extent it did. The Commissioners had just come into office a few days before the Law became in force. There had been a constant expression of fear on the part of some, and the declaration of many men operating along the lines of road, that a compliance with that section would injure them and the business of the country, and, under all the circumstances, I am not surprised at the action of the Board.

They have now their grip and feel that they comprehend the situation; and their recent opinion on petitions for relief under section 4 of the Act indicates that they intend to allow section 4 to have the same force and effect as other provisions of the statute, except in such cases as clearly call for relief after investigation in special cases. I trust that relief will only be granted after careful investigation. It is easy to abuse a public officer, and the most ignorant can do it and frequently do, with more freedom than do the wise. And I feel like saying, and I take pleasure in saying, that

while the Commission may have made a mistake in giving relief for the short haul clause to the extent they did in the outset, yet I have no question that they believed the course they pursued was the wise one; and I am not prepared to say with confidence that it was not. I believe they are doing the best they can, and I do not believe the Law would result in any substantial good to the people without such a special tribunal for its enforcement.

It is fashionable to attack commissioners charged with a special duty, but I trust that the Commission charged with the great work of protecting the people in their dealings with railroads engaged in interstate commerce will be upheld and strengthened in the performance of their duty. It is their duty to enforce the Law, and I wish to say that I trust, now that they have made known to the railroads and the people their general views on the question of the construction of the statute, as it applies to the operation of railroads and as it affects their own action, that they will give more definite and specific attention to the question whether the schedules of rates of freight filed in their office are made out according to law, without unjust discrimination or extortion against any person, and also to the direct question whether the roads are actually complying with the Law. It is charged that they are not. It is charged that they are trying to so operate by appearing to comply with the statute as to make the Law offensive to the people and thereby secure its repeal. I make no such charge, because I do not know what the fact is; but railroad companies and their managers need not attempt to deceive the people, and I trust they will not, for any such attempt will fail, and only prolong the struggle.

There should be no antagonism between the shipper and the common carriers. The one is necessary to the other. You, gentlemen, engaged in the grain trade cannot get along without the railways; and I am sure so many railroads can not be supported without your aid. So the relation between the railroads and the people should be thoroughly friendly, their prosperity being dependent on each other. The great purpose, as I said, is to prevent unjust discrimination and to bring the common carriers down to legitimate, fair, straightforward business dealing. The railroads are common carriers. They are in a sense agents of the people; they occupy a different relation to the public from the merchant or the farmer.

But, gentlemen, I promised you that I would be brief. This subject is too great to discuss in a few minutes' time. If the Law in its general scope and purpose is right, stand by it; if it is imperfect, or needs modifying, strengthening, or in any wise amending, let the Commission and Congress know wherein; and I trust it will not be long before we shall have a perfected statute that will secure justice to the people and the railroads alike, and that increased prosperity may result to all.

THE INTERSTATE COMMERCE COMMISSION.

THE DRESSED MEAT CASES.

ARMOUR & Co., represented by *Messrs. Campbell & Custer*; G. H. Hammond & Co., by *Mr. Don M. Dickinson*; Nelson Morris & Co., by *Messrs. Dupee, Judah & Willard*; East St. Louis Dressed Beef & Canning Co., and Swift & Co., both by *Mr. Albert H. Veeder*.

The complaints of these Companies are substantially alike.

It is expected that the Commission will hear the cases in Chicago or Detroit at some future date. We learn that there is to be a strong contest on this matter and therefore give one sample petition in full,—that of

Nelson Morris & Co. v. Lake Shore Road.

Your petitioners, Nelson Morris & Company, complain to this honorable Commission of the aforesaid Lake Shore & Michigan Southern Railroad Company, a common carrier, for violating the Interstate Commerce Law:

1. That your petitioners now are and for fifteen years last past have been engaged in the business of slaughtering cattle and sheep, at the Union Stock Yards, near Chicago, and in shipping dressed beef, sheep and other meat provisions and products from said Union Stock Yards to points on the eastern seaboard, to wit: New York, Philadelphia, Boston, Baltimore, and to other points in, to and through States east of those from which said shipments are made.

2. That in the course of such business your petitioners have given and are now giving, from time to time, dressed meats and meat provisions for such shipment to the said Lake Shore & Michigan Southern Railway Company; that said Railroad Company receives the same for carriage to said terminal points, or some of them, and under some contract or arrangement between said Railroad Company and other railroad companies, carries the same to said terminal points; and that said Lake Shore & Michigan Southern Railway Company is a common carrier, engaged with other common carriers in the transportation of property wholly by railroad, or partly by railroad and partly by water, under a common control, management and arrangement for a continuous carriage or shipment of such and other property from one State of the United States, either directly or through a foreign country, to places in other States of the United States, and said common carrier is subject to the provisions of said Act as aforesaid, and has published (as required by said Act) its schedule showing the rates and charges for the transportation of property which said common carrier has established, and which are now in force, between said Union Stock Yards and said eastern points, as aforesaid.

3. That for the purpose of having such dressed meats carried, your petitioners have provided and provide, at their own expense, sidings at said point of shipment and at points of destination when required; furnish ice; provided the labor for re-icing in transit; load and unload the cars; and ship said meats at their own risk of refrigeration and condition, thus relieving said common carrier from all special

expense, labor and risk attending the transportation of such property.

4. That since the United States Statute, known as "An Act to Regulate Commerce," went into effect, to wit: April 5, 1887, your petitioners have been compelled to pay, in conformity with the schedule rates established by said common carrier, for the carriage of dressed beef, sheep and hogs, minimum weight of car load 20,000 pounds, from Union Stock Yards to New York or Boston, the rate of sixty-five cents per 100 pounds; to Philadelphia the rate of sixty-three cents per 100 pounds; to Baltimore the rate of sixty-two cents per 100 pounds, and to other eastern points rates in like proportion. That the rates now exacted are much greater than the average rate exacted for several years prior to April 5, 1887, as is shown by the following table of rates compiled from published tariffs from Chicago to New York (being the basis of rates from western to eastern points), from May 1, 1881, to date, although your petitioners charge that those rates were unjust and unreasonable.

Table of Rates on Dressed Beef.

Date in effect.	Rate per 100 lbs.
May, 1881, to April 10, 1882	- - - 40 cents.
April 10, 1882, to May 6, 1884	- - - 64 "
May 6, 1884, to August 30, 1884	- - - 48 "
August 30, 1884, to December 8, 1884	- - - 32 "
December 8, 1884, to May 1, 1885	- - - 70 "
May 1, 1885, to July 1, 1885	- - - 52½ "
July 1, 1885, to March 1, 1886	- - - 42½ "
March 1, 1886, to date	- - - 65 "

The average rate by months, as appears from said table, was fifty-four cents per 100 lbs.

The rate now exacted, and which has been exacted since said Act went into force, is more than 20 per cent greater than the average tariff rate for the same service for six years prior to that date.

Your petitioners insist that the tariff rates charged by said common carrier, as shown by said table, have at all times been excessive, unjust, and unreasonable, except as to the following rates, which were more nearly what your petitioners claim should have been charged:

Date in effect.	Rate per 100 lbs.
May 1, 1881, to April 10, 1882	- - - 40 cents.
August 30, 1884, to December 8, 1884	- - - 32 "
July 1, 1885, to March 1, 1886	- - - 42½ "

The above shows that for more than twenty-two months (nearly one third of the time covered by said table) the average rate was but forty cents per 100 lbs.

Your petitioners insist that said last mentioned average rate was a remunerative rate to said common carrier, and was largely in excess of the rate charged by said common carrier for a like and contemporaneous service in the transportation of a like kind of property under substantially similar circumstances and conditions, as will more fully appear by tables hereinafter referred to.

5. Your petitioners charge the fact to be that the rates now demanded as aforesaid are unjust and unreasonable rates for the service rendered; and they have requested in writing, said Railroad Company to make a reduction in said rates of freight so charged, as aforesaid, and to make the same just and reasonable; but

the said common carrier has neglected and refused to grant such request.

6. That the unjust and unreasonable rates complained of are fixed by said common carrier by an agreement between it and certain other common carriers, which are the owners of or control competing lines of transportation, and which are subject to the provisions of said Act of Congress. And your petitioners charge that said rate is so fixed by agreement, as aforesaid, to destroy competition between them, and that said common carrier refuses, because of such agreement, to make your petitioners a just and reasonable rate, based upon the service rendered, as is its duty to do; that the purpose of said combination between said common carriers is to prevent your petitioners and other shippers from obtaining a just and reasonable rate to which, by the provisions of said Act, they are entitled.

Your petitioners believe that said common carrier would make and establish a much less rate for the service performed as aforesaid, but is prevented from so doing by reason of the combination aforesaid.

7. That said common carrier demands and collects a much greater compensation for services rendered in transportation of dressed beef, sheep and hogs, from the initial to the terminal points herein mentioned than for like and contemporaneous service rendered in the transportation of any other like kind of traffic or property under substantially similar circumstances and conditions; that the rates of transportation charged by said common carrier upon dressed beef, sheep and hogs, and the rates upon meat provisions and beef, sheep, and hog products (meats requiring refrigeration in transit), such as side meats partly cured or cured; beef, pork or pickled tongues, in barrels or tierces; loose green hams, loose salt meats, salt tongues, sugar cured hams, beef hams and pork hams—like kinds of property with dressed beef, sheep and hogs, transported under similar circumstances and conditions, from the following initial to the following terminal points, are as shown in the annexed table. The rates to other points are in like proportion:

Chicago & Union Stock Yards	On dressed beef, sheep and hogs per 100 lbs. (in refrigerator cars.)	On side meat, pork and beef hams in tierces or barrels, salt and pickled tongues, loose green hams and other similar meat, provisions requiring refrigeration in C. L. per 100 lbs. (in refrigerator cars.)
To N. Y.	65 cents.	80 cents.
To Philad'a	63 cents.	28 cents.
To Balt'm're	62 cents.	27 cents.

So that, for the transportation of dressed beef, sheep, and hogs, between said initial and terminal points, thirty-five cents per 100 lbs more is demanded than for the transportation of other meat provisions, although the car and train, the initial and terminal points, the length, direction and character of haul, the product and its value, and every other condition and circumstance are the same, except said difference in rates; while the responsibility of the carrier is less because the dressed meats are carried at owner's risk of refrigeration and condition, while the provisions are carried at carrier's risk of refrigeration and condition,

thus reducing the liability of the carrier; the dressed meats are also loaded by the shipper and unloaded by the consignee, while provisions are loaded by the shipper and unloaded by the carrier. Yet, notwithstanding these facts, the charges for transportation of dressed beef, sheep, and hogs, are 116½ per cent more than for the transportation of meat provisions.

Your petitioners further show that said provision rate is fixed by said common carrier as above stated, and that it is an ample and remunerative rate for the service rendered. That such freight at said rate is eagerly sought for by said common carrier. That such rate is an established rate, and has been maintained for many years without material variation, as will appear from the annexed table compiled from published tariffs or schedules of rates for carrying provisions in refrigerator cars from Chicago to New York, during the period named from June 15, 1881, to date (the rates to other eastern points being in like proportion).

Table of Rates on Meat Provisions.

Date in effect	Rate per 100 lbs.
June 15, 1881, to March 13, 1882	- - 25 cents.
March 13, 1882, to December 1, 1882	- - 30 "
December 1, 1882, to April 23, 1883	- - 35 "
April 23, 1883, to November 26, 1883	- - 30 "
November 26, 1883, to January 5, 1884	- - 35 "
January 5, 1884, to January 14, 1884	- - 25 "
January 14, 1884, to March 14, 1884	- - 35 "
March 14, 1884, to March 22, 1884	- - 25 "
March 22, 1884, to June 24, 1884	- - 20 "
June 24, 1884, to July 21, 1884	- - 25 "
July 21, 1884, to March 16, 1885	- - 30 "
March 16, 1885, to November 23, 1885	- - 25 "
November 23, 1885, to December 20, 1885	- - 30 "
December 20, 1885, to April 1, 1887	- - 35 "
April 1, 1887, to date	- - 30 "

The above shows that the average rate on provisions for the last six years was twenty-nine cents per 100 lbs.

Your petitioners show that the difference between the rate charged on dressed beef, sheep and hogs and that on meat provisions is excessive, unreasonable and unjust, as will appear by a comparison of the difference in said rates in the published tariffs of railroads doing the same business from the same initial points to southern and southeastern points, as well as eastern points.

Table of Rates to Southern Points, February 7, 1887.

From Chicago and Union Stock Yards.	Provisions per 100 lbs. Boxed or loose.	Fresh meats. Per 100 lbs. in refrigerator cars.
	24,000 per car.	24,000 per car.
To Atlanta, Ga. - -	50 cents.	55 cents.
To Charleston, S. C. - -	46 "	51 "
To Macon, Ga. - -	42 "	57 "
To Montgomery, Ala. - -	45 "	50 "
To Savannah, Ga. - -	46 "	51 "
To Jacksonville, Fla. - -	46 "	51 "
To Mobile, Ala. - -	35 "	40 "
To Pensacola, Fla. - -	43 "	48 "

Table of Rates to Ohio River Points, April 5, 1887.

From Chicago and Union Stock Yards.	Provisions per 100 lbs. 25,000 per car.	Fresh meats. per 100 lbs.
To Cincinnati and adjacent points - -	14 cents.	19 cents.
To Louisville - -	16 "	21 "
To Jeffersonville, Ind. - -	14 "	19 "
To New Albany, Ind. - -	14 "	19 "
To Evansville, Ind. - -	14 "	19 "
To Cairo, Ill. - -	14 "	19 "

And your petitioners further show that the

excessive difference between the rate to eastern points charged on dressed beef, sheep and hogs and that on meat provisions is unjust and unreasonable and an unusual one, as will appear from the following table showing rates made by western roads on the same kind of property taken under similar circumstances and conditions, and transported from Omaha to Chicago:

Table of Rates from Omaha to Chicago.

On the Following Freight in Refrigerator Cars in Car Loads, May 3, 1887.

Provisions	- - -	30 cents.	Per 100 lbs.
Dressed beef	- - -	30 28-100 cents.	"
Dressed hogs	- - -	25 cents.	"

From the foregoing table of rates charged by southern and western roads it will be seen that said roads regard a difference in rates on dressed beef, sheep and hogs over meat provisions of from twenty-eight one hundredths of one cent, per 100 lbs., to not over five cents per 100 lbs., as remunerative, and have so regarded it for years; in addition to which the railway commissioners of Illinois, after investigation, have classified "fresh meat in refrigerator cars, cars to be iced, loaded and unloaded by owner, in straight or mixed car loads, minimum weight 20,000 pounds, fourth class," which is the same classification as made by them of meats, dried or salted in bulk, in car loads; thus adding the weight of their judgment to the practice of such railroads as are untrammelled by any combination to compel the charging of an unjust and burdensome rate for the transportation of said dressed meats.

As further showing that the present rates on dressed beef, sheep and hogs, as compared with the rates on meat provisions charged by said common carrier, are unjust and unreasonable, your petitioners call the attention of the Commission to the published tariffs of said common carrier, making the difference between dressed hogs in common cars and dressed hogs in refrigerator cars five cents per 100 lbs.; thus establishing, by their own published tariffs, that the difference in transporting the same class of freight from said initial to said terminal points, even if loaded in different kinds of cars, should not be more than five cents per 100 lbs. (See Special Joint Tariff No. 50, issued February 1, 1887.) The rate therein on dressed hogs in common cars is sixty cents per 100 lbs., and in refrigerator cars sixty-five cents per 100 lbs., although the rates charged in both cases are excessive, unjust and unreasonable. That a difference of five cents per 100 lbs. in such cases has been considered ample by railroad companies is further shown by the following quotation from "Joint Through Freight Tariff and Classification No. 20, from Chicago to Southern Points, in effect February 7, 1887:"

"Fresh beef or other meat, and poultry released, in mixed car loads or in straight car loads of each, will be charged for 24,000 lbs. at five cents per 100 lbs. higher than class B;" i. e., provision rates.

From said tariff it will appear that the Chicago, St. Louis & Pittsburgh R. Co., one of the railroads which have established and are

maintaining in conjunction with said Lake Shore & Michigan Southern R. Co. said unjust and unreasonable rates, carries the same products over its own lines of railway from the same initial point, under like circumstances and conditions, to southern and southeastern points, at a difference between said kinds of freight of only five cents per 100 lbs., as shown by its published tariffs; while the difference made by the same road from the same initial point to eastern points is thirty-five cents per 100 lbs.

8. That said common carrier requires that when meat provisions and products other than dressed beef, sheep and hogs are loaded, either loose or in boxes, in refrigerator cars with dressed beef, sheep or hogs, the said products shall take the dressed beef rate, although when said meat provisions and products are carried separately in refrigerator cars in car load lots, the said common carrier charges thirty cents per 100 lbs. therefor, so that when said articles are carried in refrigerator cars in which there is dressed beef, sheep or hogs, the said common carrier charges from Chicago to New York thirty-five cents per 100 lbs. more, or sixty-five cents per 100 lbs., on said meat products and provisions, and that said rate so exacted upon other meat provisions in a car in which there is dressed beef, sheep or hogs, is a higher rate than that charged for other like kinds of property under substantially similar circumstances and conditions.

That the above practice is arbitrary and unjust and contrary to the rules and customs of railways, and contrary to the practice of some of the eastern roads, which carry the same articles over their own rails from the same point to different destinations, is further illustrated by the following quotation from above "Joint Through Freight Tariff and Classification No. 20:" "Special note No. 1. Fresh beef or other meat, and poultry released, in mixed car loads, or in straight car loads of each, will be charged for 24,000 lbs., at five cents per 100 lbs., higher than class B;" i. e., provision rates.

9. Your petitioners further represent that the present rates demanded by said common carrier for the transportation of dressed beef, sheep and hogs, as hereinbefore set forth, subject that particular description of traffic to an unjust and unreasonable disadvantage.

10. That direct damage is being done your petitioners by reason of the premises.

Therefore, your petitioners have elected to apply to this honorable Commission and ask that a statement of the charges herein made be forwarded to said common carrier, and that said common carrier be called upon to satisfy this complaint, and to cease and desist from the violations of law herein complained of, and to make and establish its maximum rates for the carriage of dressed beef, sheep and hogs, as aforesaid, reasonable and just, and not to exceed the rates by it charged for the transportation of other like kinds of property under substantially similar circumstances and conditions, and to make reparation to your petitioners for the damage done them by reason of the violation of law complained of herein, as shall be determined by this honor-

able Commission, or to answer this complaint within a reasonable time to be fixed by this Commission.

Your petitioners pray for such other and further relief as this honorable Commission may deem proper.

UNITED STATES SUPREME COURT.

WESTERN UNION TELEGRAPH COMPANY, *Plff. in Err.*,
v.
William PENDLETON.

(From Lawyers' ed. U. S. Reports, Book 80.)

1. **Intercourse by telegraph between the States is interstate commerce.**
2. **A State has no authority to regulate the transmission of telegraphic messages into other States and their delivery therein.**
3. **The Statute of Indiana, which attempts to regulate the mode in which messages sent by telegraphic companies doing business in said State shall be delivered in other States, is void, such regulation being an interference with the freedom of interstate commerce.**

(Argued April 27, Decided May 27, 1887.)

IN ERROR to the Supreme Court of the State of Indiana. *Reversed.*

Statement of the case by *Mr. Justice Field*:

The Statute of Indiana declares that "Every electric telegraph company, with a line of wires wholly or partly in this State, and engaged in telegraphing for the public, shall, during the usual office hours, receive dispatches, whether from other telegraphing lines or from individuals; and on payment or tender of the usual charge, according to the regulations of such company, shall transmit the same with impartiality and good faith, and in the order of time in which they are received, under penalty, in case of failure to transmit, or if postponed out of such order, of one hundred dollars, to be recovered by the person whose dispatch is neglected or postponed; *Provided, however*, That arrangements may be made with the publishers of newspapers for the transmission of intelligence of general and public interest out of its order, and that communications for and from officers of justice shall take precedence of all others." Sec. 4176, R. S. Ind. 1881. And that "Such companies shall deliver all dispatches, by messenger, to the persons to whom the same are addressed, or to their agents, on the payment of any charges due for the same; *Provided*, Such persons or agents reside within one mile of the telegraphic station or within the city or town in which such station is." Sec. 4178, *Id.*

The present action is brought by William Pendleton, the plaintiff below, to recover of the Western Union Telegraph Company the penalty of \$100 prescribed by the above statute, for failing to deliver at Ottumwa, in Iowa, a message received by it in Indiana for transmission to that place. The complaint, as finally amended, alleges that the defendant below, the Western Union Telegraph Company, is a corporation organized and subsisting under the laws of Indiana, with a line of wires from Shelbyville, in that State, to Ottumwa, in Iowa;

that on the 14th of April, 1883, at thirty-five minutes past 5 o'clock in the afternoon, at which time the Company was engaged in telegraphing for the public, the plaintiff delivered to its agent at its office in Shelbyville, the following telegram for transmission to its office in Ottumwa, viz.:

"April 14th, 1883.

To Rosa Pendleton; care James Harker, near city graveyard, Ottumwa, Iowa.

Have you shipped things? If not, don't ship. Answer quick.

Wm. Pendleton;"

that upon its delivery, the plaintiff paid the agent sixty cents, being the amount of the charge required for its transmission from Shelbyville to Ottumwa; that, without any fault or interference on his part, the Company, after transmitting the message to Ottumwa, where it was received at half past seven in the afternoon of that day, failed to deliver it either to Rosa Pendleton or to James Harker, whereby the plaintiff sustained damage, and the defendant became liable for \$100, under the Statute of Indiana; for which sum plaintiff demands judgment.

To this Complaint the Company answered, admitting the receipt of the telegram as alleged, and setting up that it transmitted the message with impartiality and good faith, in the order of time in which it was received, and without delay, to its office in Ottumwa, Iowa, where it was received, as alleged, at half past seven of that day; that James Harker, to whose care the message was directed, lived more than one mile from the telegraph station at Ottumwa; that, in accordance with the usual custom of the office, the message was, without delay, placed in the postoffice of that town, with proper stamp thereon, and duly addressed; and that the telegram was received by the person to whom it was addressed on the following morning, April 15, 1883, at about 9 o'clock.

The answer further set forth that the duties and liabilities of telegraph companies in Iowa, and the transmission and delivery of the telegrams within the State, are regulated by a special statute of that State, which is as follows, viz.: "Any person employed in transmitting messages by telegraph must do so without unreasonable delay; and anyone who willfully fails thus to transmit them, or who intentionally transmits a message erroneously, or makes known the contents of any message sent or received to any person, except him to whom it is addressed or to his agent or attorney, is guilty of a misdemeanor. The proprietor of a telegraph is liable for all mistakes in transmitting messages made by any person in his employment, and for all damages resulting from a failure to perform any other duties required by law;" that by that statute the defendant was not required to deliver telegrams by messenger to the persons to whom they were addressed; that in the City of Ottumwa it had established a certain district within which it delivered tel-

egrams by messenger; and that on the receipt of the telegram in question at Ottumwa it was ascertained that Harker, to whose care it was addressed, did not reside within the delivery district, but outside of it, and more than one mile from the defendant's office, and that, in accordance with the custom and usage of the office, and in order to facilitate the delivery of the message, a copy of the telegram was promptly placed in the postoffice at Ottumwa, with proper address, and delivered as stated above.

To this answer the plaintiff demurred; the Circuit Court of the State sustained the demurrer; and, the defendant electing to stand upon its answer, judgment was rendered for the plaintiff for \$100, which, on appeal to the Supreme Court of the State, was affirmed, and the Company brings the case here for review.

Messrs. Augustus L. Mason, Joseph E. McDonald, and John M. Butler, for plaintiff in error:

The business of telegraphing from one State to another is interstate commerce, within the meaning of the eighth section of the first article of the Constitution of the United States.

Penacola Tel. Co. v. Western Union Tel. Co. 96 U. S. 1 (24: 708); *Telegraph Co. v. Texas*, 105 U. S. 460 (26: 1067).

The power of Congress to regulate interstate commerce is exclusive in all cases where the subject over which the power is exercised is in its nature national, or admits of one uniform system or plan of regulation. The inaction of Congress upon such a subject is equivalent to a declaration that it shall be free from all state regulation or interference.

Gloucester Ferry Co. v. Pa. 114 U. S. 196 (29: 158); *Brown v. Houston*, 114 U. S. 622 (29: 257); *Pickard v. Pullman Southern Car Co.* 117 U. S. 34 (29: 785); *Wabash, St. L. & P. R. R. Co. v. Ill.* 118 U. S. 557 (30: 244); *Walling v. Mich.* 116 U. S. 454 (29: 693); *Corson v. Md.* 120 U. S. 502 (30: 699); *Case of The State Freight Tax*, 82 U. S. 15 Wall. 232 (21: 146); *Cooley v. Port Wardens*, 53 U. S. 12 How. 299 (18: 996); *Gilman v. Phila.* 70 U. S. 3 Wall. 713 (18: 96); *Hall v. De Cuir*, 95 U. S. 485 (24: 547), on page 497 (551); *R. R. Co. v. Huse*, 95 U. S. 465 (24: 527).

The subject over which the power of regulation is attempted to be exercised in this case is in its nature national and properly admits only of one uniform system or plan of regulation.

Telegraph Co. v. Texas, 105 U. S. 460, 466 (24: 1067, 1068).

Acts rendered penal by law are penal only because the law of the place where committed makes them so.

Graham v. Monsergh, 22 Vt. 543; *Richardson v. Burlington*, 33 N. J. L. 192; *Slack v. Gibbs*, 14 Vt. 357; *Whitford v. Panama R. R. Co.* 23 N. Y. 465; *Story, Conf. Law*, §§ 18, 20; *Hutchinson, Carriers*, § 777; *Nashville etc. R. R. Co. v. Eakin*, 6 Cold. (Tenn.) 582; *Crowley v. Panama R. R. Co.* 30 Barb. 99; *Leonard v. Steam Nav. Co.* 84 N. Y. 48; *Shedd v. Moran*, 10 Bradw. 618.

(No counsel appeared for defendant in error.)

Mr. Justice Field, after stating the case as above, delivered the opinion of the court, as follows:

The contention of the Western Union Telegraph Company is that the law of Indiana is in conflict with the clause of the Constitution vesting in Congress the power to regulate commerce among the States.

In *Telegraph Co. v. Texas*, 105 U. S. 460 (26: 1067), it was decided by this court that intercourse by the telegraph between the States is interstate commerce. Its language was: "A telegraph company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods. Both companies are instruments of commerce, and their business is commerce itself. They do their transportation in different ways, and their liabilities are in some respects different; but they are both indispensable to those engaged to any considerable extent in commercial pursuits."

Although intercourse by telegraphic messages between the States is thus held to be interstate commerce, it differs in material particulars from that portion of commerce with foreign countries and between the States which consists in the carriage of persons and the transportation and exchange of commodities, upon which we have been so often called to pass. It differs not only in the subjects which it transmits, but in the means of transmission. Other commerce deals only with persons, or with visible and tangible things. But the telegraph transports nothing visible and tangible; it carries only ideas, wishes, orders and intelligence. Other commerce requires the constant attention and supervision of the carrier for the safety of the persons and property carried. The message of the telegraph passes at once beyond the control of the sender, and reaches the office to which it is sent instantaneously. It is plain, from these essentially different characteristics, that the regulations suitable for one of these kinds of commerce would be entirely inapplicable to the other.

In the consideration of numerous cases, in which questions have arisen relating to ordinary commerce with foreign countries and between the States, this court has reached certain conclusions as to what subjects of commerce the regulation of Congress is exclusive, and indicated on what subjects the States may exercise a concurrent authority until Congress intervenes and assumes control. *Cooley v. Board of Wardens*, 53 U. S. 12 How. 299 [18:996]; *Gilman v. Phila.* 70 U. S. 3 Wall. 713 [18:96]; *Crandall v. Nevada*, 73 U. S. 6 Wall. 35 [18:745]; *Welton v. Missouri*, 91 U. S. 275 [23:347]; *Henderson v. Mayor*, 92 U. S. 259 [23:543]; *Inman Steamship Co. v. Tinker*, 94 U. S. 238 [24:118]; *Hall v. De Cuir*, 95 U. S. 485 [24:547]; *County of Mobile v. Kimball*, 102 U. S. 691 [26:238]; *Transportation Co. v. Parkersburg*, 107 U. S. 691 [27:584]; *Gloucester Ferry Co. v. Pa.* 114 U. S. 196 [29:158]; *Wabash, St. L. & P. R. Co. v. Ill.* 118 U. S. 557 [30:244]; and *Robbins v. Shelby Tax. Dist.* 120 U. S. 489, 493 [30:694]. But with reference to the new species of commerce, consisting of intercourse by telegraphic messages, this court has only in two cases been called upon to inquire into the power of Congress and of the State over the subject. In *Penacola Tel. Co. v. Western Union Tel. Co.* 96 U. S. 1 [24:708], this court had before it the Act of Congress of July 24, 1866, 14 Stat. at L. 221, "To aid in the construction of telegraph lines,

and to secure the use of the same for postal, military and other purposes;" and it held that the Act was constitutional so far as it declared that the erection of telegraph wires should, as against state interference, be free to all who accepted its terms and conditions, and that a telegraph company of one State accepting them could not be excluded by another State from prosecuting its business within her jurisdiction. In *Telegraph Company v. Texas*, 105 U. S. 460 [supra], from the opinion in which we have quoted above, it was held that a statute of Texas imposing a tax upon every message transmitted by a telegraph company doing business within its limits, so far as it operated on messages sent out of the State, was a regulation of foreign and interstate commerce, and, therefore, beyond the power of the State.

In these cases the supreme authority of Congress over the subject of commerce by the telegraph with foreign countries or among the States is affirmed, whenever that body chooses to exert its power; and it is also held that the States can impose no impediments to the freedom of that commerce. In conformity with these views the attempted regulation by Indiana of the mode in which messages sent by telegraphic companies doing business within her limits shall be delivered in other States cannot be upheld. It is an impediment to the freedom of that form of interstate commerce, which is as much beyond the power of Indiana to interpose, as the imposition of a tax by the State of Texas upon every message transmitted by a telegraph company within her limits to other States was beyond her power. Whatever authority the State may possess over the transmission and delivery of messages by telegraph companies within her limits, it does not extend to the delivery of messages in other States.

The object of vesting the power to regulate commerce in Congress was to secure, with reference to its subjects, uniform regulations, where such uniformity is practicable, against conflicting state legislation. Such conflicting legislation would inevitably follow with reference to telegraphic communications between citizens of different States, if each State was vested with power to control them within its own limits. The transmission of intelligence by telegraph and public interest out of its mission, communications for and from of each State shall take precedence of all above. *sec. 4176, R. S. Ind. 1881.* And that for companies to be established by charter, to be addressed in the manner and order of the delivery of telegrams, as well as of the delivery of communications for and from of each State. Indiana, as seen by its judges and officers of justice shall take precedence, and that arrangements may be made with publishers of newspapers for the transmission of intelligence of general and public interest of its order, but that all other messages shall be transmitted in the order in which they are received; and punishes as an offense a disregard of this rule. Her attempt, by penal statutes, to enforce a delivery of such messages in other States, in conformity with this rule, could hardly fail to lead to collision with their state laws. Other States might well direct that telegrams on many other subjects should have precedence in delivery within their limits over some of these, such as telegrams for the attendance of physicians and surgeons in case of sickness or accident, telegrams in case of fire or other

grams respecting the sickness or death of relatives.

Indiana also requires telegrams to be delivered by messengers to the persons to whom they are addressed, if they reside within one mile of the telegraph station, or within the city and town in which such station is; and the requirement applies, according to the decision of its supreme court in this case, when the delivery is to be made in another State. Other States might conclude that the delivery by messenger to a person living in a town or city being many miles in extent was an unwise burden, and require the duty within less limits; but if the law of one State can prescribe the order and manner of delivery in another State, the receiver of the message would often find himself incurring a penalty because of conflicting laws, both of which he could not obey. Conflict and confusion would only follow the attempted exercise of such a power. We are clear that it does not exist in any State.

The Supreme Court of Indiana placed its decision in support of the statute principally upon the ground that it was the exercise of the police power of the State. Undoubtedly, under the reserved powers of the State, which are designated under that somewhat ambiguous term of police powers, regulations may be prescribed by the State for the good order, peace and protection of the community. The subjects upon which the State may act are almost infinite; yet in its regulations with respect to all of them there is this necessary limitation, that the State does not thereby encroach upon the free exercise of the power vested in Congress by the Constitution. Within that limitation it may undoubtedly make all necessary provisions with respect to the buildings, poles and wires of telegraph companies within its jurisdiction which the comfort and convenience of the community may require.

It follows from the views expressed that the judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion; and it is so ordered.

PHILADELPHIA & SOUTHERN MAIL

AGENCY COMPANY, *Pff. in Err.*,
The answer.

and liabilities OF WEALTH OF PENNSYLVANIA.

and the transmission of telegrams within the State.

statute of that State not constitutionally im-

posed: "Any person engaged in the business of transmitting telegrams by telegraph must observe the delay; and any one derived from the State to transmit them, or persons and property, or a message erroneously transmitted to different States, or contents of any message, and freights

of telegrams, except him, and the agent or attorney of the State, or the proprietor of a different

1. A State cannot mistake in its power of corporate upon a person in his power of its gross receipts, the defendant, and to and from foreign countries, it had established it delivered

2. The regulation of telegrams by messengers, persons and goods between different States, and between the States, and between the States, is within the power of Congress.

4. Where a subject of interstate commerce is national in character, or admits of only one uniform system of regulation, the power of Congress is exclusive; and its failure to make express regulations indicates its will that the subject shall be free.

5. If a state statute imposing a tax upon interstate commerce is unconstitutional, it is not cured by including in its provisions subjects within the jurisdiction of the State.

The case of the *Philadelphia & Reading R. R. Co. v. Pennsylvania*, 15 Wall. 304, bk. 31, L. ed. 184, criticised.

(Argued April 1, 1897. Decided May 27, 1897.)

IN ERROR to the Supreme Court of the State of Pennsylvania. *Reversed.*

The history and facts of the case appear in the opinion of the court.

Mr. Morton P. Henry, for plaintiff in error.
Messrs. W. S. Kirkpatrick, *Atty-Gen. of Pennsylvania* and John F. Sanderson, *Deputy Atty-Gen. of Pennsylvania*, for defendant in error.

Mr. Justice Bradley delivered the opinion of the court:

The question in this case is whether a State can constitutionally impose upon a steamship company, incorporated under its laws, a tax upon the gross receipts of such company derived from the transportation of persons and property by sea, between different States, and to and from foreign countries.

By an Act of the Legislature of Pennsylvania, passed March 20, 1877, it was, amongst other things, enacted as follows, to wit:

"That every railroad company, canal company, steamboat company, slack water navigation company, transportation company, street passenger railway company, and every other company now or hereafter incorporated by or under any law of this Commonwealth, or now or hereafter incorporated by any other State, and doing business in this Commonwealth, and owning, operating, or leasing to or from another corporation or company any railroad, canal, slack water navigation, or street passenger railway, or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freight or passengers, and every telegraph company incorporated under the laws of this or any other State, and doing business in this Commonwealth, and every express company, and any palace car and sleeping car company, incorporated or unincorporated, doing business in this Commonwealth, shall pay to the State Treasurer, for the use of the Commonwealth a tax of eight tenths of 1 per centum upon the gross receipts of said company for tolls and transportation, telegraph business, or express business."

A similar Act was passed by the same Legislature on the 7th of June, 1870.

By the terms of these Acts, returns of the gross receipts are required to be made every six months to the auditor-general, who is to

tax is assessed by him and charged against the company.

Under and by virtue of these Acts, the Auditor-General of the State, in October, 1892, charged the appellant, the Philadelphia & Southern Mail Steamship Company, taxes upon its gross receipts for the years 1877, 1878, 1879, 1880 and 1881, all of which receipts were derived from freight and passage money between the Ports of Philadelphia and Savannah, and in foreign trade from New Orleans, and a small amount for charter parties in the like trade. The tax thus charged against the Company for the five years in question amounted to about \$8,500, and, with accumulated interest and penalties, to over \$9,000. After serving the account upon the Company, an action was brought for its recovery in the Common Pleas of Dauphin County, at Harrisburg. The defendant pleaded that it was a Steamship Company, "operating sea going steamships engaged in the business of ocean transportation between different States of the United States and between the United States and foreign countries; and that all the said steamships of the said defendant were duly enrolled or registered under the laws of the United States for the coasting or foreign trade of the United States; and that the gross receipts so returned to the Auditor-General, upon which a tax has been levied by the Commonwealth of Pennsylvania, were received by defendant for freight and passengers carried in the said steamships on the ocean and on the navigable waters of the United States, between the State of Pennsylvania and other States of the United States, and between the States of the United States and foreign countries, and for the charter and hire of the said steamships to other parties in such trade and business; and that no part of the said gross receipts was received for the transportation of freight and passengers between places within the State of Pennsylvania, or for the hire and use of the said steamships within the State of Pennsylvania."

On the trial of the cause the parties entered into an agreement as to the facts, showing the gross receipts for each year, in each branch of the Company's trade; which facts supported the allegations of the plea. A trial by jury was dispensed with, and the court gave judgment for the Commonwealth for the principal of the tax and interest from the time of commencing suit. Exceptions were taken, on the ground that the judgment was in conflict with the clauses of the Constitution of the United States giving to Congress the power to regulate commerce with foreign Nations and among the several States. The judgment, being removed by writ of error to the Supreme Court of Pennsylvania, was affirmed by that court, and its judgment is now before us for review.

The question which underlies the immediate question in the case is whether the imposition of the tax upon the Steamship Company's receipts amounted to a regulation of, or an interference with, interstate and foreign commerce, and was thus in conflict with the power granted by the Constitution to Congress? The tax was levied directly upon the receipts derived by the Company from its fares and freights for transportation of persons and goods be-

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5. If a state statute imposing a tax upon interstate commerce is unconstitutional, it is not cured by including in its provisions subjects within the jurisdiction of the State.

The case of the Philadelphia & Reading R. Co. v. Pennsylvania, 15 Wall. 284, bk. 31, L. ed. 164, criticised.

(Argued April 7, 1887. Decided May 27, 1887.)

IN ERROR to the Supreme Court of the State of Pennsylvania. *Reversed.*

The history and facts of the case appear in the opinion of the court.

Mr. Morton P. Henry, for plaintiff in error.

Messrs. W. S. Kirkpatrick, Atty-Gen. of Pennsylvania and *John F. Sanderson, Deputy Atty-Gen. of Pennsylvania*, for defendant in error.

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tax is assessed by him and charged against the company.

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On the trial of the cause the parties entered into an agreement as to the facts, showing the gross receipts for each year, in each branch of the Company's trade; which facts supported the allegations of the plea. A trial by jury was dispensed with, and the court gave judgment for the Commonwealth for the principal of the tax and interest from the time of commencing suit. Exceptions were taken, on the ground that the judgment was in conflict with the clause of the Constitution of the United States giving to Congress the power to regulate commerce with foreign Nations and among the several States. The judgment, being removed by writ of error to the Supreme Court of Pennsylvania, was affirmed by that court; and its judgment is now before us for review.

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In these cases the supreme authority of Congress over the subject of commerce by the telegraph with foreign countries or among the States is affirmed, whenever that body chooses to exert its power; and it is also held that the States can impose no impediments to the freedom of that commerce. In conformity with these views the attempted regulation by Indiana of the mode in which messages sent by telegraphic companies doing business within her limits shall be delivered in other States cannot be upheld. It is an impediment to the freedom of that form of interstate commerce, which is as much beyond the power of Indiana to interpose, as the imposition of a tax by the State of Texas upon every message transmitted by a telegraph company within her limits to other States was beyond her power. Whatever authority the State may possess over the transmission and delivery of messages by telegraph companies within her limits, it does not extend to the delivery of messages in other States.

The object of vesting the power to regulate commerce in Congress was to secure, with reference to its subjects, uniform regulations, where such uniformity is practicable, against conflicting state legislation. Such conflicting legislation would inevitably follow with reference to telegraphic communications between citizens of different States, if each State was vested with power to control them ~~within~~ ^{within} its own limits. The manner and order of the delivery of telegrams, as well as of their transmission, would vary according to the judgment of each State. Indiana, as seen by its law given above, has provided that communications for or from officers of justice shall take precedence, and that arrangements may be made with publishers of newspapers for the transmission of intelligence of general and public interest out of its order, but that all other messages shall be transmitted in the order in which they are received; and punishes as an offense a disregard of this rule. Her attempt, by penal statutes, to enforce a delivery of such messages in other States, in conformity with this rule, could hardly fail to lead to collision with their statutes. Other States might well direct that telegrams on many other subjects should have precedence in delivery within their limits over some of these, such as telegrams for the attendance of physicians and surgeons in case of sudden sickness or accident, telegrams calling for aid in cases of fire or other calamity, and tele-

grams respecting the sickness or death of relatives.

Indiana also requires telegrams to be delivered by messengers to the persons to whom they are addressed, if they reside within one mile of the telegraph station, or within the city and town in which such station is; and the requirement applies, according to the decision of its supreme court in this case, when the delivery is to be made in another State. Other States might conclude that the delivery by messenger to a person living in a town or city being many miles in extent was an unwise burden, and require the duty within less limits; but if the law of one State can prescribe the order and manner of delivery in another State, the receiver of the message would often find himself incurring a penalty because of conflicting laws, both of which he could not obey. Conflict and confusion would only follow the attempted exercise of such a power. We are clear that it does not exist in any State.

The Supreme Court of Indiana placed its decision in support of the statute principally upon the ground that it was the exercise of the police power of the State. Undoubtedly, under the reserved powers of the State, which are designated under that somewhat ambiguous term of police powers, regulations may be prescribed by the State for the good order, peace and protection of the community. The subjects upon which the State may act are almost infinite; yet in its regulations with respect to all of them there is this necessary limitation, that the State does not thereby encroach upon the free exercise of the power vested in Congress by the Constitution. Within that limitation it may undoubtedly make all necessary provisions with respect to the buildings, poles and wires of telegraph companies within its jurisdiction which the comfort and convenience of the community may require.

It follows from the views expressed that the judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion; and it is so ordered.

PHILADELPHIA & SOUTHERN MAIL
STEAMSHIP COMPANY, *Plff. in Err.*

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The case of the *Philadelphia & Reading R. Co. v. Pennsylvania*, 15 Wall. 284, bk. 21, L. ed. 164, criticised.

(Argued April 7, 1887. Decided May 27, 1887.)

IN ERROR to the Supreme Court of the State of Pennsylvania. *Reversed.*

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Mr. Morton P. Henry, for plaintiff in error.
Messrs. W. S. Kirkpatrick, Atty-Gen. of Pennsylvania and John F. Sanderson, Deputy Atty-Gen. of Pennsylvania, for defendant in error.

Mr. Justice Bradley delivered the opinion of the court:

The question in this case is whether a State can constitutionally impose upon a steamship company, incorporated under its laws, a tax upon the gross receipts of such company derived from the transportation of persons and property by sea, between different States, and to and from foreign countries.

By an Act of the Legislature of Pennsylvania, passed March 20, 1877, it was, amongst other things, enacted as follows, to wit:

"That every railroad company, canal company, steamboat company, slack water navigation company, transportation company, street passenger railway company, and every other company now or hereafter incorporated by or under any law of this Commonwealth, or now or hereafter incorporated by any other State, and doing business in this Commonwealth, and owning, operating, or leasing to or from another

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Under and by virtue of these Acts, the Auditor-General of the State, in October, 1882, charged the appellant, the Philadelphia & Southern Mail Steamship Company, taxes upon its gross receipts for the years 1877, 1878, 1879, 1880 and 1881, all of which receipts were derived from freight and passage money between the Ports of Philadelphia and Savannah, and in foreign trade from New Orleans, and a small amount for charter parties in the like trade. The tax thus charged against the Company for the five years in question amounted to about \$6,500, and, with accumulated interest and penalties, to over \$9,000. After serving the account upon the Company, an action was brought for its recovery in the Common Pleas of Dauphin County, at Harrisburg. The defendant pleaded that it was a Steamship Company, "operating sea going steamships engaged in the business of ocean transportation between different States of the United States and between the United States and foreign countries; and that all the said steamships of the said defendant were duly enrolled or registered under the laws of the United States for the coasting or foreign trade of the United States; and that the gross receipts so returned to the Auditor-General, upon which a tax has been levied by the Commonwealth of Pennsylvania, were received by defendant for freight and passengers carried in the said steamships on the ocean and on the navigable waters of the United States, between the State of Pennsylvania and other States of the United States, and between the States of the United States and foreign countries, and for the charter and hire of the said steamships to other parties in such trade and business; and that no part of the said gross receipts was received for the transportation of freight and passengers between places within the State of Pennsylvania, or for the hire and use of the said steamships within the State of Pennsylvania."

On the trial of the cause the parties entered into an agreement as to the facts, showing the result each year, in each branch of trade; which facts supported of the plea. A trial by jury with, and the court gave judgment for the principal interest from the time of commencement. Exceptions were taken, on the ground that the judgment was in conflict with the Constitution of the United States. Congress the power to regulate foreign Nations and among the States. The judgment, being removed to the Supreme Court of Pennsylvania, was affirmed by that court; and its decision is now before us for review.

which underlies the immediate case is whether the imposition of a tax upon the Steamship Company's receipts is a regulation of, or an interference with, interstate and foreign commerce, in conflict with the power granted to Congress? The tax is levied upon the receipts derived by the Company from its fares and freights for the transportation of persons and goods be-

and to secure the use of the same for postal, military and other purposes," and it held that the Act was constitutional so far as it declared that the erection of telegraph wires should, as against state interference, be free to all who accepted its terms and conditions, and that a telegraph company of one State accepting them could not be excluded by another State from prosecuting its business within her jurisdiction. In *Telegraph Company v. Texas*, 105 U. S. 460 [*supra*], from the opinion in which we have quoted above, it was held that a statute of Texas imposing a tax upon every message transmitted by a telegraph company doing business within its limits, so far as it operated on messages sent out of the State, was a regulation of foreign and interstate commerce, and, therefore, beyond the power of the State.

In these cases the supreme authority of Congress over the subject of commerce by the telegraph with foreign countries or among the States is affirmed, whenever that body chooses to exert its power; and it is also held that the States can impose no impediments to the freedom of that commerce. In conformity with these views the attempted regulation by Indiana of the mode in which messages sent by telegraphic companies doing business within her limits shall be delivered in other States cannot be upheld. It is an impediment to the freedom of that form of interstate commerce, which is as much beyond the power of Indiana to interpose, as the imposition of a tax by the State of Texas upon every message transmitted by a telegraph company within her limits to other States was beyond her power. Whatever authority the State may possess over the transmission and delivery of messages by telegraph companies within her limits, it does not extend to the delivery of messages in other States.

The object of vesting the power to regulate commerce in Congress was to secure, with reference to its subjects, uniform regulations, where such uniformity is practicable, against conflicting state legislation. Such conflicting legislation would inevitably follow with reference to telegraphic communications between citizens of different States, if each State was vested with power to control the manner and order of the delivery of telegrams, as well as of their transmission, which would vary according to the judgment of each State. Indiana, as seen by its law given above, has provided that communications for or from officers of justice shall take precedence, and that arrangements may be made with publishers of newspapers for the transmission of intelligence of general and public interest out of its order, but that all other messages shall be transmitted in the order in which they are received; and punishes as an offense a disregard of this rule. Her attempt, by penal statutes, to enforce a delivery of such messages in other States, in conformity with this rule, could hardly fail to lead to collision with their statutes. Other States might well direct that telegrams on many other subjects should have precedence in delivery within their limits over some of these, such as telegrams for the attendance of physicians and surgeons in case of sudden sickness or accident, telegrams calling for aid in cases of fire or other calamity, and tele-

grams respecting the sickness or death of relatives.

Indiana also requires telegrams to be delivered by messengers to the persons to whom they are addressed, if they reside within one mile of the telegraph station, or within the city and town in which such station is; and the requirement applies, according to the decision of its supreme court in this case, when the delivery is to be made in another State. Other States might conclude that the delivery by messenger to a person living in a town or city being many miles in extent was an unwise burden, and require the duty within less limits; but if the law of one State can prescribe the order and manner of delivery in another State, the receiver of the message would often find himself incurring a penalty because of conflicting laws, both of which he could not obey. Conflict and confusion would only follow the attempted exercise of such a power. We are clear that it does not exist in any State.

The Supreme Court of Indiana placed its decision in support of the statute principally upon the ground that it was the exercise of the police power of the State. Undoubtedly, under the reserved powers of the State, which are designated under that somewhat ambiguous term of police powers, regulations may be prescribed by the State for the good order, peace and protection of the community. The subjects upon which the State may act are almost infinite; yet in its regulations with respect to all of them there is this necessary limitation, that the State does not thereby encroach upon the free exercise of the power vested in Congress by the Constitution. Within that limitation it may undoubtedly make all necessary provisions with respect to the buildings, poles and wires of telegraph companies within its jurisdiction which the comfort and convenience of the community may require.

It follows from the views expressed that *the judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion; and it is so ordered.*

PHILADELPHIA & SOUTHERN MAIL
SHIP COMPANY, *Plff. in Err.*,
v.
COMMONWEALTH OF PENNSYLVANIA.

(From *Lafayette* ed. U. S. Reports, Bk. 80.)

1. A State cannot constitutionally impose upon a steamship company, incorporated under its laws, a tax upon its gross receipts, derived from the transportation of persons and property by sea, between different States, and to and from foreign countries.
2. The regulation of fares and freights receivable for the transportation of persons and goods between different States, and between the States and foreign countries, is within the power of Congress equally with the regulation of such transportation itself.
3. In the case presented, the tax in question can not be regarded as an impost tax.

4. Where a subject of interstate commerce is national in character, or admits of only one uniform system of regulation, the power of Congress is exclusive; and its failure to make express regulations indicates its will that the subject shall be free.
5. If a state statute imposing a tax upon interstate commerce is unconstitutional, it is not cured by including in its provisions subjects within the jurisdiction of the State.

The case of the *Philadelphia & Reading R. Co. v. Pennsylvania*, 15 Wall. 284, bk. 21, L. ed. 164, criticised.

(Argued April 7, 1887. Decided May 27, 1887.)

IN ERROR to the Supreme Court of the State of Pennsylvania. *Reversed.*

The history and facts of the case appear in the opinion of the court.

Mr. Morton P. Henry, for plaintiff in error.

Messrs. W. S. Kirkpatrick, Atty-Gen. of Pennsylvania and John F. Sanderson, Deputy Atty-Gen. of Pennsylvania, for defendant in error.

Mr. Justice Bradley delivered the opinion of the court:

The question in this case is whether a State can constitutionally impose upon a steamship company, incorporated under its laws, a tax upon the gross receipts of such company derived from the transportation of persons and property by sea, between different States, and to and from foreign countries.

By an Act of the Legislature of Pennsylvania, passed March 20, 1877, it was, amongst other things, enacted as follows, to wit:

"That every railroad company, canal company, steamboat company, slack water navigation company, transportation company, street passenger railway company, and every other company now or hereafter incorporated by or under any law of this Commonwealth, or now or hereafter incorporated by any other State, and doing business in this Commonwealth, and owning, operating, or leasing to or from another corporation or company any railroad, canal, slack water navigation, or street passenger railway, or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freight or passengers, and every telegraph company incorporated under the laws of this or any other State, and doing business in this Commonwealth, and every express company, and any palace car and sleeping car company, incorporated or unincorporated, doing business in this Commonwealth, shall pay to the State Treasurer, for the use of the Commonwealth a tax of eight tenths of 1 per centum upon the gross receipts of said company for tolls and transportation, telegraph business, or express business."

A similar Act was passed by the same Legislature on the 7th of June, 1879.

By the terms of these Acts, returns of the gross receipts are required to be made every six months to the auditor-general, upon which the

tax is assessed by him and charged against the company.

Under and by virtue of these Acts, the Auditor-General of the State, in October, 1882, charged the appellant, the Philadelphia & Southern Mail Steamship Company, taxes upon its gross receipts for the years 1877, 1878, 1879, 1880 and 1881, all of which receipts were derived from freight and passage money between the Ports of Philadelphia and Savannah, and in foreign trade from New Orleans, and a small amount for charter parties in the like trade. The tax thus charged against the Company for the five years in question amounted to about \$6,500, and, with accumulated interest and penalties, to over \$9,000. After serving the account upon the Company, an action was brought for its recovery in the Common Pleas of Dauphin County, at Harrisburg. The defendant pleaded that it was a Steamship Company, "operating sea going steamships engaged in the business of ocean transportation between different States of the United States and between the United States and foreign countries; and that all the said steamships of the said defendant were duly enrolled or registered under the laws of the United States for the coasting or foreign trade of the United States; and that the gross receipts so returned to the Auditor-General, upon which a tax has been levied by the Commonwealth of Pennsylvania, were received by defendant for freight and passengers carried in the said steamships on the ocean and on the navigable waters of the United States, between the State of Pennsylvania and other States of the United States, and between the States of the United States and foreign countries, and for the charter and hire of the said steamships to other parties in such trade and business; and that no part of the said gross receipts was received for the transportation of freight and passengers between places within the State of Pennsylvania, or for the hire and use of the said steamships within the State of Pennsylvania."

On the trial of the cause the parties entered into an agreement as to the facts, showing the gross receipts for each year, in each branch of the Company's trade; which facts supported the allegations of the plea. A trial by jury was dispensed with, and the court gave judgment for the Commonwealth for the principal of the tax and interest from the time of commencing suit. Exceptions were taken, on the ground that the judgment was in conflict with the clause of the Constitution of the United States giving to Congress the power to regulate commerce with foreign Nations and among the several States. The judgment, being removed by writ of error to the Supreme Court of Pennsylvania, was affirmed by that court; and its judgment is now before us for review.

The question which underlies the immediate question in the case is whether the imposition of the tax upon the Steamship Company's receipts amounted to a regulation of, or an interference with, interstate and foreign commerce, and was thus in conflict with the power granted by the Constitution to Congress? The tax was levied directly upon the receipts derived by the Company from its fares and freights for the transportation of persons and goods be-

NOTE.—Constitutional law; interstate commerce; regulation of power of Congress; how far exclusive. See *Gloucester Ferry Co. v. Pa.* 114 U. S. bk. 20, L. ed. 168, note.

tween different States, and between the States and foreign countries, and from the charter of its vessels which was for the same purpose. This transportation was an act of interstate and foreign commerce. It was the carrying on of such commerce. It was that, and nothing else. In view of the decisions of this court, it cannot be pretended that the State could constitutionally regulate or interfere with that commerce itself. But taxing is one of the forms of regulation. It is one of the principal forms. Taxing the transportation, either by its tonnage, or its distance, or by the number of trips performed, or in any other way, would certainly be a regulation of the commerce, a restriction upon it, a burden upon it. Clearly, this could not be done by the State without interfering with the power of Congress. Foreign commerce has been fully regulated by Congress, and any regulations imposed by the States upon that branch of commerce would be a palpable interference. If Congress has not made any express regulations with regard to interstate commerce, its inaction, as we have often held, is equivalent to a declaration that it shall be free, in all cases where its power is exclusive; and its power is necessarily exclusive whenever the subject matter is national in its character and properly admits of only one uniform system. See the cases collected in *Robbins v. Shelby Taring District*, 120 U. S. 489, 492, 493 [80: 694]. Interstate commerce carried on by ships on the sea is surely of this character.

If, then, the commerce carried on by the plaintiff in error in this case could not be constitutionally taxed by the State, could the fares and freights received for transportation in carrying on that commerce be constitutionally taxed? If the State cannot tax the transportation, may it, nevertheless, tax the fares and freights received therefor? Where is the difference? Looking at the substance of things, and not at mere forms, it is very difficult to see any difference. The one thing seems to be tantamount to the other. It would seem to be rather metaphysics than plain logic for the state officials to say to the Company: "We will not tax you for the transportation you perform, but we will tax you for what you get for performing it." Such a position can hardly be said to be based on a sound method of reasoning.

This court did not so reason in the case of *Brown v. Maryland*,* 25 U. S. 12 Wheat. 419 [6: 678]. The State of Maryland required all importers of foreign goods, and other persons selling the same by wholesale, bale or package, to take out a license and pay \$50 therefor, subject to a penalty and forfeiture for selling without such license. It was contended on the part of the State that this was a mere tax on the occupation of selling foreign goods, affecting only the person and not the importation of the goods themselves, or the occupation of importing them. Chief Justice Marshall met this objection by showing that the attempt to regulate the sale of imported goods was as much in conflict with the power of Congress to regulate commerce as a regulation of their importation itself would be. "If this power," said he (referring to the power of Congress), "reaches

the interior of a State, and may be there exercised, it must be capable of authorizing the sale of those articles which it introduces. Commerce is intercourse; one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic, where given in the most comprehensive terms, with the intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right, not only to authorize importation but to authorize the importer to sell. * * * Any penalty inflicted on the importer for selling the article in his character of importer must be in opposition to the Act of Congress which authorizes importation. * * * The distinction between a tax on the thing imported, and on the person of the importer, can have no influence on this part of the subject. It is too obvious for controversy that they interfere equally with the power to regulate commerce." pp. 446-448 [688].

The application of this reasoning to the case in hand is obvious. Of what use would it be to the ship owner, in carrying on interstate and foreign commerce, to have the right of transporting persons and goods free from State interference if he had not the equal right to charge for such transportation without such interference? The very object of his engaging in transportation is to receive pay for it. If the regulation of the transportation belongs to the power of Congress to regulate commerce, the regulation of fares and freights receivable for such transportation must equally belong to that power; and any burdens imposed by the State on such receipts must be in conflict with it. To apply the language of Chief Justice Marshall, fares and freights for transportation in carrying on interstate or foreign commerce are as much essential ingredients of that commerce as transportation itself.

It is necessary, however, that we should examine what bearing the cases of the *State Freight Tax* and *Railway Gross Receipts*, reported in 15th of Wallace, have upon the question in hand. These cases were much quoted in argument, and the latter was confidently relied on by the counsel of the Commonwealth. They both arose under certain tax laws of Pennsylvania. The first, which is reported under the title of *Case of the State Freight Tax*, 15 Wall. 232 [21: 146], was that of the Reading Railroad Company, and arose under an Act passed in 1864, which imposed upon every railroad, steamboat, canal and slack water navigation company, a tax of a certain rate per ton on every ton of freight carried by or upon the works of said company; with a proviso directing, in substance, that every company, foreign or domestic, whose line extended partly in Pennsylvania, and partly in another State, should pay for the freight carried over that portion of its line in Pennsylvania, the same as

*See note and cases cited, L. ed. [Ed.]

if its whole line were in that State. Under this law the Reading Railroad Company was charged a tax of \$38,000 for freight transported to points within Pennsylvania, and of \$46,000 for that exported to points without the State. The latter sum the company refused to pay; and the question in this court was whether that portion of the tax was constitutional; and we held that it was not. *Mr. Justice Strong* delivered the opinion of the court. It was held that this was not a tax upon the franchises of the companies, or upon their property, or upon their business, measured by the number of tons of freight carried; but was a tax upon the freight carried, and because of its carriage: that transportation is a constituent of commerce; that the tax was, therefore, a regulation of commerce, and a regulation of commerce among the States; that the transportation of passengers or merchandise from one State to another is in its nature a matter of national importance, admitting of a uniform system or plan of regulation, and therefore, under the rule established by *Cooley v. Port Wardens*, 53 U. S. 12 How. 299 [18:996], exclusively subject to the legislation of Congress. The inevitable conclusion was that the tax then in question was in conflict with the exclusive power of Congress to regulate commerce among the States, and was therefore unconstitutional. Referring to the decision in *Crandall v. Nevada*, 78 U. S. 6 Wall. 35 [18:745], in which this court had decided that a State cannot tax persons for passing through or out of it, *Justice Strong* said: "If state taxation of persons passing from one State to another, or a state tax upon interstate transportation of passengers, is unconstitutional, *a fortiori*, if possible, is a state tax upon the carriage of merchandise from State to State in conflict with the Federal Constitution. Merchandise is the subject of commerce. Transportation is essential to commerce; and every burden laid upon it is *pro tanto* a restriction. Whatever, therefore, may be the true doctrine respecting the exclusiveness of the power vested in Congress to regulate commerce among the States, we regard it as established that no State can impose a tax upon freight transported from State to State, or upon the transporter because of such transportation."

The court in its opinion took notice of the fact that the law was general in its terms, making no distinction between freight transported wholly within the State and that which was destined to, or came from, another State. But it was held that this made no difference. The law might be valid as to one class, and unconstitutional as to the other. On this subject *Justice Strong* said: "The State may tax its internal commerce, but if an Act to tax interstate or foreign commerce is unconstitutional, it is not cured by including in its provisions subjects within the jurisdiction of the State. Nor is a rule prescribed for carriage of goods through, out of, or into a State, any the less a regulation of transportation because the same rule may be applied to carriage which is wholly internal." This last observation meets the argument that might be made in the present case, namely: that the law is general in its terms, and taxes receipts for all transportation alike, making no discrimination against receipts for interstate or foreign transportation, and hence cannot be regarded as a special tax on

INTER 8.

the latter. The decision in the case cited shows that this does not relieve the tax from its objectionable character.

If this case stood alone, we should have no hesitation in saying that it would entirely govern the one before us; for, as before said, a tax upon fares and freights received for transportation is virtually a tax upon the transportation itself. But at the same time that the *Case of State Freight Tax* was decided, the other case referred to, namely, that of *State Tax on Railway Gross Receipts*, was also decided, and the opinion was delivered by the same member of the court. 83 U. S. 15 Wall. 234 [21:164]. This was also a case of a tax imposed upon the Reading Railroad Company. It arose under another Act of Assembly of Pennsylvania, passed in February, 1866, by which it was enacted that "In addition to the taxes now provided by law, every railroad, canal and transportation company incorporated under the laws of this Commonwealth, and not liable to the tax upon income under existing laws, shall pay to the Commonwealth a tax of three fourths of 1 per centum upon the gross receipts of said company; the said tax shall be paid semi-annually." Under this statute the accounting officers of Pennsylvania stated an account against the Reading Railroad Company for tax on gross receipts of the company for the half year ending December 31, 1867. These receipts were derived partly from the freight of goods transported wholly within the State, and partly from the freight of goods exported to points without the State, which latter were discriminated from the former in the reports made by the company. It was the tax on the latter receipts which formed the subject of controversy. The same line of argument was taken at the bar as in the other case. This court, however, held the tax to be constitutional. The grounds on which the opinion was based, in order to distinguish this case from the preceding one, were two: first, that the tax, being collectible only once in six months, was laid upon a fund which had become the property of the company, mingled with its other property, and incorporated into the general mass of its property, possibly expended in improvements, or otherwise invested. The case is likened, in the opinion, to that of taxing goods which have been imported, after their original packages have been broken, and after they have been mixed with the mass of property in the country, which, it was said, are conceded in *Brown v. Maryland* to be taxable.

This reasoning seems to have much force. But is the analogy to the case of imported goods as perfect as is suggested? When the latter become mingled with the general mass of property in the State, they are not followed and singled out for taxation as imported goods, and by reason of their being imported. If they were, the tax would be as unconstitutional as if imposed upon them whilst in the original packages. When mingled with the general mass of property in the State they are taxed in the same manner as other property possessed by its citizens, without discrimination or partiality. We held in *Wells v. Missouri*, 91 U. S. 275 [23:347] that goods brought into a State for sale, though they thereby become a part of the mass of its property, cannot be taxed by

reason of their being introduced into the State, or because they are the products of another State. To tax them as such was expressly held to be unconstitutional. The tax in the present case is laid upon the gross receipts for transportation as such. Those receipts are followed and caused to be accounted for by the Company, dollar for dollar. It is those specific receipts, or the amount thereof, which is the same thing, for which the Company is called upon to pay the tax. They are taxed not only because they are money, or its value, but because they were received for transportation. No doubt a ship owner, like any other citizen, may be personally taxed for the amount of his property or estate, without regard to the source from which it was derived, whether from commerce, or banking, or any other employment. But that is an entirely different thing from laying a special tax upon his receipts in a particular employment. If such a tax is laid, and the receipts taxed are those derived from transporting goods and passengers in the way of interstate or foreign commerce, no matter when the tax is exacted, whether at the time of realizing the receipts, or at the end of every six months or a year, it is an exaction aimed at the commerce itself, and is a burden upon it, and seriously affects it. A review of the question convinces us that the first ground on which the decision in *State Tax on Railway Gross Receipts* was placed is not tenable; that it is not supported by anything decided in *Brown v. Maryland*; but, on the contrary, that the reasoning in that case is decidedly against it.

The second ground on which the decision referred to was based was that the tax was upon the franchise of the corporation granted to it by the State. We do not think that this can be affirmed in the present case. It certainly could not have been intended as a tax on the corporate franchise, because, by the terms of the Act, it was laid equally on the corporations of other States doing business in Pennsylvania. If intended as a tax on the franchise of doing business, which in this case is the business of transportation in carrying on interstate and foreign commerce, it would clearly be unconstitutional. It was held by this court in the case of *Gloucester Ferry Co. v. Pennsylvania**, 114 U. S. 196 [20:158], that interstate commerce carried on by corporations is entitled to the same protection against state exactions which is given to such commerce when carried on by individuals. In that case the tax was laid upon the capital stock of a ferry company incorporated by New Jersey, and engaged in the business of transporting passengers and freight between Camden, in New Jersey, and the City of Philadelphia. The law under which the tax was imposed was passed by the Legislature of Pennsylvania on the 7th of June, 1879, and declared "That every company or association whatever, now or hereafter incorporated by or under any law of this Commonwealth, or now or hereafter incorporated by any other State or Territory of the United States, or foreign government, and doing business in this Commonwealth, * * * (with certain exceptions named) shall be subject to and pay into the treasury of the Commonwealth annually a

tax to be computed as follows, namely:" the amount of tax is then rated by the dividends declared, and imposed upon the capital stock of the company at the rate of so many mills, or fractions of a mill, for every dollar of such capital stock. It was contended that the ferry company could not hold property in Philadelphia for the purpose of carrying on its ferrying business, and could not carry on its said business there without a franchise, express or implied, from the State of Pennsylvania. But this court held, in its opinion, delivered by Mr. Justice Field, that the business of landing and receiving passengers and freight at the wharf in Philadelphia was a necessary incident to, and a part of, their transportation across the Delaware River from New Jersey; that without it, that transportation would be impossible; that a tax upon such receiving and landing of passengers and freight is a tax upon their transportation, that is, upon the commerce between the two States involved in such transportation; and that Congress alone can deal with such transportation, its nonaction being equivalent to a declaration that it shall remain free from burdens imposed by state legislation. The opinion proceeds as follows: "Nor does it make any difference whether such commerce is carried on by individuals or corporations. *Welton v. Missouri*, 91 U. S. 275 [*supra*]; *Mobile Co. v. Kimball*, 102 U. S. 691 [26:238]. As was said in *Paul v. Virginia*, 75 U. S. 8 Wall. 168 [19:357] at the time of the formation of the Constitution, a large part of the commerce of the world was carried on by corporations; and the East India Company, the Hudson Bay Company, the Hamburg Company, the Levant Company, and the Virginia Company were mentioned as among the corporations which, from the extent of their operations, had become celebrated throughout the commercial world. The grant of power [to Congress] is general in its terms, making no reference to the agencies by which commerce may be carried on. It includes commerce by whomsoever conducted, whether by individuals or corporations." P. 204 [162]. Again; "While it is conceded that the property in a State belonging to a foreign corporation engaged in foreign or interstate commerce may be taxed equally with like property of a domestic corporation engaged in that business, we are clear that a tax or other burden imposed upon the property of either corporation because it is used to carry on that commerce, or upon the transportation of persons or property, or for the navigation of the public waters over which the transportation is made, is invalid and void as an interference with, and obstruction of, the power of Congress in the regulation of such commerce." P. 211 [164]. It is hardly necessary to add that the tax on the capital stock of the New Jersey Company, in that case, was decided to be unconstitutional, because, as the corporation was a foreign one, the tax could only be construed as a tax for the privilege or franchise of carrying on its business, and that business was interstate commerce.

The decision in this case, and the reasoning on which it is founded, so far as they relate to the taxation of interstate commerce carried on by corporations, apply equally to domestic and foreign corporations. No doubt the capital stock of the former, regarded as inhabitants of

*See note and cases cited, L. ed. [Ed.]

the State, or their property, may be taxed as other corporations and inhabitants are, provided no discrimination be made against them as corporations carrying on foreign or interstate commerce, so as to make the tax, in effect, a tax on such commerce. But their business as carriers in foreign or interstate commerce cannot be taxed by the State under the plea that they are exercising a franchise.

There is another point, however, which may properly deserve some attention. Can the tax in this case be regarded as an income tax? And, if it can, does that make any difference as to its constitutionality? We do not think that it can properly be regarded as an income tax. It is not a general tax on the incomes of all the inhabitants of the State; but a special tax on transportation companies. Conceding, however, that an income tax may be imposed on certain classes of the community, distinguished by the character of their occupations, this is not an income tax on the class to which it refers, but a tax on their receipts for transportation only. Many of the companies included in it may, and undoubtedly do, have incomes from other sources, such as rents of houses, wharves, stores, and water power, and interest on moneyed investments. As a tax on transportation, we have already seen, from the quotations from the *State Freight Tax Case*, that it cannot be supported where that transportation is an ingredient of interstate or foreign commerce, even though the law imposing the tax be expressed in such general terms as to include receipts from transportation which are properly taxable. It is unnecessary, therefore, to discuss the question which would arise if the tax were properly a tax on income. It is clearly not such, but a tax on transportation only.

The corporate franchises, the property, the business, the income of corporations created by a State may undoubtedly be taxed by the State; but in imposing such taxes care should be taken not to interfere with or hamper, directly or by indirection, interstate or foreign commerce, or any other matter exclusively within the jurisdiction of the Federal Government. This is a principle so often announced by the courts, and especially by this court, that it may be received as an axiom of our constitutional jurisprudence. It is unnecessary, therefore, to review the long list of cases in which the subject is discussed. Those referred to are abundantly sufficient for our purpose. We may add, however, that since the decision of the *Railway Tax Cases* now reviewed, a series of cases has received the consideration of this court, the decisions in which are in general harmony with the views here expressed, and show the extent and limitations of the rule that a State cannot regulate or tax the operations or objects of interstate or foreign commerce. We may refer to the following: *R. R. Co. v. Husen*, 95 U. S. 465 [24: 527]; *Cook v. Pa.* 97 U. S. 566 [24: 1015]; *Guy v. Baltimore*, 100 U. S. 434 [25: 743]; *Webber v. Va.* 103 U. S. 344 [26: 565]; *Moran v. New Orleans*, 112 U. S. 69 [28: 658]; *Walling v. Mich.* 116 U. S. 446 [29: 691]; *Pickard v. Pullman Southern Car Co.* 117 U. S. 84

[29: 785]; *Wabash etc. R. R. Co. v. Ill.* 118 U. S. 557 [30: 244]; *Robbins v. Shelby County*, 120 U. S. 489 [30: 694]; *Fargo v. Mich.* 121 U. S. 230 [30: 888.] The cases of *Moran v. New Orleans* and *Fargo v. Michigan* are especially apposite to the case now under consideration. As showing the power of the States over local matters incidentally affecting commerce, see *Munn v. Illinois* 94 U. S. 123 [24: 88], and other cases in the same volume, pp. 161, 176, 180 [95, 98, 99], as explained by *Wabash etc. R. R. Co. v. Illinois*; *Wharfage Cases*, viz.: *Keokuk etc. Packet Co. v. Keokuk*, etc. 95 U. S. 80 [24: 377]; 100 U. S. 428 [25: 690]; 105 U. S. 563 [26: 1171]; 107 U. S. 698 [27: 587]; 121 U. S. —; *Mobile Co. v. Kimball*, 102 U. S. 691 [26: 288]; *Brown v. Houston*, 114 U. S. 622, 630 [29: 257, 260]; *R. R. Commission Cases*, 116 U. S. 307 [29: 636]; *Coe v. Errol*, *Id.* 517 [29: 715].

It is hardly within the scope of the present discussion to refer to the disastrous effects to which the power to tax interstate or foreign commerce may lead. If the power exists in the State at all, it has no limit but the discretion of the State, and might be exercised in such a manner as to drive away that commerce, or to load it with an intolerable burden, seriously affecting the business and prosperity of other States interested in it; and if those States, by way of retaliation, or otherwise, should impose like restrictions, the utmost confusion would prevail in our commercial affairs. In view of such a state of things which actually existed under the Confederation Chief Justice Marshall, in the case before referred to, said: "Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of Nations, perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which introduced the present system, than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce, and all commerce among the States. To construe the power so as to impair its efficacy would tend to defeat an object, in the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity." *Brown v. Maryland*, 25 U. S. 12 Wheat. 446 [6: 688].

Nothing can be added to the force of these words.

Our conclusion is that the imposition of the tax in question in this cause was a regulation of interstate and foreign commerce, in conflict with the exclusive powers of Congress under the Constitution.

The judgment of the Supreme Court of Pennsylvania is therefore reversed, and the case is remanded, to be disposed of according to law, in conformity with this opinion.

THE INTERSTATE COMMERCE COMMISSION.

(July 6, 1887.)

Re OPELIKA BOARD OF TRADE.

W. O. HARWELL, H. B. T. Montgomery and J. W. Ponder, a transportation committee of the Opelika, Alabama, Board of Trade, complain to the Interstate Commerce Commission that the Columbus & Western Railway and the Western Railroad, practice such discrimination in freight rates against Opelika and in favor of Montgomery and Columbus that merchants of the two last named towns retail goods in Opelika's suburban villages at lower rates than Opelika merchants can give, and that the interests of Opelika are being ruined in consequence.

W. H. HEARD

v.

GEORGIA RAILROAD.

W. H. HEARD, a colored man of Charleston, S. C., who complained to the Interstate Commerce Commission of discrimination against him on account of color, by the Georgia Railroad, has reduced his complaint to the form of an affidavit. He asks that the Georgia Railroad be compelled to furnish equal accommodation to persons holding first class tickets "irrespective of race or color."

ARMOUR & CO.

v.

LAKE SHORE & MICHIGAN SOUTHERN R. R. CO.*

ANSWERS have been received from the Lake Shore & Michigan Southern Railroad Company to the complaints of Armour & Co., and Nelson Morris & Co., alleging excessive rates upon meat products.

It is denied that the agreement was made for the purpose of destroying competition between said common carriers, or that the respondent refuses in consequence of said agreement to make petitioners just and reasonable rates based upon the service rendered.

(July 11, 1887.)

Mrs. J. H. STAHL

v.

OREGON RAILWAY & NAVIGATION CO.

THE first case before the Commission to be adjusted by the refunding of an alleged overcharge, is that of Mrs. J. H. Stahl, of Walla Walla, Washington Territory, against the Oregon Railway & Navigation Company.

Mrs. Stahl's letter of complaint was an informal document in which she described in German-English phraseology her business troubles, mentioning the fact that she was a widow.

*See ante, 294, 303.

Commissioner Bragg, on behalf of the Commission, forwarded the complaint to the Railway Company, requesting an investigation and, if it was found that an overcharge had been made, that the money be refunded.

The Company's attorneys filed their reply, to the effect that the beer kegs over which the complaint arose were shipped from Milwaukee; that the rates were fixed by a company over which respondent had no control, and that the said rates were not unreasonable or unjust. Notwithstanding this, however, the respondent says it has fully satisfied complainant in respect to all matters connected with said shipment of beer kegs. Mrs. Stahl's receipt for \$20 in full settlement and complete satisfaction for overcharges was inclosed, and her complaint withdrawn.

HARTFORD & NEW YORK TRANSPORTATION CO.

v.

NEW YORK & NEW ENGLAND R. R. CO. et al.

O. C. GOODRICH, general agent of the Hartford & New York Transportation Company, has written to the Commission that "the most outrageous wrong doing on cargo freights" is practiced by the New York & New England Railroad and the Connecticut Western Railroad, in an endeavor to drive out and destroy the water commerce.

The roads, he says, having fixed a reasonable rate to Hartford, have put in force an enormous local tariff from river points to inland towns, thus depriving inland points from all benefit of water competition and compelling shippers to send by all rail.

William H. REED.

v.

OREGON RAILWAY & NAVIGATION CO.**Milton EVANS v. SAME.**

ANSWERS have been received by the Commission from the Oregon Railway & Navigation Company to the complaints of William H. Reed and Milton Evans, of Walla Walla, Washington Territory. These cases practically involve the interests of a large wheat growing region. The complaints are in substance that the charge of \$6 a ton for the transportation of grain from Walla Walla to Portland is excessive and unreasonable.

The Company sets forth that the whole traffic, freight and passenger, between Portland and Walla Walla, inclusive, amounted during the eleven months ending May 31, 1887, to \$606,405, and the operating expenses for the same period amounted to \$792,490. The Company declares that the lowest charge upon wheat from Walla Walla to Portland previous to the time the road went into operation was \$12 a ton. In anticipation of a large yield in 1887, the rates have already and voluntarily been reduced to \$5 a ton, to take effect from

July 5. It avers that the adoption of the rates prayed for (\$8 a ton) would in effect destroy defendant's entire property as an investment.

(July 12, 1887.)

Nelson L. DERBY

v.

ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY CO.

THE Commission received a complaint from Nelson L. Derby, of St. Thomas, Dakota, which is supplementary to those already received from other farmers of that vicinity, alleging a refusal on the part of the Manitoba Railroad Company to furnish cars for the shipment of the wheat crop of that region.

The complaint assumes to speak for the entire community of farmers, and bears evidence of being the outcome of a general movement of farmers for relief. It avers that the local press is muzzled, that the free pass system is in as full operation as before the passage of the Interstate Law, and that the prosperity of the community hangs upon the intervention of the Commission. It is stated as the prevailing belief of the farmers that the proprietor of a certain elevator line, by collusion with the railroad authorities, has reached a position "from which he controls the price of wheat, if not through the entire country, certainly through the spring wheat belt of the Northwest."

The complaint narrates some past experiences, among them the receipt of an order from the Railroad Company to ship his wheat through these particular elevators, accompanied by an intimation that if he did not wish to do so he could stop raising wheat. At one time, he says, the farmers seized the cars they needed, despite the railroad company, and loaded their wheat, which resulted in the adoption of a plan by the railroad of keeping its cars at a distance from the wheat stations.

(July 13, 1887.)

Re MILK TRAFFIC.*

THE Commission began a hearing in the matter of Nathaniel W. Howard and others against the New York, Lake Erie & Western and other railroads. This is the complaint of the Orange County, N. Y. milk producers.

Congressman Henry Bacon appeared for the complainants. The railroads were all represented. After the submission of a statement by the complainants the hearing was adjourned.

(July 14, 1887.)

William M. HOLBROOK *et al.*

v.

ST. PAUL, MINNEAPOLIS & MANITOBA R. CO.

MR. S. S. Burdette, attorney for the St. Paul, Minneapolis & Manitoba Railway Company, appeared before the Commission, and

*See *ante*, 24, 202.

INTER S.

submitted two motions; the first was to dismiss the complaints of Holbrook, Derby and others, farmers of Dakota, upon the general ground that the acts complained of antedated the passage of the Interstate Law; the second was to dismiss the complaints, upon the ground that the so-called testimony submitted was taken without notice to defendant, and without giving an opportunity to cross examine witnesses.

The Commission stated to Mr. Burdette that there seemed to be no reason for his further attendance, and that its decision would be made a matter of record. Mr. Burdette said that the Company now had plenty of cars, and would supply the demand. The action of the Commission is equivalent to a dismissal.

(July 15, 1887.)

LEHIGH VALLEY R. R. CO.

v.

PHILADELPHIA & READING R. R. CO.*

THIS matter, which involves the question of free baggage allowance upon the registry and indemnity certificates of the Traders & Travelers Union, came on for hearing before the Commission, all parties to the case being represented by counsel, and Russell P. Hoyt, general manager of the Traders & Travelers Union, being present.

There was substantial unanimity among the parties to the case, in desiring an authoritative opinion from the Commission upon the question of the right of a railroad to recognize the certificates of the union and carry free for the holders of such certificates an amount of baggage in excess of that so carried for other passengers. The operation of the union's system was explained to the Commission; and it was shown that its advantages were open to all who might choose to avail themselves of them, the passenger securing free transportation of extra baggage, together with insurance, against loss, and the railroads being relieved from responsibility, in case of loss or injury, and securing an additional safeguard against fraud on the part of its employees.

The decision of the Commission was reserved.

(July 15, 1887.)

Re ANNAPOLIS, WASHINGTON & BALTIMORE R. R. CO. *et al.*

So far as a railroad company, whose line is entirely within one State, issues through bills of lading over its connecting lines to points in other States, and makes through rates, it falls under the provision of the Interstate Commerce Act.

THE authorities of the Annapolis, Washington & Baltimore Railroad Company have written to the Commission asking if their line is subject to the provisions of the Interstate Law, lying as it does wholly within the State of Maryland. A great many like inquiries

*See *ante*, 62.

and Pittsburg, Cincinnati & St. Louis Railroad Companies.

The burden of the complaint is that the defendant companies are the owners of the stock yards at Covington, through which they require complainants to pass all stock shipped by them, charging for the privilege twenty-five cents a head upon horned cattle, six cents upon hogs, and five cents upon sheep as a tribute, notwithstanding that complainants have convenient stock yards, platforms, and chutes of their own.

Re EXPRESS COMPANIES.*

THREE express companies have filed their schedules with the Commission. To the others a letter has been addressed by Secretary Moseley, giving them thirty days to do the same before final action in their case is taken.

(July 21, 1887.)

Ralph W. THACHER

v.

DELAWARE & HUDSON CANAL CO.†

The Commission heard arguments and testimony upon the complaint of R. W. Thacher, of Schenectady, against the Delaware & Hudson Canal Company, and its eastern connections.

The defendant did not appear by counsel.

Mr. Thacher was represented by George L. Stedman, Esq.

Henry S. Marcy, of Ballston, N. Y., general traffic manager of the Delaware & Hudson Canal Company, was examined as a witness for complainant. He said the through rate on grain from Chicago to Boston points was thirty cents a hundred, of which the Fitchburg Road received five and seven tenths as its proportion for the haul from Mechanicsville. The same rate was accepted by the Fitchburg when the grain was transhipped either at Buffalo or Ogdensburg; but if transhipped at Schenectady

the Fitchburg demanded eight cents as its proportion, the service performed being exactly similar.

Mr. Thacher testified that 80 per cent of his eastern business had been destroyed by reason of this alleged discrimination. The Delaware & Hudson Canal Company was willing to accept its proportion of the lower rate, but the Fitchburg Road insisted upon correcting all way bills upon defendant's grain, putting the rate up more than three cents a hundred as soon as the grain reached Mechanicsville.

Mr. Stedman maintained that the railroad was responsible under the Law for the manner of the performance of its duty, irrespective of the acts of other roads. It had no right to ask where grain came from, or whether it came by rail or water. To permit this would sanction a discrimination against localities.

Decision was reserved.

Re CLASSIFICATION OF RAILROAD FREIGHTS.

A committee of the New York Board of Trade and Transportation submitted to the Commission a statement with regard to the classification of railroad freights.

It is alleged therein that when the Interstate Commerce Law went into force the trunk lines adopted a new system of classification, in which an unjust discrimination is made against small shippers of some varieties of goods, by placing less than car load quantities in a higher class than car loads, so that the small shippers are forced to pay from 16 to 60 per cent more for transportation than the large ones. A slight change has been made by the classification committee of the trunk lines on representations made to them; but the same objectionable principle still prevails.

The committee ask return to the old west bound classification, or if, after considering the subject, the Commission decides this would be unreasonable, that they will recommend the establishment of reasonable differences, define them, and where a doubt exists as to what is reasonable, that the smaller shippers shall be given the benefit of that doubt.

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF OREGON.

Ex parte Richard KOEHLER, RECEIVER OF THE OREGON & CALIFORNIA R. CO.

†1. Long and short haul—competition.

The fact that there is competition in the carriage of persons or property to or from a particular place is a circumstance that justifies a common carrier under section 4 of the Interstate Commerce Act to charge less for a long haul to or from said place than a short one included therein.

2. Passes to families of employees.

Section 2 of the Interstate Commerce Act in effect prohibits the giving of passes or free carriage to particular per-

sons; and the exception allowed in section 22, in favor of officers and employees of the road, does not include the families of such persons.

(July 4, 1887.)

PETITION for instruction.

The facts and questions presented are stated in the opinion.

Mr. John W. Whalley, for petitioner.

Deady, J., delivered the following opinion:

On June 25, 1887, the Receiver of the Oregon & California Railway Company filed his petition in this court asking for direction touching certain questions arising in the management of the road under the Interstate Commerce Act.

The road is 400 miles in length, and lies wholly in this State, between Portland and the

*See ante, 23.

†See nature of the complaint stated, ante, 24.

‡Head notes by DEADY, J.

assume that the State has the power to prevent a railway company from discriminating between persons and places for the sake of putting one up or another down, or any other reason than the real exigencies of its business. Such discrimination, it seems to me, is a wanton injustice, and may therefore be prohibited. It violates the fundamental maxim *Sic utere tuo ut alienum non laedas*, which, in effect, forbids anyone to so use his property as to injure another. * * * But where the discrimination is between places only, and it is the result of competition with other lines or means of transportation, the case, I think, is different. For instance, the Act prescribes a reasonable rate for carrying freight between Corvallis and Portland, or from either to points intermediate thereto. But Corvallis is on the river, and has the advantage of water transportation for some months in the year. The carriage of goods by water usually costs less than by land, and as water craft are allowed to carry at a rate less than the maximum fixed for the railway, they will get all the freight from this point unless the latter is allowed to compete for it. But if, to do this, it must adopt the water rate for all the points intermediate between Portland and Corvallis, where there is no such competition, it is in effect required to carry freight to and from such points at a less rate than that which the Legislature has declared to be reasonable, or else give up the business at Corvallis altogether. If the Legislature cannot require a railway corporation formed under the laws of the State, to carry freight for nothing, or at any less rate than a reasonable one, then it necessarily follows that this provision of the Act cannot be enforced, so far as to prevent the railway from competing with the water craft at Corvallis and other similarly situated points, even if, in so doing, they are compelled to charge less for a long haul than a short one in the same direction. It is not the fault or contrivance of the railway company that compels this discrimination. It is the necessary result of circumstances altogether beyond its control. It is not done wantonly, for the purpose of putting the one place up or the other down, but only to maintain its business against rival and competing lines of transportation. In other words, the matter, so far as the railway is concerned, resolves itself into a choice of evils. It must either compete with the boats during the season of water transportation, and carry freight below what the Legislature has declared to be a reasonable rate, or abandon the field and let its road go to rust. Nor can the shipper at the noncompeting point or over the short haul, complain, so long as his goods are carried at a reasonable rate. It is not the fault of the railway that the shipper who does business at a competing point has the advantage of him. It is a natural advantage to which he must submit, unless the Legislature will undertake to equalize the matter by prohibiting the carriage of goods by water for a less rate than by rail; and when this is done the inequalities of distance, as well as place, may also be overcome by requiring goods to pay the same rate over a short haul as a long one.

This opinion has been before the world for more than two years and, on account of the INTER 8.

importance of the subject, has attracted some attention; but so far as I am aware it has received no unfavorable criticism; and time and reflection have fully satisfied me of the correctness of the ruling.

In *Ex parte Koehler*, 25 Fed. Rep. 73, I had occasion to consider this subject again, on account of the competition at Corvallis with the Oregon Pacific Railway Company running in connection with the steamers of the Oregon Development Company for freight destined to and from San Francisco, in which the receiver was instructed to make rates that would enable the Oregon & California Road to compete for freight with the Oregon Pacific Company at Corvallis.

At common law a carrier has a right to charge less for a long haul than a short one in the same direction, but the rate for the short haul must be reasonable.

In *Atchison etc. R. Co. v. Denver etc. R. R. Co.* 110 U. S. 683 [Bk. 28, L. ed. 297], the supreme court held that the former could not be required to carry freight over its road from Kansas City to Pueblo, Colorado, for the latter at the same rate it obtained on a division of through rates among combined companies, of which it was one, on a through line from Kansas to Denver, the latter being a competitive point for the business to and from the Missouri River, while Pueblo is not. And this conclusion was reached notwithstanding the Constitution of Colorado (§ 6, art. 15) prescribes—"All individuals, associations and corporations shall have equal rights to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers within the State."

The judgment of the court is authority then, for this proposition: two or more corporations, in order to meet competition, may form a through line and charge through rates for transportation thereon, which may be less than the sum of the local rates of the several roads constituting the line; and the portion of the through rate received by each corporation may be less than the local rate charged by said corporation for carrying freight over the whole length of its road.

The Interstate Commerce Act is intended, among other things, to prevent discrimination between long and short hauls, except where they are made under substantially dissimilar circumstances and conditions. In my judgment, Congress, in limiting the prohibition contained in section 4 of the Act against discriminating charges between long and short hauls, to cases where such hauls are made "under substantially similar circumstances and conditions," has recognized the rule laid down in *Ex parte Koehler* as a proper one.

Freight carried to or from a competitive point is always carried under "substantially dissimilar circumstances and conditions" from that carried to or from noncompetitive points.

In the latter case the railway makes its own rates, and there is no good reason why it should be allowed to charge less for a long haul than a short one. When each haul is made from or to a noncompetitive point, the

southern boundary thereof; and since January 19, 1885, it has been operated by the petitioner, as Receiver of this court.

It appears from the petition that the Oregon & California Road will soon be connected with the California & Oregon Road, when the two will form a through line between Portland and San Francisco; that between these points there is also water communication by steamers and sail vessels, that carry passengers and freight at less than the average cost of transportation by rail between said places and all intervening stations; that the road of the Oregon Pacific Railway Company runs from Yaquina Bay to Albany in this State, and there crosses the line of the Oregon & California Road, from whence it is being constructed to the eastward; that, with the aid of steamboats on the Wallamet River, it receives a portion of the freight which would otherwise be carried on the Oregon & California Road; that the bulk of the freight obtained by the Oregon Pacific Railway Company from the Wallamet Valley, is carried to Yaquina Bay, and thence to San Francisco, at special rates, on the steamers of the Oregon Development Company, which are apparently under the same control as the Oregon Pacific Road; that the Canadian Pacific Road connects with a line of steamers running between its western terminus and San Francisco; and that to compete with such all water and rail and water transportation between Portland and points to the north and east of it, and in the Wallamet Valley on the one hand and San Francisco on the other, it is necessary to make corresponding rates on the Oregon & California Road.

The petitioner also states that it will be necessary for him, under section 6 of the Interstate Commerce Act, in conjunction with those in control of the connecting lines, to make the rates between Portland and San Francisco; and in view of these general statements and many illustrative details contained in the petition, he asks: 1, whether, under the Interstate Commerce Act, such rates can be made, for through travel and traffic, as will enable the Oregon & California Road to compete for the same, at points where competition by water or rail exists, although the rates for the long haul between Portland and San Francisco or intervening points may be less than those for a shorter haul in the same direction between said places or such points; and 2, whether, in conjunction with the Northern Pacific Railway Company or other transportation lines, the Oregon & California Road may meet the competition of the Canadian Pacific Road or other transportation lines, on transcontinental business originating to the north and east of Portland, although its share of the through rate may be less than the local charges over the road, or its share of the through rate on competitive business between Portland and San Francisco.

The petitioner also states that it has been customary to issue passes to the families of employees of the road, as well as the employees themselves, and that the same have been regarded as a part of the consideration for the services of the latter, and asks whether, under section 22 of the Interstate Commerce Act, he can issue such passes over the Oregon & Cali-

fornia Road to be used on interstate travel, and whether he can interchange the same for the passes of other roads to be used in such travel by the families of the employees of such other roads.

The Interstate Commerce Act applies, by its own terms, "to any common carrier engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management or arrangement for a continuous carriage or shipment" not "wholly within one State;" and all charges for any such service "shall be reasonable and just."

Section 4 of the Act provides "That it shall be unlawful for any common carrier, subject to the provisions of this Act, to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act, to charge and receive as great compensation for a shorter as for a longer distance."

From *Ex parte Koehler*, 23 Fed. Rep. 529, it appears that the Oregon & California Company was formed under the general Incorporation Act (1882) of Oregon, passed in pursuance of section 2 of article 9 of the Constitution of the State, which provides for the formation of corporations under general laws, and reserves to the Legislature the power to alter, amend or repeal any Act passed in pursuance thereof; "but not so as to impair or destroy any vested corporate right;" and § 36 of this Corporation Act provides that "any corporation formed thereunder shall be deemed a common carrier; and shall have power to collect and receive such freights for transportation of persons and property thereon, as it may prescribe." Laws, 582.

From these premises I concluded in *that* this corporation has a vested right to collect and receive a reasonable compensation for the transportation of persons and property on its road, which the Legislature cannot alter or destroy; and that while the Legislature may prescribe rates of transportation which are presumed reasonable, until the contrary appears, the judiciary are the final judges of what is reasonable or not, or what is the vested right of the corporation to receive reasonable compensation for its service.

Following this conclusion, I held in the same case that, notwithstanding the action of the Oregon Legislature (Sess. Laws, 1884, called "the Houtt Act," prohibiting transportation from charging a greater rate for carrying similar property for a short haul than for a long one, in the same direction, the Oregon & California Road might, for the purpose of maintaining and securing business, at a place where there are competing lines of transportation, charge less for a long haul than for a short one, in the same direction, so long as the charge for the latter is reasonable.

In the course of the opinion it was

DISMISS.

Missouri Pacific Railway
 Co., its attorney, and
 of the Associated
 June 27, 1887, be
 jurisdiction; and for
 points out that the
 solely that your re-
 mercial travelers \$25
 et; *whereas*, as alleged,

of February 4, 1887,

his Act shall apply to
 mileage, excursion or
 tickets.

Jno. S. Blair,
 Missouri Pacific R. Co.

UNION.

sion:

his case complains of the de-
 sale of thousand mile tick-
 transportation it makes ex-
 The price charged for each
 ; *whereas*, it is averred that a
 charge would be \$15.

air, for defendant, now moves
 mplaint, for the reason that it
 within the jurisdiction of the
 Interstate Commerce Act ex-
 ing that it is not to apply to the
 age tickets. No notice had been
 motion.

motion declines to take up the motion,
 use notice to the complainant had
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ause the object of the motion was
 merits of the case and have them
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HOLBROOK *et al.*,

v.

APOLIS & MANITOBA
 CO. *

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importance of the subject, has attracted some attention; but so far as I am aware it has received no unfavorable criticism; and time and reflection have fully satisfied me of the correctness of the ruling.

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The judgment of the court is authority then, for this proposition: two or more corporations, in order to meet competition, may form a through line and charge through rates for transportation thereon, which may be less than the sum of the local rates of the several roads constituting the line; and the portion of the through rate received by each corporation may be less than the local rate charged by said corporation for carrying freight over the whole length of its road.

The Interstate Commerce Act is intended, among other things, to prevent discrimination between long and short hauls, except where they are made under substantially dissimilar circumstances and conditions. In my judgment, Congress, in limiting the prohibition contained in section 4 of the Act against discriminating charges between long and short hauls, to cases where such hauls are made "under substantially similar circumstances and conditions," has recognized the rule laid down in *Ex parte Koehler* as a proper one.

Freight carried to or from a competitive point is always carried under "substantially dissimilar circumstances and conditions" from that carried to or from noncompetitive points.

In the latter case the railway makes its own rates, and there is no good reason why it should be allowed to charge less for a long haul than a short one. When each haul is made from or to a noncompetitive point, the

effect of such discrimination is to build up one place at the expense of the other. Such action is willfully unjust, and has no justification or excuse in the exigencies or conditions of the business of the corporation.

In the former case the circumstances are altogether different. The power of the corporation to make a rate is limited by the necessities of the situation. Competition controls the charge. It must take what it can get, or as was said in *Ex parte Koehler*, "Abandon the field, and let its road go to rust."

Competition may not be the only circumstance that makes the condition under which a long and a short haul are performed substantially dissimilar. But certainly it is the most obvious and effective one; and must have been in the contemplation of Congress in the passage of the Act.

Section 6 of the Act of July 1, 1862 (12 Stat. 489), incorporating the Union Pacific, provides that the United States shall have the preference in the use of the road of the corporation, for the transportation of mails, troops, and munitions of war "at fair and reasonable rates of compensation, not to exceed the amount paid by private parties for the same kind of service."

In the *Union Pacific R. Co. v. U. S.* 104 U. S. 662 [Bk. 26, L. ed. 884] and 117 U. S. 355 [Bk. 29, L. ed. 920] a question arose under this section, as to what compensation the corporation was entitled to receive for transporting persons connected with the postal and military service of the government, over the line of its road, when it appeared from the finding of the court of claims that the uniform rate of the Union Pacific for carrying passengers over its road between Council Bluffs and Ogden, on tickets purchased at either of these points, was \$78.50; but by contract with connecting railway corporations, passengers were carried on through tickets from New York to San Francisco at reduced rates, of which the Union Pacific received as its proportion \$54 a passenger. [117 U. S. 862.]

As stated by the supreme court, 117 U. S. 363 [Bk. 29, L. ed. 928]. "The contention of the United States is that local passengers, carried on its account between Council Bluffs and Ogden, shall be carried at the same rates as are charged for through passengers passing between these points, as part of a journey over the whole line, although a difference is made in respect to all other persons."

The question was decided in favor of the corporation, the court holding, in the language of the syllabus, [117 U. S. 355]: "The service rendered by a railway company in transporting a local passenger from one point on its line to another, is not identical with the service rendered in transporting a through passenger over the same rails."

The decisions of the supreme court in these two cases are quite recent (1881, 1883 and 1885), and were doubtless present in the mind of Congress at the passage of the Interstate Commerce Act. In effect they both hold that a short haul without competition is not a like service, or a service performed under similar circumstances and conditions, with a long one subject to competition—and that the circum-

stances in such case are so dissimilar as to warrant discrimination, or a less rate over the long haul than the short one.

Section 90 of the English Railway Act of 1845 (8 and 9 Vic. chap. 20) requires equality of rates for the passage of goods "passing only over the same portion of the line of said railway under the same circumstances."

In *Denaby Main Colliery Co. v. M. S. & L. Railway Co.* L. R. 10 H. of L. 97; S. C. 26 Am. & Eng. R. Cas. 298, it was held, in an action against the defendant for overcharges, made in violation of the Act, in carrying coal from a group of collieries, situate at different points along the line of its road, at a uniform rate, that the Act only applied to goods passing between the same termini and over no other part of the line; and that inequality of rate, where unequal distances are traversed does not constitute a preference contrary to the Act. In other words, the court held that two tons of coal, passing over the road of the defendant between B & C, did not pass over such portion of its line under the same circumstances, if one of them also passed over that portion of the road between A & B, and therefore the defendant was not guilty of an infraction of the Act, when it charged no more for carrying a ton of coal from A to the point C, than it did from B to such point.

But under the Interstate Commerce Act, mere difference in distance is not such a circumstance as will justify a greater or even an equal charge for a short haul than for a long one. Yet Congress must have contemplated that there might be such a difference in the circumstances attending a long and short haul, as would justify such charge—as would make it necessary for a railway corporation in the retention and acquisition of the business for which it is constructed and operated, to charge less for a long haul than a short one. Congress never intended to make of this Act a Procrustean bed, in which the conduct of the business of all the roads engaged in interstate commerce shall be made to conform to one arbitrary rule, without reference to the probable and even unavoidable differences in the conditions and circumstances under which it must be transacted. And, as I have said, in my judgment, competition between the termini of a long haul, is the most obvious and effective circumstance, that justifies a railway in making a rate below what it might reasonably and does charge where there is no competition. The places, between which competition in transportation exists between water craft and railways, or even the latter, always will and must send and receive freight at lower rates than others not so favored. This is the result of natural advantage, supplemented often by exceptional sagacity and enterprise, and it would be folly in the Legislature to prevent it, if it could.

As long as people and places differ so widely in capabilities and facilities, social or business equality is impossible. Society can do no more than to give each one an even chance and a fair show, to make the most of his or its opportunities, and leave the result to circumstances over which it has little if any direct control.

The third question propounded by the Receiver is easily answered.

Section 2 of the Act by prohibiting any carrier subject thereto, from charging any one person a greater or less compensation, for any service rendered in the transportation of persons or property subject to the Act, than it does any other person for a like and contemporary service, under substantially similar circumstances and conditions, in effect prohibits the issuing of passes or the carrying of any person free of charge, so long as the same privilege is denied to any other person under substantially similar circumstances and conditions.

Now it may be said, and with much plausibility, that the wife or minor child of an employee sustains a different relation to the employer from that of the public generally; and that therefore the carriage of such a person on a pass, or free of charge, is a service rendered by the carriers under "substantially dissimilar circumstances and conditions," from that rendered to any other person, not belonging to the family of an employee.

But section 22 of the Act contains some specific exceptions to the operation of section 2. Among them is this: "Nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employees or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees."

The language of the exception is explicit. There is no room for interpretation or construction. The words cannot be made to in-

clude the family of an employee, without violence to the apparent purpose of the Legislature. In effect the exception declares that the circumstance of a person being the employee of a railway corporation is sufficient to justify the latter in carrying him free of charge, but not his wife or his children. The exception takes the subject of free carriage on account of any persons' employment by a railway corporation, out of the question of "similar circumstances and conditions" as provided in section 2, and declares that the person so employed may be carried on that account, without reference to any other circumstance or condition, and by a necessary implication, no one else.

Doubtless it would be expedient to include the immediate family—the wife and minor children—of the employee in this exception. By this means the corporation might, without material cost to itself or prejudice or injustice to anyone, augment in a graceful way the compensation and convenience of faithful servants.

But the remedy, if any, is with Congress and not the courts.

The receiver is instructed that he is authorized to make a less rate for a long haul than a short one, in conjunction with connecting lines or otherwise, whenever, by reason of competition with other lines or means of transportation, the same is necessary to enable the Oregon & California Road to retain or acquire business, and that he is not authorized to give passes over his road to any member of the family of an employee thereof, for the purpose of or in connection with interstate travel.

THE INTERSTATE COMMERCE COMMISSION-

ASSOCIATED WHOLESALE GROCERS
OF ST. LOUIS

v.

MISSOURI PACIFIC R. CO.

1. A motion to dismiss a complaint denied, because: 1, no notice of motion had been given; and 2, because the object of the motion was to reach the merits of the case and have them passed upon summarily, instead of at the customary final hearing.

2. It is the desire of the Commission that the practice and proceedings shall be as simple as possible, and that final hearings be had forthwith, without the interposition of dilatory motions, etc.

(July 12, 1887.)

COMPLAINT alleging excessive charges in the sale of thousand mile tickets. Motion by defendant to dismiss complaint. *Motion not entertained.*

COMPLAINT.

To the Honorable, the Interstate Commerce Commissioners:

Your petitioner herewith, the Associated Wholesale Grocers of St. Louis, a corporate body existing under the laws of the State of Missouri, asks leave to present this complaint against the Missouri Pacific Railway Company, a corporation existing under and by virtue of the laws of the State of Missouri, and of the United States, and to charge that the said Railway Company has violated and is daily violat-

INTER 8.

ing the provisions of an Act of Congress, entitled an Act to Regulate Commerce, and known as the Interstate Commerce Law, to the injury of this complainant.

In support of this charge it is hereby averred:

Specification 1.

That the said Missouri Pacific Railway Company has made a combination and arrangement with other and separate railway lines connecting therewith, whereby it charges to shippers of other States, by those lines of railway, a less compensation for services rendered in transporting property from points within the State of Missouri, to points without the State, than it charges to citizens of the State of Missouri for rendering substantially similar services in transporting property between the same points, all in violation of sections 1 and 2 of the said Interstate Commerce Law.

Specification 2.

That the said Missouri Pacific Railway Company, itself owning no connecting line between the City of St. Louis in the State of Missouri, and the City of East St. Louis, in the State of Illinois, nevertheless, by its published tariff, offers to transport property from both the points named to points in Kansas, Nebraska, and elsewhere, at the same rate; and it being evident that the said Railway Company must part with some portion of its compensation to the line transporting the property from East St. Louis to St. Louis, it practically follows that an undue preference is shown to

appeared before me Joseph Lathrop, a notary public, within and for the City of St. Louis, State of Missouri, Jacob Furth and W. E. Schweppe, who are known to me, and to be respectively the Vice President and the Secretary of the Associated Wholesale Grocers of St. Louis, and they severally acknowledged their signatures to the foregoing petition, and declared the same to be true to the best of their knowledge and belief.

Joseph Lathrop,
Notary Public.

ANSWER.

Answer of the Missouri Pacific Railway Company to the bill of complaint made by the Associated Wholesale Grocers, before the Interstate Commission, at Washington, D. C.

To the Honorable T. M. Cooley and members of the Interstate Commission, Washington, D. C.:

The Missouri Pacific Railway Company, respondent in the above case, for its answer to the bill of complaint filed therein, respectfully submits the following:

No. 1. The Missouri Pacific Railway Company admits that, as is customary with all common carriers, it does, in some instances, accept as a division of a through rate a lower proportion than its published local tariff from point of interchange with connecting transportation lines to destination of the freight; but denies that in any case it is a party to the making of a less through rate from point of shipment to destination than the rates charged between intermediate points on any interstate shipments.

No. 2. The Missouri Pacific Railway Company admits that it, in some instances, publishes and charges the same through rate from East St. Louis as from St. Louis, to some of the stations on its own and connecting lines; but it denies that this is in any manner in conflict with the requirements of any of the provisions of the Interstate Commerce Law; and it further alleges that it does control and operate, under joint lease with another company, a connecting line between the City of St. Louis, in Missouri, and the City of East St. Louis, in Illinois.

No. 3. The Missouri Pacific Railway Company admits that, as is customary with nearly all if not all common carriers, it makes a lower charge for freight in car load quantities than for similar shipments in less than car loads; but avers that in doing this it does not violate any of the provisions of the Interstate Commerce Law, and does not unjustly discriminate against anyone, as its tariffs, formulated on this basis, are applicable alike to all shippers.

The Missouri Pacific Railway Company denies that there is any discrimination in any of its acts, as admitted under the different specifications named in the complaint; and denies that such action as herein admitted, regarding its rates, is in any manner in conflict with any of the sections of the Interstate Commerce Law, and in further evidence of this makes reference to the tariffs on file in your office.

The Missouri Pacific Railway Company,
By W. H. Newman,
Genl. Traffic Manager.

INTER 8.

MOTION TO DISMISS.

Now comes the Missouri Pacific Railway Company by John S. Blair, its attorney, and moves that the complaint of the Associated Grocers of St. Louis, dated June 27, 1887, be dismissed for want of jurisdiction; and for grounds of said motion he points out that the complaint is simply and solely that your respondent is charging commercial travelers \$25 for a thousand mile ticket; *whereas*, as alleged, \$15 would be sufficient.

Section 22 of the Act of February 4, 1887, provides:

That nothing in this Act shall apply to * * * the issuance of mileage, excursion or commutation passenger tickets.

Jno. S. Blair,
for Missouri Pacific R. Co.

OPINION.

By the Commission:

The petition in this case complains of the defendant that in the sale of thousand mile tickets for passenger transportation it makes excessive charges. The price charged for each such ticket is \$25; *whereas*, it is averred that a fair and sufficient charge would be \$15.

Mr. John S. Blair, for defendant, now moves to dismiss the complaint, for the reason that it shows no case within the jurisdiction of the Commission, the Interstate Commerce Act expressly providing that it is not to apply to the issuance of mileage tickets. No notice had been given of the motion.

The Commission declines to take up the motion.
First, because notice to the complainant had not been given.

Second, because the object of the motion was to reach the merits of the case and have them discussed and passed upon summarily, instead of at the customary final hearing. A practice thus to anticipate by motion the final hearing the Commission did not think advisable and would not therefore favor.

It is the desire of the Commission that the practice and proceedings in cases before us shall be in the simplest form possible, consistent with justice, and that without dilatory motions, pleas in abatement or other interlocutory proceedings, the matter in question may be brought to an issue at the earliest practicable day when a final hearing may be had forthwith, and all proper questions will then be entertained, whether jurisdictional or going to the merits of the controversy.

William M. HOLBROOK *et al.*,

v.

ST. PAUL, MINNEAPOLIS & MANITOBA
R. CO. *

1. Where no overt acts of misconduct on the part of a defendant railroad company, which could support any judgment of the Commission or any mandatory order, are made to appear, the Commission has no discretion but to dismiss the complaint.

*See ante, 315.

complaint, this Company will gladly furnish it with all information in its possession; but it submits that it is not within the province of your Commission to investigate the actions of railroad companies prior to the passage of the Act of Congress, approved February 4, 1887, entitled "An Act to Regulate Commerce."

Dated St. Paul, Minn., May 4, 1887.

W. E. Smith,
General Solicitor, St. Paul, Minne-
apolis & Manitoba R. Co.,
St. Paul, Minn.

State of Minnesota, }
Ramsey County, } ss.

E. Sawyer, being duly sworn, deposes and says, he is the Secretary of the St. Paul, Minneapolis & Manitoba Railway Company, the defendant herein; that he has read the foregoing answer, and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief; and as to those matters he believes the same to be true.

E. Sawyer.

Subscribed and sworn to before me,
this 4th day of May, 1887.

F. W. Woodruff, Notary Public,
Ramsey Co., Minn.

MOTION TO STRIKE OUT.

Comes the defendant Company and moves the honorable Commission to disregard and strike from the files of this case the certain papers and documents described as follows:

The sworn statement of Nelson L. Derby and others, dated April 18, 1887—Filed April 23, 1887.

The sworn statement of Nelson L. Derby and W. M. Holbrook, sworn to July 2, 1887, and filed July —, 1887.

And for cause of motion the defendant says that said papers purport to be and contain evidence in support of the petition or complaint in this case filed.

That the said testimony was taken without notice to defendant, and without opportunity to be present, or to cross examine the witnesses produced.

That the testimony therein contained is irrelevant, immaterial, and insufficient.

S. S. Burdett,
Atty. for defendant.

MOTION TO DISMISS.

Comes the defendant, the said St. Paul, Minneapolis & Manitoba Railway Company, by S. S. Burdett its attorney, and moves the Commission to dismiss the cause and complaint herein for insufficiency.

1. Because there is no matter set out therein cognizable by this Commission under the Act of Congress approved February 4, 1887.

2. Because the said petition or complaint shows on its face that the matters and things therein complained of happened prior to the approval of the Act aforesaid and prior to its taking effect as a law.

3. Because said complaint contains no allegation or averment that the matters therein complained of continued after the passage of said Act.

INTER S.

4. Because the allegation in said complaint of a belief as to what may happen in the future to the detriment of the petitioners is not ground for interposition in that behalf by the honorable Commission.

S. S. Burdett

Attorney for St. Paul, Minneapolis & Manitoba Railway Co.

OPINION.

By the Commission:

The petition in this case, which was filed April 18, 1887, avers that the complainants during the last fall and winter, for nearly two months, were denied cars by the defendant company, and fearing that the course of the defendant will be similar the coming fall, and thinking the present a proper time to bring the matter to the attention of the Commission, that the apprehended inconvenience may be avoided, the complainants apply to the Commission for some proper and adequate remedy.

The reason given for the failure to supply cars to the complainants is stated to be that the defendant has been engaged in constructing an extension of the road, and has used its rolling stock for that purpose, thus making itself a preferred shipper.

As the facts stated did not show any violation of the Law occurring since the Act was passed, under which the Commission is acting, but only a fear that there might be such a violation, the Commission might, with entire propriety, have advised the parties that they should wait until it was seen whether their fears of misconduct on the part of the defendant were to be realized; the Commission having no authority to anticipate violations of law, or to issue mandatory process upon suppositions or fears that any such violations will take place. But as it was quite possible that the fears which were asserted might not be wholly groundless, it was deemed proper to send to the defendant company a copy of the petition, that it might have an opportunity for explanation, and also for giving assurances as to the future if inclined to do so.

This course having been taken, the defendant answered, excusing its failure to furnish cars during the time of which complaint of deficiency was made by the complainants, and averring that the Company had now procured an additional quantity of cars, so that it was believed there would hereafter be no difficulty in handling its business promptly and without delay. A copy of this answer was served upon the complainants, and this day was assigned for a public hearing if the parties or either of them desired to have one.

The complainants have not appeared today, but have forwarded certain affidavits on which (and upon the pleadings and certain facts appearing by the report of the Railroad Commission of Dakota) they desire the case to be heard. The affidavits were taken *ex parte*, and the defendant Company was not notified to appear for cross examination when they were taken. They are not, therefore, legal evidence, whatever they might show, and we could not base an opinion upon them. We have looked into them, however, enough to satisfy ourselves that they do not show any violation of law committed since the Act to regulate commerce

was passed. Nor does any such violation appear from anything else to which our attention is called. If, therefore, the complaint was sufficient in substance, it would stand without evidence of any overt acts of misconduct on the part of the defendant, which could support any judgment by the Commission or any mandatory order. Under such circumstances we have no discretion but to dismiss the complaint.

If the defendant was guilty of any wrong prior to April of the present year, we cannot for such wrong call it to account, because it antedates our authority. If at this time the defendant avows a purpose to comply with the Law, we must not only assume that it will do so, but we must act upon that assumption until we have evidence that the purpose is not lived up to. At this time we have no such evidence and these proceedings will, therefore, here terminate.

All concur in this memorandum.

MILTON EVANS

v.

OREGON RAILWAY & NAVIGATION CO.*

PROCEEDING by a resident of Walla Walla, Washington Territory, based upon allegations of exaction of excessive charges by defendant company for the transportation of wheat.

COMPLAINT.

To the honorable Interstate Commerce Commission.

Milton Evans, petitioner, respectfully shows and alleges.

First; That he is a citizen of the United States, over twenty-one years of age, and residing in Walla Walla County, in the Territory of Washington.

Second; That the defendant, The Oregon Railway and Navigation Company is a corporation and, as such, has been for several years last past and is now a common carrier engaged in operating a railroad and transporting passengers and property between the City of Walla Walla, in the Territory of Washington, and the City of Portland, in the State of Oregon, and other points in the State of Oregon and the Territories of Idaho and Washington.

Third; That the said defendant's line of railroad from Walla Walla City, in the Territory of Washington, to the City of Portland, in the State of Oregon, is one continuous line of road, 246 miles in length, about thirty-six miles of which is in the Territory of Washington, and 210 miles in the State of Oregon, and that the same is now and has been at all times, since the same has been owned and operated by the defendant as aforesaid, running through trains between said cities without change of cars.

Fourth; That on April 26, 1887, your petitioner, being the owner of a car load of wheat consisting of 27,000 pounds of wheat, delivered the same on board of one of defendant's cars at Walla Walla City, in the Territory of Washington, aforesaid, for transportation to the City of Portland, in the State of Oregon; that

said defendant Railroad Company, as aforesaid, charged complainant \$81 (thirty cents per 100 lbs.), for transporting said car load of wheat from said Walla Walla City to the City of Portland, aforesaid, and refused to carry or transport the same for any less sum or compensation, and petitioner, in order to have said wheat transported as aforesaid, was compelled to pay and did pay said defendant therefor the sum of \$81, and received from said defendant a receipt or contract in the words and figures following, to wit:

"Walla Walla, W. T. April 26, 1887.

"Received today from Milton Evans Eighty-One Dollars, as payment in full for freight on Twenty-Seven Thousand pounds (27,000 lbs.) wheat shipped to day from here on car 1992 to Portland, Oregon, that being our regular rate on car load lots, viz.: 30 per cental from here to Portland.

\$81.00.

Subject to corrections.

"W. F. Wamsley, Agt."

and petitioner was also required by said defendant to load and unload said car at his own expense.

Fifth; That the said charge made, demanded, and received by said defendant from petitioner for the transportation of said car load of wheat as aforesaid, was unjust, unreasonable, and extortionary, and was at least twice as much as it was reasonably worth to transport the same as aforesaid.

Sixth; That petitioner has other large quantities of wheat, to wit: four thousand bushels which he is desirous of having transported over said defendant's railroad from said City of Walla Walla, in the Territory of Washington, to the City of Portland, in the State of Oregon; that said defendant refuses to transport or carry the same or any part thereof at just or reasonable rates, or at any rate less than the aforesaid unjust, unreasonable and extortionate rates.

Wherefore, Your petitioner prays that an investigation of the matters and things alleged in the foregoing petition be ordered and had by the honorable Interstate Commerce Commission, and that the aforesaid rate charged your petitioner by the said defendant be adjudged unreasonable and unjust, and that the said defendant be ordered to repay and refund to petitioner one half of the aforesaid sum of \$81, extorted from petitioner as aforesaid, and that said defendant be required and ordered by this honorable Commission to transport the wheat of petitioner now on hand at the rate of three dollars per ton in car load lots, and that the honorable Interstate Commerce Commission fix and establish a reasonable rate for the transportation of freight and property over the said Oregon Railway & Navigation Company's Railroad between the said Cities of Walla Walla, in the Territory of Washington, and Portland, in the State of Oregon; and for such other and further order and relief as may be just and equitable; and your petitioner will ever pray, etc.

Milton Evans,
Petitioner.

Territory of Washington, }
County of Walla Walla. } ss.

Milton Evans, being first duly sworn, deposes and says, that he is the petitioner named in the foregoing petition and that he has read the said

*See ante, 314.

petition and knows the contents thereof and that the same is true.

Milton Evans.

Subscribed and sworn to before me this 6th day of June, 1887.

[Seal.]

Frank Filber,
Notary Public.

ANSWER.

Answering to the complaint of Milton Evans, of Walla Walla, Washington Territory, the Oregon Railway and Navigation Company, the above named defendant:

Admits that this defendant is a corporation incorporated under the Laws of the State of Oregon, having its principal office at the City of Portland, in said State, and that as such, it has been for several years last past, to wit: since the 21st day of October, 1883, and now is, a common carrier engaged in operating a railroad and transporting passengers and property between the City of Walla Walla, in the Territory of Washington, and the City of Portland, in the State of Oregon, and other points in the State of Oregon and the Territory of Washington, but denies that it is engaged in operating any continuous line of railroad between either of said points and any point in the Territory of Idaho.

Defendant admits that this defendant's line of railroad from the City of Walla Walla, in the Territory of Washington, to the City of Portland, in the State of Oregon, is one continuous line of road, 246 miles in length, about thirty-six miles of which is in the Territory of Washington, and 210 miles in the State of Oregon, and that this defendant is now and has heretofore been running through trains between said cities without change of cars, except where such changes became necessary by reason of the interruptions hereinafter mentioned.

Defendant admits that on or about the 26th day of April, 1887, the petitioner delivered on board of one of defendant's cars at Walla Walla, in the Territory of Washington, 27,000 pounds of wheat for transportation to the City of Portland, in the State of Oregon, and that this defendant charged said petitioner \$81, or thirty cents per 100 pounds for transporting said car load of wheat from said Walla Walla to the City of Portland aforesaid, including, however, all terminal charges at said City of Portland; and this defendant admits that it refused to transport said wheat for a less charge than said thirty cents per 100 pounds, amounting in the aggregate to \$81 upon the shipment made by complainant, which said complainant paid defendant, and defendant issued and delivered to complainant a receipt therefor, substantially in the words and figures set forth in the petition filed herein.

Defendant denies that said charge, or any charge made, demanded or received by this defendant from petitioner or any person for the transportation of said car load of wheat as aforesaid, or otherwise, or the transportation of any wheat or other freight, was or is unjust, unreasonable or extortionary, and denies that the same was any more than it was reasonably worth to transport the same as aforesaid.

Defendant says that as to whether or not petitioner has other large or other quantities of

wheat, either 4,000 bushels or any amount, which he is desirous of having transported over defendant's railroad from Walla Walla to Portland, Oregon, or otherwise, this defendant has no knowledge or any information sufficient to form a belief, and it denies that defendant refuses to transport the same or any part thereof, or any wheat or other merchandise, at just and reasonable rates, or at less than any unjust, unreasonable or extortionate rates.

And further answering unto the complaint of said petitioner, this defendant respectfully alleges and shows to Your Honors:

That the railroad line of this defendant between the City of Portland, in the State of Oregon, and the City of Walla Walla, in Washington Territory, a distance of 246 miles, is necessarily constructed and operated for the most part through a rugged and mountainous country, with extraordinary grades and curves, and being so constructed, is operated at exceptionally great expense.

That between the said City of Portland and Dalles City, a distance of eighty-eight miles, its said road runs over and across the Cascade Mountains in the State of Oregon, and the adjoining mountainous country is unproductive and unsettled.

That, during the winter seasons, the operation of this part of defendant's road is frequently interrupted by storms and snow blockades, and earth slides, and the defendant is thereby subjected to extraordinary expense; that between said Dalles City and said City of Walla Walla, defendant's road for the greater part of the way runs through a sandy and unproductive desert, and is subject to constant obstruction from sand drifts. Its ties and bridge sub-structures along this portion of its line require to be renewed every six or seven years on account of deterioration caused by alkali in the soil.

That defendant's road consists of 572 miles of main track, and runs through the Counties of Wasco, Gilliam, Umatilla, Union and Baker in the State of Oregon, and the Counties of Walla Walla, Columbia and Garfield in Washington Territory; that said counties contain in the aggregate, 34,441 square miles, that the population of said counties is in the aggregate, 58,520.

That the total of way freights between Portland and said Dalles City during the eleven months ending May 31, 1887, amounted to the sum of \$424.86.

That the whole local traffic, both passenger and freight, between the said City of Portland and Walla Walla, including the business received at said points during said eleven months ending May 31, 1887, amounted to the sum of \$606,450.39, and the operating expenses of that portion of said road amounted to \$792,490 during the same time.

That wheat furnishes much the largest part of the freight shipped over defendant's lines; that the total wheat shipped during the eleven months ending May 31, 1887, over all defendant's lines of road was 121,152 tons, and that the total from Walla Walla was 15,249 tons during the same time; that the amount shipped from Walla Walla during the month of May, 1887, was but 167 tons.

That labor in the vicinity where this defendant's railroad is operated, is excessively high and exceeds by at least 25 per cent the prices paid therefor upon other railroads within the United States, and skilled labor, like engineers of the capacity and experience required in the operation of defendant's railroad exceeds that amount.

That this defendant has constructed its said railroad solely by private capital invested in the enterprise, and without any government, state or municipal aid.

That the capital stock and bonded indebtedness of defendant's railroad, represents only the actual paid up capital and moneys actually invested in its business, and the fixed charges upon that portion of its said road exceed at the present time, and at the present rates of freights and fares, the whole amount of the income derived from the business of said road between the said City of Portland and said City of Walla Walla, upon all freights and fares between said points, including all freights and fares received at said Walla Walla and Portland; so that if this defendant were compelled to rely entirely upon local traffic between the points aforesaid, and that originating at the said Cities of Walla Walla and Portland, at the present tariff of freights and fares, the income from the said railroad would not be sufficient to pay its said fixed charges and maintenance without making any returns whatever upon its capital stock expended in building its said railroad.

That at its present tariff rates, with the most economical management possible in the operation of its said railroad, this defendant is able to pay no more than 8 per cent upon its paid up capital stock, while the ordinary rates of interest upon first class loans at said Walla Walla in the vicinity of defendant's said railroad, is 10 per cent per annum.

That defendant has been engaged in operating its said railroad between said City of Port-

And this defendant alleges the fact to be that the adoption of a rate of freight charges for its road as low as that prayed for herein would make it impossible to operate defendant's said road, and pay operating expenses and cost of repairs, leaving nothing for dividends or interest; that such rate would prevent the construction of the new lines under way and in contemplation, and would, in effect, destroy its entire property as an investment.

Wherefore, Defendant prays that the complaint herein be dismissed.

Oregon Railway & Navigation Co.,
By H. S. Rowe, Supt.

Dolph, Bellinger,
Mallory & Simon,
Attys.

State of Oregon,
County of Multnomah, } ss.

I, H. S. Rowe, being first duly sworn, say that I am the Superintendent of The Oregon Railway and Navigation Company, defendant above named, and that the foregoing answer is true as I verily believe.

H. S. Rowe.

Subscribed and sworn to before me this 2d day of July, 1887.

[Seal.] V. O. Bellinger,
Notary Public for Oregon.

William H. REED
v.

OREGON RAILWAY & NAVIGATION
CO.*

PROCEEDING by a resident of Walla Walla, Washington Territory, based upon allegations of exaction of excessive charges by defendant company, for the transportation of wheat.

*See ante, 214.

COMPLAINT.

The plaintiff complains and alleges:

1. That now and at the time hereinafter mentioned, the defendant is and was a common carrier engaged in the transportation of passengers and property wholly by railroad, under a common control, for a continuous carriage from the City of Walla Walla, in the Territory of Washington, to the City of Portland, in the State of Oregon.

2. That on the 26th day of May, A. D. 1887, at the City of Walla Walla, Washington Territory, the plaintiff delivered to the defendant, on board its cars at the defendant's depot in said city, a certain amount of wheat, in sacks, the property of the plaintiff, to wit: one hundred and eighty-five (185) sacks of wheat, weighing 24,000 pounds, being 400 bushels, of the value of sixty-five cents a bushel, in sacks, on board the defendant's cars at Walla Walla, Washington Territory. And the defendant, as such carrier, received said wheat for delivery to the plaintiff on board the defendant's cars at Portland, Oregon. And the defendant for such service, which it subsequently performed, the loading and unloading of the car being done by the plaintiff, charged the plaintiff the sum of \$72, which was at the rate of thirty cents per hundred pounds, or eighteen cents a bushel, equalling 2.439 cents per ton per mile. This sum was paid by the plaintiff, through his order, the receipt for said payment being hereto attached, dated May 28, 1887. Said receipt gives the date of the way bill as May 26, the number of way bill as 297, and the number of the car as 1794.

3. Said transportation being for a distance of but 246 miles, this charge of \$72 for transporting 24,000 pounds of wheat that distance, the plaintiff deems unjust and unreasonable, to the extent and in the sum of \$3 a ton.

The plaintiff and his neighbors have been repeatedly made to pay the same unjust and unreasonable rate for the same service since the Interstate Commerce Act, approved February 4, 1887, took effect; and the plaintiff prays your honorable body to find, under the first section of said Act, that such charge is excessive and unlawful to the extent and in the sum of \$3 a ton; and plaintiff asks your honorable body to issue an order on said defendant to return to said plaintiff said excessive charge, and that the defendant be restrained by your honorable body from hereafter making a charge of over \$3 a ton for a like service of transporting wheat from Walla Walla, Washington Territory, to Portland, Oregon.

William H. Reed, Plaintiff.
Territory of Washington. } ss.
County of Walla Walla.

William H. Reed, being duly sworn, says he is the above named plaintiff, that he has read the foregoing complaint, and that the same is true to the best of his knowledge and belief.

Subscribed and sworn to before me this, the tenth day of June, A. D. 1887.

(Seal)

Fred G. Reed, Notary Public.

[Receipt.]

Portland, May 28, 1887.

W. H. Reed,
To Oregon Railway & Navigation Company,
INTER S.

Dr., for freight and charges from Walla Walla.

Date, May 26. No. of Way Bill, 297

No. of Car, 1794. Articles, 185 Sk wheat.

Weight, 24,000. Rate \$0.

Local charges 72.00. Total to pay 72.00

Cartage to warehouse 4.80

Insurance 1.80

Cartage from warehouse to Greenwich 4.80

83.40

Received Payment for the Company,

G. H. Stewart, Agent.

Consignor, W. H. Reed.

The answer to the above complaint is similar to that set forth in the case of Milton Evans against the same defendant, *supra*.

BURTON STOCK CAR CO.

CHICAGO, BURLINGTON & QUINCY R.
R. CO. *et al.*

1. The **milage** rate of $\frac{3}{4}$ of a cent per mile run, which is customary among railroads, for **freight cars** of other railroad companies used upon the paying company's line, and which payment is, by the interchange of cars, practically equalized among the different roads, is **not** to be taken as the **measure of payment** for the use of cars belonging to other persons than railroad companies.
2. The **Burton Stock Car Company**, which furnishes special improved live stock cars owned by it, to shippers over railroads, does not exchange with or use cars belonging to others, and is in no sense a "connecting line," entitled to equal facilities for interchange of traffic, under paragraph 2 of section 3 of the Act to Regulate Commerce.
3. The **Burton Stock Car Company** is **not** entitled to claim that it is **unjustly discriminated against** by a refusal on the part of railroad companies to pay it the same rate of milage which carriers adopt as the basis in adjusting their car service accounts with each other.
4. The expense of hauling the **Burton cars** in one direction unloaded (for the reason that by their construction they are not suited to carrying general freight) as compared with the greater ability to load back the ordinary railroad cattle cars, and the fact that a large percentage of the ordinary cattle cars are so back-loaded upon the long hauls of western roads, are **considerations which justify a difference in charge against shippers who prefer to hire the improved stock cars.**
5. *Doubted (but not decided)* whether the extra charges made to shippers of live stock in special cars (including the **Burton cars**) over thirty feet in length, according to the revised classification of the Western Railroad Classification

Committee, put in force April 7, 1887, are not unreasonable.

(Decided July 25, 1887.)

BILL OF COMPLAINT.

To the Honorable T. M. Cooley, Chairman, and Members of the Interstate Commerce Commission, Washington.

The Burton Stock Car Company (Incorporated), with headquarters at Boston, and offices at Chicago, Washington, Kansas City, Portland, (Maine), etc., complain against the Chicago, Burlington & Quincy Railway Company, Chicago, Rock Island & Pacific Railway Company, Chicago & Alton Railway Company, Union Pacific Railway Company, Lake Shore & Michigan Southern Railway Company, Cleveland, Columbus, Cincinnati & Indianapolis Railway Company, Chicago, Burlington & Northern Railway Company, Hannibal & St. Joseph Railway Company, Missouri Pacific Railway Company, Chicago, Milwaukee & St. Paul Railway Company, and the Burlington & Missouri Railway Company—all within the jurisdiction of your honorable Commission, and say:

That the said Burton Stock Car Company have, own, and operate a large number of cars designed especially for the humane transportation of live stock. These cars weigh from twelve and one half to thirteen tons each (no more than the common cattle car of the same length), are thirty-four, thirty-six and thirty-eight feet in length, and have a carrying capacity for sixteen full sized horses or neat cattle. Said cars being equipped, they are with all modern improvements and appliances, require less motive power to haul the same than is required for the transaction of an ordinary stock car, such as is owned and operated by the various railroad companies complained against, according to the admissions of officials of the said roads.

And said Burton Stock Car Company avers that it has repeatedly demanded of said railroads the customary mileage of three quarters of one cent per mile per car paid by said roads to each other, and to other roads, private corporations, and owners and operators of cars running over their lines, which sum is paid as compensation for the use of these cars while on their respective lines, and that said railway companies have repeatedly refused to report to or pay to said Burton Stock Car Company said mileage, and demand from them a charge of 120 per cent of the tariff rate for thirty foot cars, and an additional charge of 8 per cent of tariff rate for each additional foot or fraction thereof in excess of thirty feet in length; that is, if cattle are shipped in a Burton stock car which is thirty-six feet in length, internal measurement, the shipper will be charged 188 per cent for the privilege, as they term it, of shipping in a Burton stock car.

And said Company avers that this is an exorbitant and extortionate charge and a discrimination against the Burton Stock Car Company and a hindrance and oppression to its business.

And said Company further avers that the said roads have, own, and operate cars of more

than thirty feet in length on which no such excess charge is made.

And said Burton Stock Car Company further avers that the extortionate charge as above is a great injury and detriment to said Burton Stock Car Company, and to the detriment and injury of public and private rights, and to the annoyance and great inconvenience of shippers and dealers desiring to ship and have transported their live stock with the advantages of said improved stock cars, and is in direct violation of the terms of sections 1, 2, and 3 of the Interstate Commerce Act.

Over one hundred railroad companies operating within the United States pay the Burton Stock Car Company the usual mileage of three quarters of one cent per mile per car, and operate the cars of the Burton Company in every respect on the same terms and conditions as they haul their own, and cars of individuals, private corporations, and other railroad companies.

And said Burton Stock Car Company prays that it may be relieved from such unjust discrimination, and that said railroad companies may be enjoined and restrained from making any extortionate demands and charges, and that said railroad companies may be ordered to haul and operate the cars of the Burton Stock Car Company on the same terms and conditions as they operate their own and the cars of other railroads, individuals, and private companies, and that they may also be ordered to report and account to said Burton Stock Car Company for such mileage as has been earned in the past, or may be earned in the future over the several lines referred to, by the cars of the said Burton Stock Car Company, and for such further relief as may be deemed just and proper by your honorable board.

(Signed) Burton Stock Car Company,
By Chas. E. Barber,
Solicitor and Stockholder.
Benjamin P. Butler, of counsel.

Dated May 2, 1887.

Sworn to and subscribed before me by Charles E. Barber this 4th day of May, A. D. 1887.

(Seal.) Edward J. Steelwagen,
Notary Public, D. C.

THE ANSWER OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD Co., one of the defendants herein, to the complaint exhibited against it by the Burton Stock Car Company.

This respondent admits that the said Stock Car Company, has, owns, and operates a number of cars designed especially for the transportation of live stock, and that they weigh from twelve and one half to thirteen tons each, and that they are thirty-four, thirty-six and thirty-eight feet in length; but it denies that the said cars weigh no more than the ordinary cattle cars, and asserts that ordinary cattle cars do not exceed thirty-four feet in length, and that the majority of ordinary cattle cars are less than thirty-four feet in length.

This respondent denies that it requires less motive power to haul said Burton stock cars than to haul the ordinary stock cars, and asserts that it requires more motive power and

greater expense to haul said Burton stock cars than to haul the ordinary stock cars.

And this respondent admits that it pays a mileage of three quarters of one cent per mile to other roads, corporations, owners and operators of certain classes of cars running on its lines, for the use of said cars while running thereon, and that it has, at all times, refused to pay said mileage to said Burton Stock Car Company; but it avers that the character of the cars first mentioned in this paragraph, and the conditions of their operation are totally different from the cars of said Burton Stock Car Company and the conditions of their operation; and it further admits that it does demand and has demanded from said Burton Stock Car Company for the transportation of its cars the rates alleged in said complaint; but it denies that said charge is exorbitant or extortionate, or in any way a discrimination against said Burton Stock Car Company or a hindrance or oppression to its business, or that the same is an injury or detriment to said Burton Stock Car Company or to any public or private rights, nor is it an annoyance or inconvenience to shippers and dealers desiring to ship and have transported their live stock with the advantages of said Burton stock cars, or that it has been guilty of any violation of the terms of sections 1, 2 and 8 of the Interstate Commerce Act, or of any other section thereof.

And this respondent admits that it hauls cars over more than thirty feet in length on which no excess charge is made, but it denies that said cars are of the same character as the Burton stock cars, or that the conditions of their operation are similar to the condition governing the operation of said Burton stock cars; and it asserts that said cars are operated under circumstances and conditions radically different from those under which the Burton stock cars are or can be operated.

And this respondent neither admits nor denies the allegation in the complaint that more than one hundred railroad companies pay mileage to the said Burton Stock Car Company, and that they operate the cars of the said Burton Stock Car Company on the same terms and conditions as they haul their own cars and cars of individuals, private corporations, or other railroad companies, inasmuch as it is unadvised in reference thereto; but it submits that said allegation is impertinent and irrelevant to said complaint.

But this respondent alleges and shows the facts to be as follows: that it owns and operates lines of railroad in the States of Illinois, Iowa, and Missouri, and that the same connect with other lines of railroad owned and operated by other corporations with which this company does a thorough freight business; that the railroads of this respondent and of said connecting companies are furnished with a full equipment of stock cars sufficient to transact and carry on their ordinary business; that said stock cars of this respondent and of said connecting roads are of substantially similar construction and of such a character that they can be and are loaded with lumber, and many other kinds of merchandise; it is the custom of this respondent to receive from and deliver to the said connecting

roads its stock cars, but it is not the custom of this respondent or said connecting roads to use said stock cars of said other companies when their own stock cars are not in use, but this respondent's road and its connections claim and have always claimed and exercised the right to refuse to accept the cars of their connections, and have forwarded all freight in their own cars when the same were available for that purpose, and it asserts that it pays mileage of three fourths of one cent per mile to connecting companies and others, for the reason that it is enabled from the construction of the ordinary stock cars furnished to it by connecting companies and others to use the same in the transportation of freight in both directions upon its line of railroad, and that said mileage is a compensation for such use in both directions.

But this respondent asserts that the cars of the said Burton Stock Car Company are elaborately constructed stock cars, ordinarily called palace stock cars; that the same cannot be and are not used for the transportation of freight other than live stock, and that from the character of said cars this respondent and other railroad companies are compelled to haul them empty in one direction at great expense and without earning any freight therewith, and that there is not the same consideration for the payment of mileage on said Burton stock cars, as in the case of ordinary stock cars, as herein set forth, nor is there any consideration moving to this respondent therefor.

And this respondent asserts that, for the reason last mentioned and because it is compelled to haul the cars of said Burton Stock Car Company empty in one direction and without any compensation for said empty haul, it is entitled to make a rate which shall cover such additional cost and service; and it asserts that, in view of the conditions governing the use of said Burton stock cars, the rate for hauling the same, as herein set forth, is reasonable and just; and this respondent further asserts that, by reason of the fact that it hauls the cars of said Burton Stock Car Company in one direction empty and without compensation, and that said Burton Stock Car Company will not and does not permit this respondent to forward in ordinary cars of its own the live stock delivered to it by said Burton Stock Car Company, this respondent is compelled to allow its own cars to lie idle to the extent of said Burton Stock Car Company's shipments and to the number of the cars offered by them, and it loses the freight on its own cars and on said Burton stock cars in one direction, which fact in itself justifies the additional charge on said Burton stock cars, as hereinbefore set forth.

And this respondent asserts that it has but one rate and schedule for all palace stock cars similar to the cars of the Burton Stock Car Company, and that it makes no other rate to any person or corporation running similar cars over its road, nor does it pay any mileage thereon; and it asserts that it does not discriminate against the cars of the Burton Stock Car Company, but that it extends to it the same facilities for the transportation of its cars as to all other persons and corporations operating cars similar thereto; and it asserts that it pays

no millage to any person or corporation running cars over its road similar to those of the said Burton Stock Car Company.

And this respondent further asserts that the payment of millage to said Burton Stock Car Company would be an unjust discrimination against the cars of other corporations and companies constructed in such a way as to earn the freight in both directions as a consideration for such millage.

Wherefore, this respondent prays that the charge against it may be dismissed, and that the relief asked for by the Burton Stock Car Company may be denied. Henry B. Stone,

General Manager C. B. & Q. R. R.

Wirt Dexter,

Defendant's solicitor.

State of Illinois, }

Cook County, }

Personally appeared before me, a notary public in and for the county and State aforesaid, Henry B. Stone, and made oath that he is the general manager of this defendant railroad company, that the statements contained in the foregoing answer by him subscribed are true, except such statements as are therein made upon information and belief, and as to those statements he believes them to be true.

Witness my hand and notarial seal this 24th day of May, 1887. Chester M. Dawson,

[Seal]

Notary Public.

The other respondents filed separate answers, to the same general effect as that of the Chicago, Burlington & Quincy Railroad Company.

BRINFA.

Mr. Benjamin F. Butler, with Mr. Charles E. Barber, for complainant:

Since the Act of Congress requiring live stock to be fed at intervals while being transported, which was the only improvement on the method always used, the carriers by rail have used cars varying at their pleasure between twenty-eight and thirty-six feet in length, the tendency being now to extend the car in length, into which as many animals were driven by them, large and small, as could be got in, the car then closed and the animals so conveyed to their destination, stopping an interval of five hours once in twenty-four, when all the animals in the train were turned out into a yard supplied with water troughs, and dry hay and corn, bought by the shipper from the railroad company at the stock yard, were thrown to them upon the ground as fodder. The cattle were then driven back into the cars and the journey renewed. No other equipment of any railroad complained of is shown to exist, or to ever have existed as the property of said road.

The disadvantages of this mode of transportation are:

First, the crowding of the cattle, the strong and the weak, the young and the old, together, so that if one falls it is trampled to death. Second, their being heated and sickened in the hot season. Third, that by the horns of their fellows, and by prodding with goads shod with iron in driving them in so frequently in long hauls, their hides are greatly injured, the flesh ulcerates and the pus from the

wounds poisons the blood, so that the meat becomes tainted, and in many cases poisonous and unfit for food, so as to call for the intervention at the market stations of the boards of health of the States. Fourth, the inability of the weaker cattle to get water, and after long thirst the inordinate quantity of water taken, so that the animal for a considerable time refuses food, making a depreciation as a rule in the summer of about 15 per cent and about 10 per cent in the winter months in the weight of the stock, the depreciation in its worth from the other causes mentioned not being capable of ascertainment. In case of highly valuable stock for breeding purposes, the depreciation is very large. All these losses, of necessity, come upon the producer, except the unhealthy quality of the meat, which is shared by the consumer.

These consequences of this method of transportation have caused a change in the course of this class of commerce, so that the meat is now largely killed at Chicago and other slaughtering points, to which it comes from the West, and is forwarded to the East for consumption and export as dressed beef in refrigerator cars, which are fitted up at great expense, and in which large amounts of ice have to be transported, and the freight and cost of the ice are added to the cost of the meat to the consumer at the East. This expense reacts upon the producer, because it is taken into account in the purchase of the cattle at the slaughtering point. Besides, slaughtered meat is of necessity so changed in its appearance, in a large degree, that the quality of the meat cannot be determined, and the greed of the seller causes him to salt down his bad and blood poisoned meat, whereby its condition cannot be tested by the producer and consumer.

This condition of transportation of live stock has stimulated the inventive genius of many people to prepare cars by which these evils may be avoided; and the use of these cars on railroads, as was shown without contradiction, has always been prevented or hindered by the railroads. Many impediments and discriminations in the use of cars adapted to the humane, economical and prudential transportation of cattle have always been interposed by the railroads.

The Burton Stock Car Company, the petitioner, made a car which was constructed to be as near like as possible, in its running gear and other equipment which is below the platform, the best burden cars on any railroad, and was capable of being made a part of any burden train on any railroad of a standard gauge. The improvements in these cars consisted in their being fitted with apartments, feed troughs and appliances for watering the stock at all times. They carry sixteen cattle, with an attendant to take care of them. In them the cattle are not transhipped. The fodder is taken along on the car with the cattle, furnished by the shipper and fed out by men employed by him. The stock on a thousand miles' travel in such a car, under the most unfavorable circumstances, were shown not to have depreciated more than 5 per cent in weight, and in every other respect were delivered in as good order and condition as when they started.

These cars can be used as a part of any freight or burden train, as there is no occasion for them to stop any more than for any other freight car. They were transported over one hundred different roads east of Chicago upon the same terms as any other stock freight car. The request of the shipper that they might be permitted to pass over the Lake Shore Railroad was refused. Many instances were proven of discrimination on the roads petitioned against, and especially the Union Pacific Railroad, which refused to allow the car to pass over its road at all.

It was in evidence that the Burton Stock Car Company, by a published circular, had offered to allow any railroad company to manufacture and use the cars constructed according to its patents for \$15 a year royalty; but that no railroad had ever availed itself of that privilege to the extent of a single car.

It was also in evidence that there was a demand for the car for the purpose of shipping cattle; that there were discriminations against it by the railroads, and that the high rates put upon its use prevented its use largely in transshipping cattle from the plains, which are intended for food, as their value would not bear the increased charges. It was in evidence that the experiment had been tried in several instances, and that the cars could have been transported at the same rates as any other car, and would have been used to any extent that they could have been obtained. They have been used quite extensively for valuable stock—all that would be allowed to be used—that stock being such as could afford to pay the enhanced price.

It was in evidence that one of the railroads, represented through its manager, had said in substance that as there was a large profit to the shipper and the petitioner in the use of these cars; the railroad wanted a share of that profit.

There was some evidence attempted to be put in by some of the respondents as to the capability of those cars to bring back return freight.

I do not discuss that part of the evidence, because I think it is amply disposed of in the brief of my associate, Mr. Barber, which is filed with the Commission.

It was in evidence that after the Interstate Commerce Act was passed, a combination of western railroads was made and a joint tariff rate was passed, by which greatly enhanced rates and charges were put upon the use of all classes of cars that had any appliances for the humane and proper care of cattle during their transportation, they being classed, in apparent derision, as "palace cars for cattle."

It was also in evidence that these railroads owned no refrigerator cars, and that the refrigerator cars were larger and heavier than the ordinary Burton stock cars, and yet were charged no greater rates for the same weight of meat transported, with an extra charge only for the ice carried.

It was also in evidence that larger and heavier cars for the transportation of oil were received by those same roads without extra charge.

It was also in evidence that the stock yards in which cattle are fed at intervals are managed by the railroads, which control the fur-

nishing of fodder and make very large profit thereon, furnishing hay at double the market price, and corn that would cost from twenty to forty cents a bushel, at \$2 a bushel. The calculations of this profit, which show it to be simply enormous, will be found in my brother's brief.

The claims of the contending parties arise upon this statement of facts, which, I believe, is complete, so far at least as all the questions involved are concerned.

The claims of the petitioner are that its cars when presented as part of a train, or to be made a part of a train to be carried over roads forming a continuous line between different States, shall be charged with no greater rate of freight and subject to no other hindrances than any other car carrying like freight of substantially the same weight; or, in other words, that no discriminations shall be made by railroads against the shipper in its car under substantially similar circumstances. This we claim to be its right both at common law and under the Interstate Commerce Act. It would seem to need no argument to establish that right as a legal proposition.

The respondents object upon several grounds: First, that they have, all of them, a sufficient equipment of cars to do their business.

That we admit. Their equipment is sufficient and proper to do their business in their way for their profit; but we submit that the Commission will feel constrained to find that they have no equipment whatever with which to do the public business of transporting live stock on interstate hauls in the way the public desire it to be done, and in the way that economy, humanity, public health and public welfare require it to be done. No man can doubt that there is a very great public demand for the use of cars for the transportation of live stock of the kind owned by the petitioner.

Again; they object and say that if the petitioner's cars are used for this purpose, their cars will lie in their yards and rot.

Why? Because the public do not want to use them, and will not use them if they can get any other. That is admitted in their several answers. What stronger argument does the Commission need than that admission that there is a public demand for the petitioner's cars? If theirs are better than his for the public commerce in this regard, it will be his that will rot and not theirs.

Again; they object that the Commission has no right to cause them to use a patented article; and one of the learned counsel grew eloquent upon that proposition as a very dangerous one for the Commission to entertain.

We answer to that simply that we do not require the railroads to use any part of our car except the wheels, the drawbars, bunters, and platforms, and we have no patent on any part of those. Our patents are upon appliances above the platform and within the outside walls of the car, with which the railroad has simply nothing to do, no part of which is claimed to be injurious, offensive or dangerous.

Again; it is objected that so many cattle cannot be carried in our cars as are carried in the ordinary cars.

To that we answer that by their tariff the car is made the unit of computation—so much a

car per mile, going and coming. If we pay the same as the ordinary car when we carry only sixteen cattle in our car, then the railroad saves the hauling of the three additional cattle which would be in their car, or, in other words, they get for hauling our car the same price as they would get for hauling other cars carrying three thousand pounds more freight upon them than is hauled upon ours. Ours have but sixteen, and theirs have nineteen cattle.

There was some attempt to show that our car weighed something more than their cars.

Be it so, when loaded it is not contended that it does not weigh less than theirs.

Again, they object, and spend the larger portion of their evidence in an attempt to sustain that objection, that they discriminate against our car because on its return it would be heavier.

On that the fair weight of evidence shows that our car hauls easier than theirs does, and was purposely contrived so to do by springs and appliances, not so much with regard to the weight of the car as to the ease with which cattle could ride in it, and who does not know that an easy riding car is a light hauling car, even with great additions of weight. I believe that the parlor and drawing room passenger cars are as easily drawn cars as any cars in a train of which it forms a part, because of their superior appliances.

Not much consideration, however, was put upon this; but great reliance was put upon the fact that when empty, going for live stock, it could not carry out freight, and returning empty after having deposited its freight it could not be so used. The freight instanced upon the evidence that it could not carry, as well as any other car, was steel rails, railroad ties, and sixteen foot lumber.

We submit that this class of evidence was simply intended to throw dust in the eyes of the Commission. What is the question we are examining? It is whether the great live stock corporation transportation business for the supply of this country and Europe shall be properly done, and we are answered that the Commission cannot do this without mixing it up with the carriage of steel rails, sixteen foot lumber and railroad ties. Upon consulting Poor's Manual it will be found that in the year 1893 the whole railroad mileage in the United States was 126,967, while the number of miles of road constructed that year was 3,121. We have no statistics of the exact profits of the roads from carrying steel rails, but the gross earnings from freight that year were \$519,090,000. I will leave the Commission to work out the percentage of earnings of the railroads in carrying steel rails, railroad ties, and sixteen foot lumber.

Again; sixteen foot lumber comes from the lumber belt north of Michigan, in Canada, and I suppose the Grand Trunk takes care of that. Maine is substantially exhausted, and that goes south by water. As I am instructed, and I have no doubt the Commission is also, the cattle come from an entirely different direction, and from where there is substantially no use for lumber.

In regard to railroad ties, if the Commission will do me the favor to remember the evidence, we showed that we could carry a very much

larger per cent—34 per cent more railroad ties in our cars, because of their extra width, by piling them crosswise, than could be done in the ordinary car. But there is a more decisive answer still: it was in testimony before the Commission, which it would have known without, that not one half it is admitted, and our testimony was not more than one tenth, of the ordinary empty stock trains both ways are filled with freight. If there is any doubt upon this point, please examine the discussion of the evidence in my brother's brief.

Again; it is objected that the Commission cannot interfere with the instrumentalities with which interstate commerce is carried on by railroads.

I am so unfortunate as to believe that you can interfere with nothing else. Congress has not given you any power to regulate interstate commerce, to say that this shall not be shipped and that shall be shipped. You are only to regulate how shipments which the public desire to be made shall be carried by the railroads; by what means and appliances, and what conveniences shall be furnished for that purpose; and above all that under substantially like circumstances all that shall be done with equal convenience and safety and at equal cost to the shipping public for their goods and merchandise of all kinds.

Another objection is made that the railroads ought not to be compelled to take cars not of other railroads on to their roads loaded with freight, and transport them at the same rate that they do the cars of connecting roads; and that is instanced as a dissimilarity which should weigh against the petitioner's case. But the facts find expressly that in the case of refrigerator cars, oil cars, coal cars, cars for showmen, they do take them and transport them at the same rates that they do the cars of other railroads. Why then should they discriminate against the Burton stock cars? They have established this rule for themselves as a proper one when they choose to follow it, and in cases where they do not make great profits by feeding the elephant en route. Barnum feeds his elephants in an apartment car, and the railroads do not discriminate against him but charge him by weight.

I may be called upon to answer, well, Why do the railroads discriminate against the Burton stock car and other cars which don't require a stoppage in transit to feed the animals transported? It is because, as a slight computation will show which my brother has made for you, they make enormous profits out of that enterprise; and while that furnishes a sufficient motive, we respectfully submit that the business of selling hay and oats is not within their charters at all; or, if at all, not for the purpose of making a discrimination in the rates, safety, economy and proper appliances for transporting live stock, to the damage of the producer or shipper, public health and public welfare.

In the briefs furnished by the respondents, reliance is placed upon the *Express Company Case*, and they are cited as if controlling in this case. The distinction, however, is a broad one. The *Express Company* demanded that the railroad be obliged to accommodate their cars to their business in distinction and differ-

them in the same manner that other railroads have transported them. | for its stockholders the benefits intended, and conferred, by the grant of incorporation.

If it has not sufficient rolling stock or machinery to meet a particular business or demand, it may go into the market, and hire such additional rolling stock or machinery, either temporarily or permanently, as it may think best. But it does this not because it is required to do so by its charter, nor because its duty to the public compels it to do so. It does it simply to accommodate a certain class of business, outside of the regular course, and to meet demands of individuals, based on luxury to be obtained or money to be made, or to meet inducements in that direction offered by competing lines of roads.

When it hires such other cars or appliances it becomes an employer, and it may make such contracts with the owner thereof as it can. It may make a contract with one as to stock cars, with another as to oil cars, with another as to refrigerator cars, with another as to hay cars, with another as to locomotives, with another as to sleeping and parlor cars, and so on infinitely; but what cars it will hire, or from whom it will hire, is a matter entirely within its discretion; and the fact that it makes a contract with one, does not give the owner of other cars, or like appliances, the right to have his cars or appliances hired, or compel the railroad company to use them upon the same terms it uses those it has by contract.

None of these private car companies are common carriers under the law, and do not hold themselves out as such.

The Burton Stock Car Company is under no obligation to the public, and the public cannot enforce or make any demands on it. It may hire its car to one individual and not to another. It may permit it to run over one line of road and refuse its use over the line of another. It may, in short, honor a request for cars, or refuse, at pleasure. With a railroad it is different. It is bound to receive freight at all reasonable times, and provide suitable cars for its transportation. The moment any such special car loaded with freight is delivered to it (unless exempted by a special legal contract), the railroad becomes a common carrier of such freight, becomes an insurer of its safety, and is bound to deliver as consigned, unless prevented by the act of God or the public enemy; and the owner of the car is only interested in the safe return of the car and the money made by such special use.

The Burton Stock Car Company is not a shipper. It is only the owner and hirer of cars, and does not pretend to be anything else. It has a commodity which it offers to sell by contract for a certain price. It has in effect a house which it offers for rent for a certain purpose and for a certain time. As its number of cars is limited, it does not pretend it can furnish them for the whole carrying trade in cattle, and therefore makes a specialty of them for certain classes and shipments, and charges for their use a large price on the investment, and a much larger price than is charged by other parties furnishing rolling stock to railroad companies. In a word, it is a speculation on its part, whereby it invests money in a private enterprise with the intention and expectation of realizing a large return from it; and by the order prayed for in the complaint filed herein, asks the Commission to become a

INTER S.

party in boosting its enterprise, and assure it permanency and profit.

Aside from these general reasons there are many special reasons why the Burton stock car should not be placed on the same footing with the cars of railroads, among which are:

There is no reciprocity between it and the railroads. It cannot give a pound of freight that the railroad would not otherwise get.

Its cars are not interchangeable with the cars of any railroad.

Its cars, as a rule, are only loaded in one direction, and usually on long hauls from distant points, to which they have to be specially sent empty.

They are of unusual length and height, and the interior is partitioned off so as to accommodate the shipment of fancy cattle, and by so doing it destroys their usefulness for general freight purposes.

They are inconvenient, as to loading lumber, steel rails or other commodities of that class, composing largely the western bound shipments, a forty-four foot car, by reason of its construction, being only equal in carrying capacity to a thirty or thirty-four foot ordinary stock car, for such freight.

The Burton stock car under the most favorable circumstances can only carry sixteen head of cattle, and from the model exhibited, it would seem that the car must be forty-four feet long to do that. A car of that length on the plan of model, would not carry sixteen horses. It would require the length these cars were originally built (fifty-one feet) to give proper space between the horses so they would not injure each other by kicking. Indeed, this fact seems to have impressed itself upon the Company, as it claims to have abandoned that length of car, and only claims merit for this patent as "a palace cattle car."

Two of these cars would be of about the length of three ordinary thirty foot stock cars, and would only carry thirty-two head of cattle, while the three stock cars would carry from sixty to sixty-nine head, as appears from the testimony.

The Burton Car Company pays nothing to the railroad, although it might have the whole equipment of that company in use. The railroad gets the ordinary freight, but it would get this if it used its own cars, and each carried the same tonnage. In addition to getting no revenue from the use of these cars, the Railroad Company becomes a common carrier of the freight contained in them—becomes responsible for the safe condition of the car—and to the Burton Company for the car itself, and all damages to it; is compelled to supply oil and waste to keep it in running condition, inspect it, and supply all defects as they appear, including parts peculiar to this patent, and not common to ordinary cars; and in all respects, while it is in its possession, treat it as one of its own cars.

The Railroad Company hauls this car say 1,000 miles, empty, to the exclusion of its own cars, and the freight they would contain, and gets in return a Burton car load of freight at a price at least 25 per cent less than it would get for a car load of freight if loaded in one of its own cars.

The Burton Company gets two and a half

cents per mile for each car from the party leasing it, for the distance it is used in transporting his stock; and it seems like assurance, to say the least, that it should ask the railroad company to pay it mileage for hauling them empty, so that it might get the load back at two and one half cents per mile; and additional assurance to ask that the railroads be compelled to pay it three and one fourth cents per mile in addition to that paid by its lessee.

The two and one half cents per mile charged one way for the Burton car is 66 per cent greater than is paid by one railroad to another for the use of its cars, and is 66 per cent greater than would be charged by any reputable Car Trust Company, for furnishing any desired number or kind of cars. Two and a half cents a mile would make millionaires of the owners of the Burton stock car, could it supply the cars, induce all cattle shippers to use them, and compel the railroads to haul them without charge.

The three fourths of a cent per mile paid by one railroad to another is to a great extent fictitious, as I will show hereafter.

Under the evidence given it is evident that practically, to the extent the complainant's cars are used, the cars of the railroads are thrown out of service and their use is lost. This should not be permitted, unless there is some great public necessity imperatively requiring it, and I submit that no such a state of facts is made to appear.

Now, in the light of these facts, would it not be gross discrimination against the railroads, to compel them to haul the Burton car upon the same terms they haul cars for each other; even if the Commission had power to make such an order?

The companies, if they haul these cars, insist they shall be paid for so doing. And as to the amount of compensation, they are as competent to judge as the complainant is as to what it will charge shippers for the use of its cars; and if figures are to be relied upon, the railroad charges will not be more exorbitant in proportion than those of the complainant.

But it is claimed by counsel for complainant, that because cattle shipped in these cars receive humane treatment, and because they are less liable to become diseased, the public is interested, and this is sufficient to give the Commission jurisdiction, and justify such an order as he has prayed for.

If his claim is based upon a solid foundation, then the innumerable owners of patents, and patent cars, may make the same showing he did, and exact from the railroad companies the same service, without compensation, that he would like to have for his client; and supply rolling stock for the railroads, while their own cars will be sidetracked and go into decay.

But what showing does the complainant make on the ground of humanity or public necessity?

The evidence shows that complainant has at present to supply this imperative public demand on all roads in the United States, the grand total of eighty-eight cars, including its fifty-one foot cars, and that it is building or going to build 100 more. The testimony of Mr. Stone shows that the C. B. & Q. R. R.

system alone has 5,000 stock cars, and at least this number is required to do the stock business of that road. The other western lines out of Chicago have, probably, 15,000 more, making a total of at least 20,000 stock cars necessary to do the business in and out of Chicago alone.

Then take the lines centering at St. Louis, and the great number of stock cars required to do their business, and some idea can be had of the large equipment necessary to accommodate the live stock traffic originating west of Chicago, and the insignificant equipment that can be furnished by complainant, even if the whole number of its cars could be run in this trade, and all the other railroads deprived of its valuable and humane service. It would be less than one half of 1 per cent of the cars required.

But counsel says the employment of these cars will prevent diseased meat, and the laboring man will no longer be compelled to eat meat poisoned and festered by being shipped in the ordinary stock cars. Let us see how this logic holds. If it requires 20,000 cars to ship cattle from the West to Chicago and other points, and the Burton Company can only furnish cars to ship less than 1 per cent of that number, it follows that more than 99 per cent of the stock shipped will be, or is liable to be, poisoned and diseased by the shipment in ordinary stock cars. If the cattle shipped by each mode are turned in together, and slaughtered and used without separation, it would seem the small percentage of sound beef would be liable to be tainted by the large percentage of that which was unsound.

If, on the contrary, there was a separation, in the killing, sale and use, then it requires no imagination to say that there would be a difference in price, and people who live in palatial houses, would get and eat the palace car meat, while the poor man would continue to get and eat the diseased and unwholesome meat.

This talk of humane treatment and public necessity is all talk, and while it may help advertise the Burton car, it lays no foundation for the action of this Commission.

As to the Second Question.

What has been said above as to the duty or obligation of railroad companies to receive and transport the Burton stock car, upon the same terms they transport cars for connecting railroads, applies with equal force to the second question submitted.

Railroad companies are entitled to the full use of their tracks, and all the revenues derived therefrom; and unless they abuse their powers and violate their obligation to the State or to the public, they are the sole judges of the instrumentalities to be used in operating their roads.

They owe no duty to private parties who own or control private cars or equipments, and are under no obligation to receive or haul such cars at all in the absence of a special contract to do so.

Why? 1, because such parties are not shippers; 2, because they are not common carriers; 3, because there is no mutuality or reciprocity be-

tween them and the railroad companies; 4, because the railroad companies have the right to make proper rules and regulations as to the operation of their respective roads, and the agencies to be employed; and the exclusion of such private cars or private car companies from their tracks without a special contract for such privileges, is a proper exercise of such right.

That these private cars or private car companies, as to the employment and use of their cars, are not shippers is self evident, and requires no further statement.

That they are not common carriers is equally true. A common carrier is defined to be: "One who undertakes as a business for hire to carry from one place to another goods of all persons who may apply, provided the goods be of the kind which he professes to carry, and the person so applying will agree to have them carried upon the lawful terms prescribed by the carrier, and who, if he refuses to carry such goods for one who is willing to comply with such terms, becomes liable to an action by the aggrieved party for such refusal."

Hutchinson, Carriers, § 47.

There is not a private car company, nor the owner of a private car in existence that comes within the definition.

A private car company, whether an association of individuals or a corporation, claims to have cars specially adapted, in whole or in part, to a particular kind of business or traffic, and as a rule that part of the car which covers this specialty is likewise covered by a patent, giving the owner the exclusive right to its use. These companies own no railroad. They cannot of themselves carry freight a foot. They simply sell the use of their patent, or the privileges covered by it, upon terms made by themselves, to such parties as for any reason desire to buy. They are under no obligation to sell. They may sell to one and refuse another, or may sell today and refuse tomorrow. The public has no claim on them, and they have no claim on the public. No duty is imposed on either side. They organize and build cars for a speculative purpose. The value of their investment depends upon getting their cars hauled, and the sale of their use. If they fail in either, their investment fails. The more they can sell the use of their cars, and get them hauled, the better their investment; and if they can get them hauled for nothing their profit is still greater.

Sleeping, parlor, refrigerator, stock, hay, oil and other special cars are of the same class, and are to be regarded alike.

In New York, Ohio, Indiana, Pennsylvania and other States the courts have declared sleeping car companies not common carriers.

Railroad Co. v. Walrath, 88 Ohio St. 461; *Woodruff etc. Coach Co. v. Diehl*, 84 Ind. 474; 3 Wood, Ry. Law, § 368, and cases cited.

On principle, can any distinction be drawn between sleeping cars and other special private cars?

There is no mutuality or reciprocity between these private cars and the railroads.

It has been shown that, as a rule, but few of these special cars are adapted to any business, except some particular freighting. They are

usually hauled loaded one way and empty the other, and revenue is derived by the carrier for only one half of the distance hauled.

They bring no freight that would not otherwise be received; and no greater amount of freight is received from their load than would be earned by the railroad, had the freight been shipped in its own cars. If additional freight is charged, it is to cover hauling the car one way empty.

They are not interchangeable with other roads, and cannot be diverted from the particular business or trade for which they are designed.

Railroads pay to each other for the use of cars three fourths of a cent per mile, but this compensation is more apparent than real. Each company is fully equipped with rolling stock of all kinds necessary to do all its business, if all its cars were kept on its own line; but in the formation of through lines, and interchange of business, and to prevent delays in transshipment, its cars are permitted to run on other lines of road, and in turn the cars of other lines take the place of those that are absent. While its cars are on the lines of other roads it receives mileage upon them, and for the foreign cars used by it, it pays mileage. When the mileage account is balanced at the end of the year it is found that the mileage paid out and the mileage received, practically balance each other, and in effect each road is using its own cars all the time and getting revenue from them.

With private cars there can be no such readjustment. It is all profit to the private cars and all loss to the railroads. There is no quality of use or compensation, and the railroads in using them are compelled to run a side show, at the expense of their legitimate business. The fact that these cars can sometimes be wholly or partially loaded with catch freight does not change the rule. The exception should not have any force in determining a duty or fixing a liability, and if there is a single element of mutuality or reciprocity between these private patent cars or their owners, and the railroad companies, I have been unable to discover it.

It is no discrimination to compel a party who desires to use your property for his personal gain to pay you a fair price for such use.

The right of a railroad to make needful and proper rules and regulations for the operation of its railroad and the agencies to be employed, has been affirmed by almost every respectable court in the United States, and has not been denied by any.

The law requires it to perform its duties as a common carrier, but does not provide for the special instrumentalities by which it shall be done.

If it does not possess the cars or appliances necessary to do its general business, or to meet a particular demand on its line, it may make contracts with whom it will, to do the work or furnish the appliances. But such employment of other agencies does not throw its road open to the world, so that any one may be so employed or perform similar service as a matter of right. All such rights rest on contracts. The railroads may or may not make them. If

it makes them, the terms of them govern the parties. If it refuses, then no rights are obtained and none can be enforced.

I think the Supreme Court of the United States, in the cases referred to by the counsel for other respondents herein, in 110, 115, 117, and 118 U. S. Reports (see also 23 Am. & Eng. Ry. Reports, page 545—notes), fully sustain the position taken: that the respondents owe no duty to the Burton Stock Car Company, as the Burton Stock Car Company, nor to any other private car company, as such; and that in the absence of voluntary consent on the part of respondents, neither the complainant, nor other parties similarly situated, have any right to have their cars run upon any of the railroads here represented, much less to have pay for such forced use.

I respectfully submit that not only should the complaint be dismissed in this case, but that the honorable Commissioners should in unmistakable terms declare the law to be that the railroad companies own their tracks and roads, and are entitled to the full and exclusive use of the same; and that no party, coming under whatever guise he may, can participate in the use of any railroad, without the consent of the owner, nor without paying adequate compensation therefor.

Mr. Edward C. Perkins, for Chicago, Burlington & Quincy, and Chicago, Burlington & Northern Railroad Companies:

The complaint in this case is that the various railroad companies named have and do discriminate against the Burton Stock Car Company, in violation of the Interstate Commerce Act. They base the claim of discrimination on two distinct and very dissimilar grounds:

First, that the railroad companies will not pay to the Burton Company a mileage for the use of their cars, and second, that the companies charge to the shippers a higher rate of freight on cattle when carried in the Burton cars than when carried in common cars.

As to the first ground: the mileage which they ask for and say is customary, is simply a rental paid by a railroad company to some person or company, for the use of cars belonging to such person or company; and the refusal to pay such rental to the Burton Company, or any other company, that is, the refusal to hire the cars of such company, can in no sense be a discrimination against such company unless in law a railroad company is bound to hire and pay a rent for all mechanically correct and properly constructed cars which are offered it by any person or corporation.

It should be kept clearly in mind that, although it is alleged in the complaint and was argued that it is customary for railroad companies to take all cars which are offered and to pay the mileage, yet there was no evidence of any such fact. The evidence showed, on the contrary, that there was no such custom, but that railroads took cars from each other only as they needed them, and that they hired such special cars, refrigerator, etc., as they needed, from particular persons or companies, by special contract; that when they had cars enough of their own on hand, and it could be done without too great expense, it was their

practice to unload the cars of others on receipt of the same, and tranship the freight into cars of their own.

As to the second ground: this is a claim that the railroad companies charge to persons who have cattle shipped in Burton cars, not, it will be noticed, to the Burton Stock Car Company, a rate which is higher than is charged to shippers of cattle on common cars, and that this rate is extortionate, and a discrimination under the Interstate Commerce Act.

It would seem that if the charge made is a discrimination, it is a discrimination against the shippers of cattle, and not against the complainant.

The questions presented by this complaint seem to be:

First. Is a railroad company by law required to accept and pay rent for all cars, mechanically correct and properly constructed which are tendered to it by any person or company, to be used by it in the transportation of persons or property over its road?

It is submitted that the order requested by the complainant cannot be given, unless the above question is answered in the affirmative; that neither this Commission nor a court can or will go into the question of the value of each patent, or so-called improvement in a car, and order one car, having a so-called improvement, taken, and another car with a different improvement, not taken; but that if the order can be made at all, it must be that all cars which are mechanically correct and properly constructed must be accepted and paid for by the company to whom they are offered.

The car is but a part of the great machine called a railroad. Improved springs in the cars, patent interlocking switches, improved chairs for holding the rails, patent couplers, and a thousand and one other things may become parts of the same great machine; and it may easily be that any one or more of them may be of as great value in the proper transportation of cattle as the feeding and watering arrangements in the cars of the complainant company. And can it be contended that it is within the province of any court or of your Commission to hear and decide upon the value of each and every patent applicable to any part of a railroad?

And can the general question be answered in the affirmative? We think not.

Even on the old theory that a railroad was a highway, upon which anyone was entitled to place his vehicles of transportation, it by no means follows that the carrier who owns the road must pay for the use of such vehicles. The carrier could hire vehicles for his own use, but was not obliged to hire all that were offered, or to hire from one because he had hired from another. But it is submitted that the theory of a railroad being in that sense a highway, is no longer, if it ever was, the law; that the needs of the great business of transportation has shown that it is absolutely impossible to carry it on, on any such theory.

It is submitted that the law on the matter is as follows:

That a railroad company is required to furnish suitable and proper equipment to meet the requirements of its business; but how they

shall furnish such equipment, whether by building, leasing or buying from others, is not a matter for any court's decision.

That a railroad company cannot be compelled to buy or hire from any one particular person or company, nor from every person or company.

That if it fails to furnish suitable and proper equipment, it can be punished.

That in case of such failure the court might, on a proper presentation of the case, have power to order that the company furnish suitable and proper equipment, but could not direct in what manner it procure the same; could not order that it purchase or hire from any particular person or company, or from every one generally.

That the duty of so furnishing the equipment would be imposed on the railroad company, and it must see, at its peril, that it does it properly.

That the method of furnishing the equipment is a matter as fully within the judgment and decision of the company as the kind of oil it uses on its locomotives, or the kind of grease on its car wheels.

And it is submitted that your honorable Commission, even granting that the question of the quality and fitness of the equipment of railroads is within the powers granted to you, and that you have the full powers of a court of equity could go no further.

That if, under those circumstances, you were satisfied that any railroad named in this complaint was not supplied with proper and suitable stock cars, you might order that it supply itself; but that the question of what cars the company got, and whether by hiring from the Burton Company or the Street Company, or by building or buying, must be left to the decision of the railroad company.

The case of *Pullman's Palace Car Co. v. Missouri Pac. R. Co.* 115 U. S. 587 (Bk. 29, L. ed. 499), seems clearly to support this view.

Here it was claimed that the car company, under a certain contract, had a right to have its cars run over the railroad of the defendant, but the court held that the contract did not apply. It was also argued for the car company that the defendant was obliged to haul its cars, aside from any obligation under the contract, and the court said: "It may be, as is also alleged, that it has 'become indispensable, in the conduct of the business of a railroad company, to run on passenger trains, sleeping and drawing room cars, with the conveniences usually afforded by such cars for night travel;' but it by no means follows that the railway is, in law, obliged to arrange with the Pullman Company for such accommodations. According to the bill itself, two such car companies cannot successfully carry on a competing business on the same road, and the custom has been for the Pullman Company, if possible, to contract for the exclusive right. The business is always done under special contracts. These contracts must necessarily vary, according to the special circumstances of each particular case. Certainly it cannot be claimed that a court of chancery is competent to require these companies to enter into such a contract for the furnishing and hauling of Pullman cars, as the court may deem reasonable.

A mere statement of the proposition is sufficient to show that it is untenable."

The case is exactly like other cases of a railroad company hiring cars. A railroad company not having sleeping cars of its own hires such cars from such other person or company and on such terms as it sees fit. As a matter of fact, it generally does so by paying to the lessor a mileage on the cars used. It also hires, as appears by the evidence in this case, such refrigerator, coal, oil, freight, lumber or cattle cars as it may need, usually paying a mileage; but there is nothing to prevent its paying a yearly or monthly rental; and it is not in the power of the courts to say with whom it shall contract, or what kind of a contract it shall make.

By the statutes of the various States by which the companies are chartered, they are required to furnish proper and suitable equipment; and shippers have their full remedy in case of failure or neglect to do so.

The principles laid down and the reasoning in the so-called *Express Cases*, 117 U. S. 1-29 (Bk. 29, L. ed. 791-803), seem to fully sustain this view; and as they say, speaking of the decision in the lower court, and referring to business arrangements between the express companies and the railroad companies, and as can be equally well said as to contracts between railroad companies and other parties for hiring cars, "The court has made an arrangement for the business intercourse of these companies, such as, in its opinion, they ought to have made for themselves, and that we said—in *Atchison etc. R. R. Co. v. Denver etc. R. R. Co.* 110 U. S. 667 (Bk. 28, L. ed. 291), followed at this term in *Pullman's Palace Car Co. v. Missouri Pac. R. Co.* 115 U. S. 587 (Bk. 29, L. ed. 499)—could not be done. The regulation of matters of this kind is legislative in its character, not judicial."

There is no legislative requirement—congressional or State—making it the duty of railroad companies to enter into such contracts with particular parties, or with anyone making a demand for such a contract.

The counsel for the complainant takes the ground that it does not ask that railroads should hire its cars to be used by them for transporting freight over their roads, but simply makes a tender to them of a package of freight to be transported like any other freight package. His proposition is: "I now hold, as a general proposition, that the car is our package, in which shippers who buy it, after we have made it, desire their merchandise to be carried by weight, as everybody else's is carried. And unless it is claimed that there is something inside that is detrimental to the public business of railroads, the railroad has no more right to look into that package for the purpose of rejecting it, and preventing it from passing over the railroad, than they have to look into any other package. What is inside my package, assuming it to be lawful merchandise within, is substantially and exactly none of their business, when they are to carry it at so much a ton."

Let us look at the proposition carefully.

According to this, the car is, by itself, simply a wrapper or crate in which goods are transported. On this basis, let us see what are

the facts in a particular case. A shipper comes to the Chicago, Burlington & Quincy Railroad Company with a load of cattle in his crate, and says: "I want this crate load of cattle sent to Council Bluffs. I want the crate delivered to the Burton Company here again at Chicago, and you must pay that company a rental of so much a mile for each mile, out and back, that the crate is carried."

Or he comes with the crate empty, and says: "I want this crate sent to Council Bluffs, where I will load it with cattle, and send it back to Chicago; You cancel lect from me the usual freight on a crate of cattle from Council Bluffs to Chicago; and you must pay to the Burton Company a rental for each mile, out and back, that the crate is carried."

We answer: "We have crates enough of our own. We do not want your crate, and can neither afford to pay you for the use of it, nor carry it both ways for one freight."

He answers: "You take the crates of the Lake Shore Railroad Company over your road, and pay them a rental for their use."

We answer: "We do, when we need crates in our business, but we prefer their crates to yours. They are better suited to our business, will carry more than one kind of goods, and yours will not; and so we can get freight on the loads in the crates both ways."

It should be kept clearly in mind that the railroad company gets payment for hauling the freight in the car, not for hauling the car. On the contrary, it is claimed that it should pay the owner for the use of the car.

No matter how you put it, it gets back to the simple demand: "You must haul our car (or use our crate) whenever asked to do so. You must not charge the owner of the freight in such car (or crate) any higher rate than you charge the owner of freight in any other car (or crate); and you must pay us for the use of the car (or crate)."

It is therefore, respectfully submitted that it all turns on the question: Is a railroad company bound to accept, use and pay for all cars and other instrumentalities of railroad traffic offered to it?

If a railroad hires crates for the transportation of pigs, fruits, or baggage from A, and pays him by way of mileage, must it also take B's and pay him a mileage? And if not crates for those purposes, why crates or cars for other purposes?

It should be kept in mind that the additional charge in the tariff is put on instead of making a charge for hauling the empty cars. If the cars are offered to us as so much freight to be carried, we certainly have a right to make a reasonable charge.

The second question is: Has Congress granted, or attempted to grant, by the Interstate Commerce Act, to this Commission, any power to consider or decide upon the quality or fitness of the equipment of railroad companies?

It is respectfully submitted that the only powers of this honorable Commission are those specially granted by this Act, and that the Act must be strictly construed. The Act contains no reference to or suggestion of any power in the Commission to consider or decide upon the quality or fitness of the equipment of railroad companies. If they have it in regard to cars,

they must equally have it as to locomotives, terminal facilities, road bed, brakes, couplers, grease, fuel, and every detail of railroad property and management, and the act would amount to the appointment of a commission to run and manage all the railroads in the United States which do an interstate business, the taking, the spending of the company's money, and the management of its property, out of the hands of the company. Congress has made no attempt to grant such an authority to the Commission, and it may well be doubted whether it could do so.

The next question is: Has not Congress, by the terms of the Act, specifically limited the power of this Commission, so that it cannot give to the cars of others the use of the track of any railroad company, and has no power to make any order in regard to the same?

It is respectfully submitted that it has. By the last clause of the third section of the Act it is provided "That this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

It was suggested that the Burton Stock Car Company did not come under the terms of this clause, as it was not a "common carrier." As was also suggested before the Commission, this is true, so long as the Burton Company confines its business to the manufacture and selling or leasing of cars; but when it comes to a railroad with its cars loaded or unloaded, and requests that they be carried over such railroad—not as so much freight to be carried—but as a car or vehicle for the transportation of freight over such road, it comes as a common carrier, within the meaning of this section, just as much as a railroad company would which had hired the cars from the Burton Company.

How can it be held otherwise? Take an example: the Lake Shore Company buys ten stock cars from the Burton Company. A train comes over the Lake Shore Road made up of the ten cars of the Burton patent belonging to the Lake Shore Company, and ten cars of the Burton patent belonging to the Burton Company, all twenty cars being loaded with cattle. The Commission clearly cannot order that the Chicago, Burlington & Quincy Railroad Company accept and run over its line the ten cars belonging to the Lake Shore Road. Can they order the Chicago, Burlington & Quincy to take and run over its line the ten cars belonging to the Burton Company? A mere statement of the proposition is sufficient to show that it is untenable.

The fourth question is: Assuming that the Commission has full power to make the order asked for, could it properly do so, having due regard to the whole question? It must be kept in mind that a railroad, considered as a machine for transportation purposes, is a great and delicate machine, requiring the most careful and exact management, in order to do its business in such a way as to satisfy its patrons, and do the business successfully, safely, and profitably; that any interference which will take the management in any of its details out of the hands of the men trained and appointed for that purpose will have a tendency to make the whole machine go wrong; that an order that railroad companies must accept, run, and

pay for all cars mechanically correct and properly constructed, might and would have a tendency to so interfere with the management as to prevent the safe, prompt, proper, and profitable doing of the business railroad companies are called upon to do. It would interfere with the proper discharge of their duties to the public, by requiring the company to haul over its road trains of empty cars which could not be used for the transportation of other freight, and so using up its motive power, and leaving the companies without proper cars at proper places to attend to its necessary traffic, and in a thousand ways taking out of their hands the management of their own business. If, on the other hand, it is ordered that cars of a certain kind and pattern be taken when offered, it should be borne in mind that the car is only a part of the whole great machine; that the car is no more an essential part of the safe, speedy, and proper transportation of merchandise or cattle, than the locomotives, signals, road bed, rails, interlocking switches, and many other things used in connection with a railroad; and the Commission must, if it undertakes to determine upon the value or propriety of using a car, also determine upon the value of all other portions of the great machine called a railroad.

In fact, if the Commission can and should order either that all cars offered, or that cars of any particular kind or kinds should be taken, it would work greatly to the injury of both the public and the railroads, and railroads could no more be run on satisfactory bases under such an order than a cotton mill could, were it required to take portions of its machinery for manufacturing from anyone who had, or thought he had, or whom a commission thought had, a piece of machinery fitted for such manufacturing.

The fifth question is: Has the complainant proved any discrimination? The evidence offered showed the following facts:

That railroad companies receive from other companies, and pay mileage for, such cars, freight, cattle, oil, refrigerator, coal, etc., as they need in the transaction of their own business, and such cars only; that when they have cars of their own ready for use, they tranship from cars of others into their own cars, unless the expense of such transshipment is greater than the expense of taking cars of such other person or company; that they never take cars simply on the demand or request of others, but simply when it is to their own advantage, and then under special agreement; that refrigerator, coal, and other special classes of cars are taken from others only when the company has not enough of the same to do their business; that the companies complained of were abundantly supplied with cars to do their cattle business.

Further, the evidence showed that the cars of the complainant were of such construction that they could not be loaded with lumber or steel rails; that the compartments in the Burton car were only sixteen feet long, and that what is called sixteen foot lumber is generally a little over that; that, moreover, the doors of the Burton cars were in the side, so that it would practically be impossible to put the lumber in, even if the compartment was

fully long enough. It was stated that Mr. Stone said that the length of the car was twenty-eight feet, and next that it was thirty feet, and that was the standard, and they do not want any on their road longer than thirty feet.

Mr. Stone made no such statements. His statement in answer to questions on cross examination, was as follows:

Q. State whether the tendency is not to increase the length of stock cars lately.

A. It is, up to thirty-four feet. It used to be twenty-eight.

Q. The needs of commerce and the comfort of the stock have, I suppose, called for that?

A. No sir; two things called for it: the first to make cars more available for general use. The twenty-eight and thirty foot cars were both too short to take in two lengths of sixteen foot lumber, and too short to take in thirty foot steel rails, and in order to get the benefit of return loads of lumber and rails, there were strong reasons for making the car thirty-four feet long, so that it would take two lengths of sixteen foot lumber without going above the 40,000 pounds capacity of the car. Otherwise it was impossible to load it full with lumber and rails.

The evidence further was that a very small percentage of cattle were carried west, and that a very small percentage of these cars could consequently be carried west loaded, but must be taken empty; that, so far as the Chicago, Burlington & Quincy Railroad Company is concerned the western freight consisted mainly of lumber and steel rails, with a good many railroad ties; that of the whole mileage on the Chicago, Burlington & Quincy Railroad, 80 per cent of cars went loaded, and 20 per cent empty, and that of the west bound cars probably 70 to 75 per cent went loaded. Now, taking a case on the Chicago, Burlington & Quincy Railroad; do the facts show discrimination in any form on the present ratio?

A Burton car is wanted at Council Bluffs, 500 miles from Chicago, for a load of cattle. The car is procured in Chicago and hauled to Council Bluffs empty, the company receiving no pay for such hauling. It is hauled back loaded, and the shipper is charged the tax rate \$70 plus 20 per cent additional, making \$84, which the Chicago, Burlington & Quincy Railroad Company receives for having hauled the car 1,000 miles—500 empty, 500 loaded.

A Lake Shore Railroad car is hauled from Chicago to Council Bluffs. The rate for that haul on a load of lumber or steel rails is about \$40, but as, say only, 70 per cent of the cars go west loaded, we get an average of \$28 per car. That car is loaded back with cattle, and we get the tariff rate, \$70, making for our total trip \$98. Out of this the Chicago, Burlington & Quincy Railroad Company pays the Lake Shore Company mileage of three fourths of a cent per mile, or, on 1,000 miles, \$7.50, leaving net to the Chicago, Burlington & Quincy Railroad Company, \$90.50, or \$6.50 more than we get on the Burton car.

If, on the contrary, we haul the car, paying the mileage and charging the freight which the complainant requests, we should receive \$70, and should pay out for mileage \$7.50, leaving net on the haul \$62.50, against about \$90 on the common car.

But it is submitted that the tariff rate is not extortionate nor in any sense a discrimination, but is made with the intent of being and is fair and reasonable, and not more than is charged to other persons for using a like service or transportation, under substantially similar circumstances and conditions; and it is further submitted as a recommendation, that:

1. a railroad company is not, in law, bound to use upon its line the cars of another person or company, and yet pay for the same, and that the fact that it does so here from one or more persons or companies in no way obligates it to hire from others; 2. that under the Interstate Commerce Act, your honorable Commission is in no way authorized to consider or determine upon the quality or fitness of the equipment of railroads; 3. that by and under said Act, your honorable Commission is specifically restricted from ordering that a railroad company give to any common carrier or to this complainant the use of its tracks; 4. that even if full power existed, it would be very unwise and very injurious to the people, as well as to the railroads, to make the order asked for; 5. that on the evidence given, the rate charged to the Burton Stock Car Company and shippers, by its cars, is reasonable and not extortionate, and is in no sense a discrimination under the Interstate Act.

In regard to the Chicago, Burlington & Northern Railroad Company, it may be pointed out that no particular case was made, that no evidence was offered that the Burton Company had ever applied to that company to haul any of its cars, loaded or empty; but this point we do not press, as this Company is a party to the classification; and the real question is the general one, as to whether any such order as is asked can or should be made.

Messrs. Samuel Shellabarger, John S. Blair, and John P. Dillon, for the Union Pacific and Missouri Pacific Railway Companies, respondents:

The exact point and substance of the petition of complainant in this case is that the complainant is the owner of certain cars suited to the transportation of cattle and live stock over railroads; that such cars are better adapted for such transportation than the ordinary cars, and their use is sought for and desired by the public; that they are lighter and of easier haul than the ordinary cattle cars; and 100 or more railroad companies allow them to be put upon their lines for said transportation purposes on the usual terms, under which railroads receive and allow three fourths of a cent per mile to the owner of the car, but that the defendant, The Union Pacific, and other companies, have refused to accept the cars of complainant, except upon payment of extortionate terms, unjust to complainant and detrimental to the public.

And the petition expressly relies upon sections 1, 2, and 8 of the Interstate Commerce Act as the ones containing the provisions which defendant is alleged to have violated.

The substance of the provisions bearing on this alleged unjust demand and refusal found in these sections are as follows:

1. Section 1 requires charges, by common carriers subject to the Act, to be "reasonable and just," and declares unlawful all which are "unjust and unreasonable."

INTER S.

2. Section 2 prohibits carriers from charging or receiving "greater or less" compensation for any service than one person that is charged for a like transportation service to any other person.

3. Section 3 declares it unlawful for the carrier to give "undue or unreasonable preference or advantage to any particular person, or locality, or any particular description of traffic," or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 4 further requires all such carriers, "according to their respective powers," to "afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate, in their rates and charges, between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

The exact legal question presented by the present issue and considered in the light of the facts, either conceded or which may be admitted for the sake of the legal point, may be condensed thus:

Do the provisions of the Interstate Commerce Act in sections 1, 2, and 3, or the principles of the common law, oblige these companies to accept from the complainant corporation, a private car manufacturing company and not a common carrier, its manufactures in the shape of cars, and to transport the same over their lines as rolling stock (as distinguished from freight) upon any terms whatever?

Points in reply to this question:

We insist that the answer to this question must be in the negative for the following reasons:

1. The strongest possible view in favor of complainant's contention is that which presents the claim in this light, to wit: that its cars are received on other railroads as part of their trains, and which cars, in process of transportation from State to State, reach connections with the Union Pacific, or some other defendant company, and there demand that complainant's cars shall be received by such company on its line as part of its trains, the same as other cars of like kind are received.

Under this state of facts and conditions of making the demand it is claimed that the position of the complainant is different from that of a manufacturer making cars and taking them to a railroad company and demanding their adoption as part of the lines of the defendant, in this: that in the latter case complainant's car has become, and is, at the time of the demand, a part of the actual interstate commerce of the country, owing to its coming to the defendant's line in the shape of being part of a train of interstate commerce; and, being thus embodied in such interstate commerce, it cannot be discriminated against.

As already remarked, there is no possible view in favor of the contention of complainant

stronger than the one just stated; and this contention of complainant is squarely met and overthrown by the express words of section 3 of the Interstate Commerce Act.

This is so because the concluding paragraph of section 3, which is the strongest provision in favor of complainant, is devoted to the requirement, as against carriers subject to the Act, that they shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines."

It must be carefully observed that this clause is one dealing with "connecting lines," as such, and it is a mandatory prescription of the rule regulating reciprocal facilities and interchanges between such "connecting lines."

After having made this provision commanding reasonable facilities for interchange of traffic between connecting lines, and after prohibiting discriminations in rates and charges between such connecting lines, an express limitation is put upon the character and extent of the rule defining these facilities and interchanges by the controlling words which conclude the section and which are:

"But this shall not be construed as requiring any such common carrier to give the use of its track or terminal facilities to another carrier engaged in like business."

Thus the Statute itself makes it plain and literal, to a demonstration, that no carrier is required "to give the use of its track or terminal facilities to another carrier engaged in like business."

In other words, this clause protects all connecting lines in their right to use their own cars for the purpose of transportation. Of course this right to use its own cars is subject to all the provisions and conditions of the common law and of the statutes requiring the carrier to furnish reasonable facilities for all descriptions of transportation of persons and property. Subject to that general obligation every carrier is, by the last clause of section 3, left in the absolute possession of the right to furnish its own cars for its own lines.

The effect of this provision is to leave all carriers subject to this Law at liberty to make contracts regarding what cars from other lines shall be transported over their lines. Because of the unmistakable character of this last clause of section 3 it would be useless to analyze other provisions of this statute bearing on this point, because, since this closing provision of section 3 cannot be misunderstood, it limits, according to its plain words, and qualifies every other provision in the Law, were there any, favoring the contention of complainant;

II. Owing to the vital importance of this matter, it is proper, however, to present other considerations leading to the same result.

One of these considerations may be stated thus:

These companies, although owing certain duties to the public, are, strictly and to all intents and purposes, private corporations, and as such possess the same dominion over their own property as other like private corporations.

Although this proposition seems quite self evident, yet the supreme court has had repeated occasion to announce this law as applicable to the Union Pacific.

In the case of the *United States v. Union Pac. R. R. Co.* 98 U. S. 619, 619, (Bk. 25, L. ed. 186) this is explicitly and repeatedly laid down by that court. It says, speaking of the Union Pacific:

"It is still a private corporation, the same as other railroad companies, and, like them, subject to the laws of taxation and other laws of the State in which the road lies."

In *Union Pac. R. R. Co. v. Preston*, 18 Wall. 39 (85 U. S. bk. 21, L. ed. 792), the court is still more emphatic on this point. After stating that the Union Pacific has certain agencies to perform under the laws of its creation, on behalf of the government, the court adds these words regarding the nature of the property rights of the Union Pacific.

"Notwithstanding this the railroad and telegraph lines are neither in whole nor in part, the property of the government. The ownership is in the complainants, a private corporation, though existing for the performance of public duties. The government owns none of its stocks," etc.

III. This brings us, then to the question: What obligations are imposed by the general principles of law upon connecting common carriers touching the matter of receiving the cars of other people upon their lines?

The question here is not whether the railroad lines of this country, generally, including the Union Pacific and Missouri Pacific, are regarded by the Law as public highways in the sense that they should be open to the trains of other connecting railroads, and there was no right in the respective roads to exclude such other trains from their lines.

This is so because the demand here of the complainant is not to be permitted, by its own locomotives, to run its cars over our lines. This demand is, in law, radically different from that. Its demand is that we shall take upon our lines and transport with our own locomotives the cars of other lines, leaving our own cars idle.

We are, therefore, here not troubled with this question (were there any question) as to the right of other companies to occupy our lines with their trains and locomotives.

On the contrary, the exact question is whether, on general principles, there is an obligation, as against the "connecting line" of railroad, to become the common carriers of other common carriers, they taking up and transporting, in the shapes in which they are tendered to us, the lines of cars brought to us.

IV. The answer to this last question; stated in paragraph III, is explicitly and unmistakably found in the *Express Company Cases*, 117 U. S. 1 (see Bk. 26, L. ed. 792).

The syllabus of those cases is an excellent synopsis of what is decided, and is in these words:

"Railroad companies are not required by usage or by the common law to transport the traffic of independent express companies over their lines in the manner in which such traffic is usually carried and handled.

"Railroad companies are not obliged, either

by the common law or by usage, to do more as express carriers than to provide the public at large with reasonable express accommodations; and they need not, in the absence of a statute, furnish to all independent express companies equal facilities for doing an express business upon their passenger trains."

It will be observed in this case, foot of page 6 (795), that the demand made against the railroad companies was that, in the absence of contracts, the defendant railroads should be decreed by the courts to "transport at all times the express matter, safes, and messengers of the said Southern Express Company by the same trains and with the same accommodations thereon and its depots and stations as it may transport its own express matter or as it may accord to itself."

This was the pith of the contention and the one repudiated by the court.

In that case the court, on page 20 (800), says:

"The controversy in each case is not with the public, but with a single express company. And the real question is not whether the railroad companies are authorized by law to do an express business themselves, nor whether they must carry express matter for the public on their passenger trains in the immediate charge of some person specially appointed for that purpose, nor whether they shall carry express freights for express companies as they carry like freights for the general public, but whether it is their duty to furnish the Adams Company or the Southern Company, facilities for doing an express business upon their roads, the same in all respects as those they provide for themselves or afford to any other express company."

On page 21 (800), the court, in repudiating the contention of the express companies, says:

"It is neither averred in the bill nor shown by the testimony that any railroad company in the United States has ever held itself out as a common carrier of express companies—that is to say, as a common carrier of common carriers."

Again the court says, page 24 (801):

"So long as the public are served to their reasonable satisfaction it is a matter of no importance who serves them. The railroad company performs its whole duty to the public at large and to each individual, when it affords the public all reasonable express accommodations. If this is done, the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security."

On page 26 (802):

"The exact question, then, is whether these express companies can now demand as a right what they have heretofore had only as by permission. That depends, as is conceded, on whether all railroad companies are now by law charged with the duty of carrying all express companies in the way that express carriers, when taken, are usually carried, just as they are with the duty of carrying all passengers and freights when offered in the way that passengers and freights are carried. The contracts which these companies once had are now out of the way, and the companies at this time possess no other right than such as belong to

any other company or person wishing to do an express business upon those roads. If they are entitled to the relief they ask, it is because it is the duty of the railroad companies to furnish express facilities to all alike who demand them."

Such is the body and effect of this decision, and it is, we submit in legal principle, conclusive against the demand of the complainant in this case, that we shall be obliged to receive in the shapes in which complainant may choose to bring the same to us its lines of cars upon our lines.

To the same point is the case in 115 U. S. 587 (490), where the Pullman Palace Car Company asserted an obligation on the part of the Missouri Pacific Railway Company to haul the cars of the Pullman Company because of the nature of the business in which the latter company was engaged, which consisted "of hiring or otherwise arranging with railway companies to use its cars" under written contracts for a term of years.

The court says, page 597 (503):

"It may be, as is also alleged, that it has become indispensable in the conduct of the business of a railroad company to run on passenger trains sleeping and drawing room cars, with the conveniences usually afforded by such cars for night travel; but it by no means follows that the railway is in law obliged to arrange with the Pullman Company for such accommodations. According to the bill itself, two such car companies cannot successfully carry on a competing business on the same road; and the custom has been for the Pullman Company, if possible, to contract for the exclusive right. The business is always done under special written contracts. These contracts must necessarily vary, according to the special circumstances of each particular case. Certainly, it cannot be claimed that a court of chancery is competent to require these companies to enter into such a contract for the furnishing and hauling of Pullman cars, as the court may deem reasonable. A mere statement of the proposition is sufficient to show that it is untenable."

In the *Atchison etc. R. R. Co. v. Denver etc. R. R. Co.* 110 U. S. 667 (Bk. 28, L. ed. 291), the sections (4 and 6 of article 15) of the Constitution of Colorado, under consideration, were as follows:

"Sec. 4. All railroads shall be public highways and all railroad companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any designated points within this State, and connect at the state line with railroads of other States or Territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad.

"Sec. 6. All individuals, associations, and corporations shall have equal rights to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers within this State, and no railroad company, nor any lessee, manager, or employee thereof, shall give any preference to individu-

Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company are members, in which the following rule appears:

"Live Stock in car loads, carriers risk, class 2. Note.—Live stock transported in special or palace live stock cars, not the property of railway companies, will be charged as follows: in cars not exceeding 30 ft. in length internal measurement, 120 per cent of tariff rate. For each additional foot or fraction thereof in excess of 30 feet in length, internal measurement, an additional charge of 3 per cent per foot, or fraction thereof, will be made. For example: live stock in a palace car, 36 ft. in length, internal measurement, will be charged 183 per cent of tariff rate. Live stock in a palace car 40 feet in length, internal measurement, will be charged 150 per cent of tariff rate, it being optional with any railway company to receive cars exceeding 34 feet in length."

This rule is still in force. The Chicago and Alton Railroad Company did not accept the western classification in this respect, but provided by a circular dated May 30, 1887, for a charge of five cents per mile on empty cars, and for ordinary tariff rates on cattle in special cars of 30 feet in length; over 30 and not exceeding 33 feet, 10 per cent additional; and a further charge of 3 per cent for each foot or fraction thereof above 33 feet.

The extra charge to shippers in the western classification above quoted was intended to be in lieu of the former charge of five cents per mile for hauling back empty cars, and was adopted after a suggestion of one of the officials of complainant, to the effect that the public objected to paying tariff rates and five cents additional for the empty cars, and that it would be better to put it in the form of a percentage on the tariff. The Commission does not understand however that complainant thereby acceded to the justice of either charge, but merely that it preferred the one method to the other in case an additional charge was to be enforced.

The traffic in live stock upon the roads leading from the West to Kansas City, Chicago and St. Louis is almost wholly east bound, the west bound shipments being chiefly of fine stock for breeding purposes. It is a matter of material importance to the railroads to be able to get return loads upon cattle cars going back from those cities to the West. The chief opportunities for back loading are found in lumber, steel rails and ties. Lumber cannot conveniently be loaded in the Burton cars. Steel rails also cannot be taken upon those cars, but are at times loaded in ordinary cattle cars through doors placed at the ends for that purpose. Practically the special stock cars are not available for back loading to any considerable extent, upon the roads of the defendant companies.

Upon the foregoing facts one question largely discussed by counsel was as to whether a railroad company is by law required to accept for transportation the cars of complainant, and whether the Commission has authority to direct such cars to be so accepted when tendered in good order, properly constructed, mechanically correct and loaded with live stock.

It was argued by defendants that a railroad company is not bound to accept all cars and other instrumentalities of traffic offered to it,

but on the other hand, is required by the law to provide for itself all equipment necessary for the transaction of its business, and having done this, has performed its duty to the public; and also that the Act to Regulate Commerce contains no suggestion of a power in the Commission to decide upon the quality or fitness of the equipment of railroad companies. It is apparently conceded that the general subject of the safe and proper operation of railroads is within the power of State Legislatures, and of Congress, to regulate within their respective spheres of jurisdiction; a large part of the duties conferred upon some of the existing state railroad commissions is in the supervision of such matters, extending to the safety of bridges and railway, as well as of rolling stock and other instrumentalities and conveniences used in transporting persons and property. But it is claimed that the supervision of interstate commerce in these respects was not contemplated by Congress in the Act under which the Commission is organized, and that no powers have been conferred upon the Commission in that behalf; that the Act regulates the transportation of property, which is called commerce; but that the subject of procuring the adequate means for the transaction of the business of transportation is not commerce, and is not within the jurisdiction of the Commission.

On the other hand the complainant insists that the only way to regulate commerce is by regulating the instrumentalities of commerce; which necessarily includes power to regulate the cars, bridges, heating apparatus, and all other means and appliances by the use of which the interstate commerce is carried on.

The complaint however does not allege a refusal by the defendants or any of them to accept and haul complainant's cars, and the evidence does not disclose any such refusal. On the contrary the evidence clearly shows that most of the defendants publicly announce the terms on which live stock offered for transportation in special cars will be received and transported. For these reasons it is apparent that the question whether defendants are bound to receive complainant's cars is not presented; nor the question whether the Act confers jurisdiction upon the Commission over the instrumentalities of commerce; and no opinion is expressed upon those questions.

In view of the general demand among intelligent shippers for more satisfactory, although more expensive, conveniences for the safe and rapid transportation of live stock, it is scarcely conceivable that any railroad company will deliberately exclude from its lines the improved stock cars which modern invention has introduced, and which are recognized in the official tariffs and classifications of the carriers.

The question presented by the complaint, and the only question properly to be decided here is whether the terms upon which the defendants take the special stock cars are just and reasonable. This question divides itself into two branches:

First, Should the defendants be required to pay three fourths of a cent per mile run to complainant by way of car service?

Second, Is the tariff rate charged shippers for transportation of live stock in special cars a just and reasonable rate?

Upon the first question it is admitted that the defendant carriers refuse to pay to the complainant mileage upon the distance run by complainant's cars over their roads. This refusal is claimed to be an unjust discrimination against the complainant.

As is well known, freight cars belonging to the different railroad companies throughout the land are to a large extent used interchangeably. A record of their mileage when away from home is made the basis of the payment of "car service" at the rate of three fourths of a cent per mile. Of course if the cars of a carrier are used as much away from home as it uses the cars of other roads on its line, the monthly payment for car service will be offset by the amounts received. This is theoretically the nature of the transaction, a matter of mutual convenience which costs neither party anything. The payments and receipts in any one month could not be expected to exactly balance, but if each road has cars sufficient for its use, the result in the long will be very nearly equalized. In view of this fact it is obvious that no great importance attends the making this payment an exact compensation for the use of the cars, and it would not be fair to make it the measure of payment required to be made for the use of cars hired from other persons.

The Burton Stock Car Company does not receive and use the cars belonging to other carriers and there is no possible mutuality in this respect such as exist between carriers exchanging cars in the ordinary way. The Burton Stock Car Company is in no sense a "connecting line," entitled to equal facilities for interchange of traffic under the provisions of the second paragraph of section 8 of the Act to Regulate Commerce. Its counsel insists that it is not a common carrier. When freight is tendered to defendants in loaded cars by other carriers, they have the option to take the car or to reload the freight into their own cars; and the latter course is often pursued when the cost of unloading is less than the car service for the proposed trip. The fact that carriers interchange cars with one another in the manner and on the terms above stated does not entitle the complainant to claim that it is unjustly discriminated against by a refusal to pay it the same rate which carriers adopt as a basis in adjusting their car service accounts with each other. The claim of the Burton Car Company for payment by the railroad companies for the use of its cars is matter of contract and agreement between the parties so far as the proofs before us show, which does not present the feature of unjust discrimination. It seems that some carriers find the use of Burton cars, or of other improved stock cars, to be a service desired and demanded by the public, and are willing to concede to the complainant a reasonable payment for such use. So long as the carriers have no like cars in their own equipment, upon which live stock can be watered and fed without unloading, there is apparent justice in making such compensation. But complainant, which charges and receives from the public two and a half cents per mile for the use of its cars, is not in a position which entitles it to demand an additional three fourths of a cent per mile from the

carrier, upon the ground that the carriers pay that sum to each other upon exchanging cars under the circumstances above stated, and that their refusal to pay the same sum to complainant is an unjust discrimination. Nor is any ground apparent upon which such a payment can be ordered by this Commission.

The other ground of complaint is that the charge made to shippers of live stock is too high.

The extra charge provided for in the western classification is justified by the carriers, upon the ground that the cars have to be taken empty to the point where they ought to be loaded, or returned empty from the point where they are unloaded, while ordinary cars are more susceptible of being loaded in both directions and are often so loaded in fact. This was explained in detail in respect to the Chicago, Burlington & Quincy Railroad, upon which a large proportion of the Company's cattle cars are used in both directions.

It appears to the Commission that the expense of hauling complainant's cars in one direction unloaded, as compared with the greater ability to load back the ordinary cattle cars in use by the defendants, and the fact that a large percentage of the ordinary cattle cars are so back loaded upon the long hauls of the western roads, are considerations which justify a difference in charge against shippers who prefer to hire the improved stock cars for the transportation of their live stock.

The fact that cattle are transported in better condition and with less shrinkage in the special cars, and on that account are worth more at the end of the journey, is not a reason which the carriers can properly make use of as justifying an increased charge; it is in view of this fact that the shippers pay two and a half cents per mile to complainant for the use of its cars; and the legal duties of carriers in respect to all property which they accept for transportation cannot be forgotten.

Nor is the fact that these special stock cars are chiefly used for higher grades of stock a proper ground for additional charge, based upon the kind of car employed in the service. The car is the same whether used for Morgan horses or Texas steers. Any addition to the transportation based upon the value of the article carried is, in part at least, in the nature of an insurance premium paid for the risk, and should be applied to the articles themselves, and not to the vehicles in which they are transported. This is recognized in the amended classification recently filed with the Commission by the joint committee of the trunk lines, in which a maximum value is given upon which the tariff rates are based, and the terms upon which added liability will be assumed for live stock of more than ordinary value are stated in detail. To place an additional burden upon all live stock carried in special stock cars, upon the ground that such cars are often used for fine stock having high value, is obviously unreasonable.

But the question remains whether the additional percentages provided for in the classification constitute a just and reasonable charge to shippers, in consideration of the single fact that the special stock cars usually hauled empty in one direction. The effect of this charge

was explained in detail by the General Manager of the Chicago, Burlington & Quincy Railroad, as follows: "The rate for a car load of cattle from the Missouri River is seventy dollars for a thirty foot car. If sent in a Burton car, a thirty foot car, the charge would be seventy dollars plus twenty per cent, that is fourteen dollars, making eighty-four dollars. Now that fourteen dollars we have on the circular compensates us for hauling the car empty from Chicago to the Missouri River, a distance of five hundred miles, and fourteen dollars divided by five hundred is the rate per mile we charge for hauling the car out. It is a fraction less than three cents per mile."

This is apparently a reasonable explanation, but other facts which appear by the testimony before us should also be noted. As before stated the shippers pay the full car load rate, whatever be the number of cattle in the car; thus, 160 cattle at the Missouri River shipped in Burton cars would make 10 car loads at the 16 head per car, for which the carrier would receive \$700 freight money, at \$70 per car. The same 160 cattle shipped in ordinary cars would make but 8 car loads at 20 head per car, for which the carrier would receive on the same basis \$560 only. The difference of \$140 is the precise amount, according to the witness, which compensates the company for hauling 10 cars empty from Chicago to the Missouri River, at \$14 per car. In other words, the railroad companies apparently receive about 25 per cent more for hauling the same number of cattle in the Burton cars than in the common cars.

It is true that the ten loaded Burton cars weigh somewhat more than the eight loaded common cars. It is also true that the case stated by the witness, quoted above, showing an extra charge of only fourteen dollars per car, was not quite fair, for the reason that the Burton cars are more than thirty feet in length. In the case of a Burton car thirty-four feet in length the extra charge on the haul stated would be \$23.40, thirty-six feet, \$26.60; thirty-eight feet, \$30.80; forty-two feet, \$39.20. If fourteen dollars, or less than three cents per mile be a fair charge for hauling a thirty foot empty car from Chicago to the Missouri River, certainly \$39.20, or nearly eight cents per mile, is too much for a forty-two foot car. Still there is some increased expense connected with the increased length and weight of the longer cars; and on the other side, again, we have the apparent fact that the use of the special cars saves a certain amount of wear and tear that would otherwise occur to the cars of the carrier, not an inconsiderable item in a run out and back of a thousand miles. And still again, the carriers urge that when the special stock cars are in use their own equipment is idle to a corresponding extent, and the investment which they represent is unproductive. The case was not presented to the Commission with satisfactory precision upon this question by either party. The force of the contest was expended on the other points. It is not improbable that other pertinent considerations may exist, mention of which was not made in the evidence, and which have not occurred to the Commission. It was distinctly stated by the complainant's counsel that the object of this proceeding was

not to obtain damages for past overcharges, but to obtain a settled and reasonable rule for future service. We therefore do not now put upon record a finding that the charges last above stated are unreasonable, although we are strongly impressed with the belief that such may be the case.

(July 22, 1887.)

BOSTON CHAMBER OF COMMERCE

v.

LAKE SHORE R. R. CO. *et al.*

THE Boston Chamber of Commerce has made a complaint to the Commission against the Lake Shore, New York Central, and Boston & Albany Railroads, that the charge from Chicago to Boston upon flour, grain and provisions is thirty cents per hundred, or \$90 per car, whereas the rates to New York have been only twenty-five cents a hundred, or \$75 a car. This, the complainants aver, constitutes an unjust discrimination to the disadvantage of Boston. It is also charged that a rebate is allowed upon goods consigned from Chicago to Boston and designed for shipment abroad. This, it is averred, is a discrimination against one class of Boston dealers and in favor of another.

George RICE

v.

LOUISVILLE & NASHVILLE R. R. Co.
et al.

GEORGE RICE, of Marietta, Ohio, an oil manufacturer and dealer, has filed a series of complaints against the Louisville & Nashville; Illinois Central; Mobile & Ohio; Newport News & Mississippi Valley; Louisville, New Orleans & Texas; Texas Pacific & Alabama; Great Southern; Mississippi & Tennessee; East Tennessee, Virginia & Georgia; and the St. Louis, Iron Mountain & Southern Railroad Companies, charging the imposition of rates which are unjust and unreasonable in themselves; the imposition of rates upon his products greater than is put upon those of the Standard Oil Company under similar circumstances and conditions; discrimination in favor of the Standard Oil Company in having its cars and charging for less than actual weight, while complainant's cars are always charged at full actual weights, and discrimination in favor of the Standard Oil Company in furnishing oil cars when the same are refused to complainant. These alleged discriminations, complainant declares, have had, and were designed to have, the effect to give the Oil Company an almost complete monopoly of the traffic in oils.

DEPARTMENT OF STATISTICS.

THE Commission has created a Bureau to be styled its Department of Statistics, the head of which will be denominated the Auditor.

G. C. McCain has been appointed Auditor and will enter upon his duties August 1. Mr. McCain is a native of Minnesota and has held for several years a responsible position in the office of Albert Fink, Ttrunk Line Commissioner in New York City.

(July 23, 1887.)

William H. COUNCIL

v.

WESTERN & ATLANTIC R. R. Co. *

THE Commission gave a hearing in the case of William H. Council against the Western & Atlantic Railroad Company. Council is the colored man who, having purchased a first class ticket, charges that he was refused permission to ride in a first class car, and was forced to go into the smoking car. The Railroad Company was represented by Julius L. Brown, of Atlanta, and the complainant by John D. Brandon and Oscar R. Hundley, of Huntsville. Mr. Brown interposed some objections to the admission of certain depositions, and during a brief discussion which ensued Mr. Brown stated his purpose to enter a motion to throw out the complaint, upon the ground of lack of jurisdiction, this being, he asserted, merely a claim for damages. The Chairman in reply said the Commission would not sit here to try any mere question of damages, but that this was much more. Here were charges of unjust discrimination against a class of citizens. If there were such a case, it ought to arise upon facts which are open, public and notorious, and there ought to be no difficulty in regard to them.

The objection being overruled the charges and response were read. The gist of the Railroad's reply is that the complainant went into a ladies' car in defiance of the rules of the Company and refused to go into the other car, and that it was the passengers and not the train men who assaulted him. The answer admits the duty of the Company to furnish equal accommodations for all first class passengers, but it claims the right to classify passengers, either by the color line or otherwise.

After the reading of a number of depositions Mr. Council was sworn. He is an intelligent colored man, well dressed, self possessed and of good address. He is a minister and principal of the State Normal School at Huntsville. He told the story of his ejection from the car in which he had taken a seat. He entered the car without objection on the part of anyone. He was told by some one, whom he did not recognize as a train man, that he must go forward, to which he paid no attention. He was finally approached by two men, one of whom carried a lantern and the other had his hand upon his hip pocket. The man with the lantern seized witness, hit him over the head several times with the lantern, cutting his head badly and breaking the glass. Witness appealed to the passengers but without avail. His assailants then seized and carried him into the forward car. This car was filthy and was full of smoke. As he was being pushed from one car to the other, the brakeman told him this was what he got for not moving when requested.

*See ante, 202.

INTER 8.

Counsel for the respondent opened his side of the case by reading a series of depositions. From one by a passenger named Whitsett, the following appears to have been the style of Mr. Council's invitation to change cars:

"I walked forward to the front end of the car and told Mr. Bivins, the flagman, that I wanted his lantern a minute. I took it out of his hand, then turned and walked back to where Council was sitting and told him there was to be no more foolishness, that I did not want to hurt him, but he had to go. He replied very insolently that he would not go, and then I grabbed him in the collar and struck him over the head with the lantern. I knocked him out of his seat and pulled him out. He fell to the floor and as he raised up he came toward me, and I let him have it again with the lantern. I hit him several times before I conquered him and then rushed him right out of the car into the darkies' car. He was willing to go by the time I got through with him."

Mr. Brown submitted a motion to dismiss the case. Both sides submitted printed briefs and the hearing ended. The defendants' briefs are two in number: the first maintaining the right of a railroad to classify its passengers on the color line; the second discussing the question of jurisdiction. The complainant's brief, admitting the right of classification, maintains that it is the duty of the railroad to furnish equal facilities and conveniences for the two races.

RECESS IN PUBLIC SESSIONS.

The Interstate Commerce Commission has now cleared its docket of cases assigned for hearing in the present month. It is the purpose of the members of the Commission to take a recess in the month of August, and to resume public duties on September 1, at which date they have assigned a hearing at Rutland, Vt.

(July 29, 1887.)

Re EXPRESS COMPANIES*

T. C. PLATT, President of the United States Express Company, informs the Interstate Commerce Commission that that company will avail itself of the permission of the Commission to present the reasons why it conceives that express companies are not subject to the provisions of the Interstate Commerce Law.

William H. Chandler, General Manager of the Erie Express, notifies the Commission that his company voluntarily comes under the rulings of the Commission and that its schedules are in process of preparation.

(July 30, 1887.)

Re CLASSIFICATION OF RAILROAD FREIGHTS. †

A COMPLAINT has been received by the Commission, signed by Thomas L. Green, Manager of the Merchants' Freight Bureau, of

*See ante, 22, 317.

See ante, 317.

shall furnish such equipment, whether by building, leasing or buying from others, is not a matter for any court's decision.

That a railroad company cannot be compelled to buy or hire from any one particular person or company, nor from every person or company.

That if it fails to furnish suitable and proper equipment, it can be punished.

That in case of such failure the court might, on a proper presentation of the case, have power to order that the company furnish suitable and proper equipment, but could not direct in what manner it procure the same; could not order that it purchase or hire from any particular person or company, or from every one generally.

That the duty of so furnishing the equipment would be imposed on the railroad company, and it must see, at its peril, that it does it properly.

That the method of furnishing the equipment is a matter as fully within the judgment and decision of the company as the kind of oil it uses on its locomotives, or the kind of grease on its car wheels.

And it is submitted that your honorable Commission, even granting that the question of the quality and fitness of the equipment of railroads is within the powers granted to you, and that you have the full powers of a court of equity could go no further.

That if, under those circumstances, you were satisfied that any railroad named in this complaint was not supplied with proper and suitable stock cars, you might order that it supply itself; but that the question of what cars the company got, and whether by hiring from the Burton Company or the Street Company, or by building or buying, must be left to the decision of the railroad company.

The case of *Pullman's Palace Car Co. v. Missouri Pac. R. Co.* 115 U. S. 587 (Bk. 29, L. ed. 499), seems clearly to support this view.

Here it was claimed that the car company, under a certain contract, had a right to have its cars run over the railroad of the defendant, but the court held that the contract did not apply. It was also argued for the car company that the defendant was obliged to haul its cars, aside from any obligation under the contract, and the court said: "It may be, as is also alleged, that it has 'become indispensable, in the conduct of the business of a railroad company, to run on passenger trains, sleeping and drawing room cars, with the conveniences usually afforded by such cars for night travel'; but it by no means follows that the railway is, in law, obliged to arrange with the Pullman Company for such accommodations. According to the bill itself, two such car companies cannot successfully carry on a competing business on the same road, and the custom has been for the Pullman Company, if possible, to contract for the exclusive right. The business is always done under special contracts. These contracts must necessarily vary, according to the special circumstances of each particular case. Certainly it cannot be claimed that a court of chancery is competent to require these companies to enter into such a contract for the furnishing and hauling of Pullman cars, as the court may deem reasonable.

A mere statement of the proposition is sufficient to show that it is untenable."

The case is exactly like other cases of a railroad company hiring cars. A railroad company not having sleeping cars of its own hires such cars from such other person or company and on such terms as it sees fit. As a matter of fact, it generally does so by paying to the lessor a mileage on the cars used. It also hires, as appears by the evidence in this case, such refrigerator, coal, oil, freight, lumber or cattle cars as it may need, usually paying a mileage; but there is nothing to prevent its paying a yearly or monthly rental; and it is not in the power of the courts to say with whom it shall contract, or what kind of a contract it shall make.

By the statutes of the various States by which the companies are chartered, they are required to furnish proper and suitable equipment; and shippers have their full remedy in case of failure or neglect to do so.

The principles laid down and the reasoning in the so-called *Express Cases*, 117 U. S. 1-29 (Bk. 29, L. ed. 791-803), seem to fully sustain this view; and as they say, speaking of the decision in the lower court, and referring to business arrangements between the express companies and the railroad companies, and as can be equally well said as to contracts between railroad companies and other parties for hiring cars, "The court has made an arrangement for the business intercourse of these companies, such as, in its opinion, they ought to have made for themselves, and that we said—in *Atchison etc. R. R. Co. v. Denver etc. R. R. Co.* 110 U. S. 667 (Bk. 28, L. ed. 291), followed at this term in *Pullman's Palace Car Co. v. Missouri Pac. R. Co.* 115 U. S. 587 (Bk. 29, L. ed. 499)—could not be done. The regulation of matters of this kind is legislative in its character, not judicial."

There is no legislative requirement—congressional or State—making it the duty of railroad companies to enter into such contracts with particular parties, or with anyone making a demand for such a contract.

The counsel for the complainant takes the ground that it does not ask that railroads should hire its cars to be used by them for transporting freight over their roads, but simply makes a tender to them of a package of freight to be transported like any other freight package. His proposition is: "I now hold, as a general proposition, that the car is our package, in which shippers who buy it, after we have made it, desire their merchandise to be carried by weight, as everybody else's is carried. And unless it is claimed that there is something inside that is detrimental to the public business of railroads, the railroad has no more right to look into that package for the purpose of rejecting it, and preventing it from passing over the railroad, than they have to look into any other package. What is inside my package, assuming it to be lawful merchandise within, is substantially and exactly none of their business, when they are to carry it at so much a ton."

Let us look at the proposition carefully.

According to this, the car is, by itself, simply a wrapper or crate in which goods are transported. On this basis, let us see what are

the facts in a particular case. A shipper comes to the Chicago, Burlington & Quincy Railroad Company with a load of cattle in his crate, and says: "I want this crate load of cattle sent to Council Bluffs. I want the crate delivered to the Burton Company here again at Chicago, and you must pay that company a rental of so much a mile for each mile, out and back, that the crate is carried."

Or he comes with the crate empty, and says: "I want this crate sent to Council Bluffs, where I will load it with cattle, and send it back to Chicago; You can collect from me the usual freight on a crate of cattle from Council Bluffs to Chicago; and you must pay to the Burton Company a rental for each mile, out and back, that the crate is carried."

We answer: "We have crates enough of our own. We do not want your crate, and can neither afford to pay you for the use of it, nor carry it both ways for one freight."

He answers: "You take the crates of the Lake Shore Railroad Company over your road, and pay them a rental for their use."

We answer: "We do, when we need crates in our business, but we prefer their crates to yours. They are better suited to our business, will carry more than one kind of goods, and yours will not; and so we can get freight on the loads in the crates both ways."

It should be kept clearly in mind that the railroad company gets payment for hauling the freight in the car, not for hauling the car. On the contrary, it is claimed that it should pay the owner for the use of the car.

No matter how you put it, it gets back to the simple demand: "You must haul our car (or use our crate) whenever asked to do so. You must not charge the owner of the freight in such car (or crate) any higher rate than you charge the owner of freight in any other car (or crate); and you must pay us for the use of the car (or crate)."

It is therefore, respectfully submitted that it all turns on the question: Is a railroad company bound to accept, use and pay for all cars and other instrumentalities of railroad traffic offered to it?

If a railroad hires crates for the transportation of pigs, fruits, or baggage from A, and pays him by way of mileage, must it also take B's and pay him a mileage? And if not crates for those purposes, why crates or cars for other purposes?

It should be kept in mind that the additional charge in the tariff is put on instead of making a charge for hauling the empty cars. If the cars are offered to us as so much freight to be carried, we certainly have a right to make a reasonable charge.

The second question is: Has Congress granted, or attempted to grant, by the Interstate Commerce Act, to this Commission, any power to consider or decide upon the quality or fitness of the equipment of railroad companies?

It is respectfully submitted that the only powers of this honorable Commission are those specially granted by this Act, and that the Act must be strictly construed. The Act contains no reference to or suggestion of any power in the Commission to consider or decide upon the quality or fitness of the equipment of railroad companies. If they have it in regard to cars,

they must equally have it as to locomotives, terminal facilities, road bed, brakes, couplers, grease, fuel, and every detail of railroad property and management, and the act would amount to the appointment of a commission to run and manage all the railroads in the United States which do an interstate business, the taking, the spending of the company's money, and the management of its property, out of the hands of the company. Congress has made no attempt to grant such an authority to the Commission, and it may well be doubted whether it could do so.

The next question is: Has not Congress, by the terms of the Act, specifically limited the power of this Commission, so that it cannot give to the cars of others the use of the track of any railroad company, and has no power to make any order in regard to the same?

It is respectfully submitted that it has. By the last clause of the third section of the Act it is provided "That this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

It was suggested that the Burton Stock Car Company did not come under the terms of this clause, as it was not a "common carrier." As was also suggested before the Commission, this is true, so long as the Burton Company confines its business to the manufacture and selling or leasing of cars; but when it comes to a railroad with its cars loaded or unloaded, and requests that they be carried over such railroad—not as so much freight to be carried—but as a car or vehicle for the transportation of freight over such road, it comes as a common carrier, within the meaning of this section, just as much as a railroad company would which had hired the cars from the Burton Company.

How can it be held otherwise? Take an example: the Lake Shore Company buys ten stock cars from the Burton Company. A train comes over the Lake Shore Road made up of the ten cars of the Burton patent belonging to the Lake Shore Company, and ten cars of the Burton patent belonging to the Burton Company, all twenty cars being loaded with cattle. The Commission clearly cannot order that the Chicago, Burlington & Quincy Railroad Company accept and run over its line the ten cars belonging to the Lake Shore Road. Can they order the Chicago, Burlington & Quincy to take and run over its line the ten cars belonging to the Burton Company? A mere statement of the proposition is sufficient to show that it is untenable.

The fourth question is: Assuming that the Commission has full power to make the order asked for, could it properly do so, having due regard to the whole question? It must be kept in mind that a railroad, considered as a machine for transportation purposes, is a great and delicate machine, requiring the most careful and exact management, in order to do its business in such a way as to satisfy its patrons, and do the business successfully, safely, and profitably; that any interference which will take the management in any of its details out of the hands of the men trained and appointed for that purpose will have a tendency to make the whole machine go wrong; that an order that railroad companies must accept, run, and

pay for all cars mechanically correct and properly constructed, might and would have a tendency to so interfere with the management as to prevent the safe, prompt, proper, and profitable doing of the business railroad companies are called upon to do. It would interfere with the proper discharge of their duties to the public, by requiring the company to haul over its road trains of empty cars which could not be used for the transportation of other freight, and so using up its motive power, and leaving the companies without proper cars at proper places to attend to its necessary traffic, and in a thousand ways taking out of their hands the management of their own business. If, on the other hand, it is ordered that cars of a certain kind and pattern be taken when offered, it should be borne in mind that the car is only a part of the whole great machine; that the car is no more an essential part the safe, speedy, and proper transportation of merchandise or cattle, than the locomotives, signals, road bed, rails, interlocking switches, and many other things used in connection with a railroad; and the Commission must, if it undertakes to determine upon the value or propriety of using a car, also determine upon the value of all other portions of the great machine called a railroad.

In fact, if the Commission can and should order either that all cars offered, or that cars of any particular kind or kinds should be taken, it would work greatly to the injury of both the public and the railroads, and railroads could no more be run on satisfactory bases under such an order than a cotton mill could, were it required to take portions of its machinery for manufacturing from anyone who had, or thought he had, or whom a commission thought had, a piece of machinery fitted for such manufacturing.

The fifth question is: Has the complainant proved any discrimination? The evidence offered showed the following facts:

That railroad companies receive from other companies, and pay mileage for, such cars, freight, cattle, oil, refrigerator, coal, etc., as they need in the transaction of their own business, and such cars only; that when they have cars of their own ready for use, they tranship from cars of others into their own cars, unless the expense of such transhipment is greater than the expense of taking cars of such other person or company; that they never take cars simply on the demand or request of others, but simply when it is to their own advantage, and then under special agreement; that refrigerator, coal, and other special classes of cars are taken from others only when the company has not enough of the same to do their business; that the companies complained of were abundantly supplied with cars to do their cattle business.

Further, the evidence showed that the cars of the complainant were of such construction that they could not be loaded with lumber or steel rails; that the compartments in the Burton car were only sixteen feet long, and that what is called sixteen foot lumber is generally a little over that; that, moreover, the doors of the Burton cars were in the side, so that it would practically be impossible to put the lumber in, even if the compartment was

fully long enough. It was stated that Mr. Stone said that the length of the car was twenty-eight feet, and next that it was thirty feet, and that was the standard, and they do not want any on their road longer than thirty feet.

Mr. Stone made no such statements. His statement in answer to questions on cross examination, was as follows:

Q. State whether the tendency is not to increase the length of stock cars lately.

A. It is, up to thirty-four feet. It used to be twenty-eight.

Q. The needs of commerce and the comfort of the stock have, I suppose, called for that?

A. No sir; two things called for it: the first to make cars more available for general use. The twenty-eight and thirty foot cars were both too short to take in two lengths of sixteen foot lumber, and too short to take in thirty foot steel rails, and in order to get the benefit of return loads of lumber and rails, there were strong reasons for making the car thirty-four feet long, so that it would take two lengths of sixteen foot lumber without going above the 40,000 pounds capacity of the car. Otherwise it was impossible to load it full with lumber and rails.

The evidence further was that a very small percentage of cattle were carried west, and that a very small percentage of these cars could consequently be carried west loaded, but must be taken empty; that, so far as the Chicago, Burlington & Quincy Railroad Company is concerned the western freight consisted mainly of lumber and steel rails, with a good many railroad ties; that of the whole mileage on the Chicago, Burlington & Quincy Railroad, 80 per cent of cars went loaded, and 20 per cent empty, and that of the west bound cars probably 70 to 75 per cent went loaded. Now, taking a case on the Chicago, Burlington & Quincy Railroad; do the facts show discrimination in any form on the present ratio?

A. Burton car is wanted at Council Bluffs, 500 miles from Chicago, for a load of cattle. The car is procured in Chicago and hauled to Council Bluffs empty, the company receiving no pay for such hauling. It is hauled back loaded, and the shipper is charged the tax rate \$70 plus 20 per cent additional, making \$84, which the Chicago, Burlington & Quincy Railroad Company receives for having hauled the car 1,000 miles—500 empty, 500 loaded.

A. Lake Shore Railroad car is hauled from Chicago to Council Bluffs. The rate for that haul on a load of lumber or steel rails is about \$40, but as, say only, 70 per cent of the cars go west loaded, we get an average of \$28 per car. That car is loaded back with cattle, and we get the tariff rate, \$70, making for our total trip \$98. Out of this the Chicago, Burlington & Quincy Railroad Company pays the Lake Shore Company mileage of three fourths of a cent per mile, or, on 1,000 miles, \$7.50, leaving net to the Chicago, Burlington & Quincy Railroad Company, \$90.50, or \$6.50 more than we get on the Burton car.

If, on the contrary, we haul the car, paying the mileage and charging the freight which the complainant requests, we should receive \$70, and should pay out for mileage \$7.50, leaving net on the haul \$62.50, against about \$90 on the common car.

But it is submitted that the tariff rate is not extortionate nor in any sense a discrimination, but is made with the intent of being and is fair and reasonable, and not more than is charged to other persons for doing a like service in transportation, under substantially similar circumstances and conditions; and it is further submitted as a restatement, that:

1. a railroad company is not, in law, bound to use upon its line the cars of another person or company, and pay rent for the same; and that the fact that it does so hire from one or more persons or companies in no way obligates it to hire from others; 2, that under the Interstate Commerce Act, your honorable Commission is in no way authorized to consider or determine upon the quality or fitness of the equipment of railroads; 3, that by and under said Act, your honorable Commission is specifically restricted from ordering that a railroad company give to any common carrier or to this complainant the use of its tracks; 4, that even if full power existed, it would be very unwise and very injurious to the people, as well as to the railroads, to make the order asked for; 5, that on the evidence given, the rate charged to the Burton Stock Car Company and shippers, by its cars, is reasonable and not extortionate, and in no sense a discrimination under the Interstate Act.

In regard to the Chicago, Burlington & Northern Railroad Company, it may be pointed out that no particular case was made, that no evidence was offered that the Burton Company had ever applied to that company to haul any of its cars, loaded or empty; but this point we do not press, as this Company is a party to the classification; and the real question is the general one, as to whether any such order as is asked can or should be made.

Messrs. Samuel Shellabarger, John S. Blair, and John F. Dillon, for the Union Pacific and Missouri Pacific Railway Companies, respondents:

The exact point and substance of the petition of complainant in this case is that the complainant is the owner of certain cars suited to the transportation of cattle and live stock over railroads; that such cars are better adapted for such transportation than the ordinary cars, and their use is sought for and desired by the public; that they are lighter and of easier haul than the ordinary cattle cars; and 100 or more railroad companies allow them to be put upon their lines for said transportation purposes on the usual terms, under which railroads receive and allow three fourths of a cent per mile to the owner of the car, but that the defendant, The Union Pacific, and other companies, have refused to accept the cars of complainant, except upon payment of extortionate terms, unjust to complainant and detrimental to the public.

And the petition expressly relies upon sections 1, 2, and 3 of the Interstate Commerce Act as the ones containing the provisions which defendant is alleged to have violated.

The substance of the provisions bearing on this alleged unjust demand and refusal found in these sections are as follows:

1. Section 1 requires charges, by common carriers subject to the Act, to be "reasonable and just," and declares unlawful all which are "unjust and unreasonable."

INTER S.

2. Section 2 prohibits carriers from charging or receiving "greater or less" compensation for any service from one person than is charged for a like contemporaneous service to "any other person."

3. Section 3 declares it unlawful for the carrier to give "undue or unreasonable preference or advantage to any particular person," etc., "or locality," "or any particular description of traffic," "or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 4 requires all such carriers, "according to their respective powers," to "afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate, in their rates and charges, between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracts or terminal facilities to another carrier engaged in like business."

The exact legal question presented by the present issue and considered in the light of the facts, either conceded or which may be admitted for the sake of the legal point, may be condensed thus:

Do the provisions of the Interstate Commerce Act in sections 1, 2, and 3, or the principles of the common law, oblige these companies to accept from the complainant corporation, a private car manufacturing company and not a common carrier, its manufactures in the shape of cars, and to transport the same over their lines as rolling stock (as distinguished from freight) upon any terms whatever?

Points in reply to this question:

We insist that the answer to this question must be in the negative for the following reasons:

I. The strongest possible view in favor of complainant's contention is that which presents the claim in this light, to wit: that its cars are received on other railroads as part of their trains, and which cars, in process of transportation from State to State, reach connections with the Union Pacific, or some other defendant company, and there demand that complainant's cars shall be received by such company on its line as part of its trains, the same as other cars of like kind are received.

Under this state of facts and conditions of making the demand it is claimed that the position of the complainant is different from that of a manufacturer making cars and taking them to a railroad company and demanding their adoption as part of the lines of the defendant, in this: that in the latter case complainant's cars have become, and is, at the time of the demand, a part of the actual interstate commerce of the country, owing to its coming to the defendant's line in the shape of being part of a train of interstate commerce; and, being thus embodied in such interstate commerce, it cannot be discriminated against.

As already remarked, there is no possible view in favor of the contention of complainant.

stronger than the one just stated; and this contention of complainant is squarely met and overthrown by the express words of section 8 of the Interstate Commerce Act.

This is so because the concluding paragraph of section 8, which is the strongest provision in favor of complainant, is devoted to the requirement, as against carriers subject to the Act, that they shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines."

It must be carefully observed that this clause is one dealing with "connecting lines," as such, and it is a mandatory prescription of the rule regulating reciprocal facilities and interchanges between such "connecting lines."

After having made this provision commanding reasonable facilities for interchange of traffic between connecting lines, and after prohibiting discriminations in rates and charges between such connecting lines, an express limitation is put upon the character and extent of the rule defining these facilities and interchanges by the controlling words which conclude the section and which are:

"But this shall not be construed as requiring any such common carrier to give the use of its track or terminal facilities to another carrier engaged in like business."

Thus the Statute itself makes it plain and literal, to a demonstration, that no carrier is required "to give the use of its track or terminal facilities to another carrier engaged in like business."

In other words, this clause protects all connecting lines in their right to use their own cars for the purposes of transportation. Of course this right to use its own cars is subject to all the provisions and conditions of the common law and of the statutes requiring the carrier to furnish reasonable facilities for all descriptions of transportation of persons and property. Subject to that general obligation every carrier is, by the last clause of section 8, left in the absolute possession of the right to furnish its own cars for its own lines.

The effect of this provision is to leave all carriers subject to this Law at liberty to make contracts regarding what cars from other lines shall be transported over their lines. Because of the unmistakable character of this last clause of section 8 it would be useless to analyze other provisions of this statute bearing on this point, because, since this closing provision of section 8 cannot be misunderstood, it limits, according to its plain words, and qualifies every other provision in the Law, were there any, favoring the contention of complainant;

II. Owing to the vital importance of this matter, it is proper, however, to present other considerations leading to the same result.

One of these considerations may be stated thus:

These companies, although owing certain duties to the public, are, strictly and to all intents and purposes, private corporations, and as such possess the same dominion over their own property as other like private corporations.

Although this proposition seems quite self evident, yet the supreme court has had repeated occasion to announce this law as applicable to the Union Pacific.

In the case of the *United States v. Union Pac. R. R. Co.* 98 U. S. 618, 619, (Bk. 25, L. ed. 156) this is explicitly and repeatedly laid down by that court. It says, speaking of the Union Pacific:

"It is still a private corporation, the same as other railroad companies, and, like them, subject to the laws of taxation and other laws of the State in which the road lies."

In *Union Pac. R. R. Co. v. Peniston*, 18 Wall. 89 (85 U. S. bk. 21, L. ed. 792), the court is still more emphatic on this point. After stating that the Union Pacific has certain agencies to perform under the laws of its creation, on behalf of the government, the court adds these words regarding the nature of the property rights of the Union Pacific.

"Notwithstanding this the railroad and telegraph lines are neither in whole nor in part, the property of the government. The ownership is in the complainants, a private corporation, though existing for the performance of public duties. The government owns none of its stocks," etc.

III. This brings us, then to the question: What obligations are imposed by the general principles of law upon connecting common carriers touching the matter of receiving the cars of other people upon their lines?

The question here is not whether the railroad lines of this country, generally, including the Union Pacific and Missouri Pacific, are regarded by the Law as public highways in the sense that they should be open to the trains of other connecting railroads, and there was no right in the respective roads to exclude such other trains from their lines.

This is so because the demand here of the complainant is not to be permitted, by its own locomotives, to run its cars over our lines. This demand is, in law, radically different from that. Its demand is that we shall take upon our lines and transport with our own locomotives the cars of other lines, leaving our own cars idle.

We are, therefore, here not troubled with this question (were there any question) as to the right of other companies to occupy our lines with their trains and locomotives.

On the contrary, the exact question is whether, on general principles, there is an obligation, as against the "connecting lines" of railroad, to become the common carriers of other common carriers, they taking up and transporting, in the shapes in which they are tendered to us, the lines of cars brought to us.

IV. The answer to this last question; stated in paragraph III, is explicitly and unmistakably found in the *Express Company Cases*, 117 U. S. 1 (see Bk. 29, L. ed. 793).

The syllabus of those cases is an excellent synopsis of what is decided, and is in these words:

"Railroad companies are not required by usage or by the common law to transport the traffic of independent express companies over their lines in the manner in which such traffic is usually carried and handled.

"Railroad companies are not obliged, either

by the common law or by usage, to do more as express carriers than to provide the public at large with reasonable express accommodations; and they need not, in the absence of a statute, furnish to all independent express companies equal facilities for doing an express business upon their passenger trains."

It will be observed in this case, foot of page 6 (795), that the demand made against the railroad companies was that, in the absence of contracts, the defendant railroads should be decreed by the courts to "transport at all times the express matter, safes, and messengers of the said Southern Express Company by the same trains and with the same accommodations thereon and its depots and stations as it may transport its own express matter or as it may accord to itself."

This was the pith of the contention and the one repudiated by the court.

In that case the court, on page 20 (800), says:

"The controversy in each case is not with the public, but with a single express company. And the real question is not whether the railroad companies are authorized by law to do an express business themselves, nor whether they must carry express matter for the public on their passenger trains in the immediate charge of some person specially appointed for that purpose, nor whether they shall carry express freights for express companies as they carry like freights for the general public, but whether it is their duty to furnish the Adams Company or the Southern Company, facilities for doing an express business upon their roads, the same in all respects as those they provide for themselves or afford to any other express company."

On page 21 (800), the court, in repudiating the contention of the express companies, says:

"It is neither averred in the bill nor shown by the testimony that any railroad company in the United States has ever held itself out as a common carrier of express companies—that is to say, as a common carrier of common carriers."

Again the court says, page 24 (801):

"So long as the public are served to their reasonable satisfaction it is a matter of no importance who serves them. The railroad company performs its whole duty to the public at large and to each individual, when it affords the public all reasonable express accommodations. If this is done, the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security."

On page 26 (802):

"The exact question, then, is whether these express companies can now demand as a right what they have heretofore had only as by permission. That depends, as is conceded, on whether all railroad companies are now by law charged with the duty of carrying all express companies in the way that express carriers, when taken, are usually carried, just as they are with the duty of carrying all passengers and freights when offered in the way that passengers and freights are carried. The contracts which these companies once had are now out of the way, and the companies at this time possess no other right than such as belong to

any other company or person wishing to do an express business upon these roads. If they are entitled to the relief they ask, it is because it is the duty of the railroad companies to furnish express facilities to all alike who demand them."

Such is the body and effect of this decision, and it is, we submit in legal principle, conclusive against the demand of the complainant in this case, that we shall be obliged to receive in the shapes in which complainant may choose to bring the same to us its lines of cars upon our lines.

To the same point is the case in 115 U. S. 587 (499), where the Pullman Palace Car Company asserted an obligation on the part of the Missouri Pacific Railway Company to haul the cars of the Pullman Company because of the nature of the business in which the latter company was engaged, which consisted "of hiring or otherwise arranging with railway companies to use its cars" under written contracts for a term of years.

The court says, page 597 (502):

"It may be, as is also alleged, that it has become indispensable in the conduct of the business of a railroad company to run on passenger trains sleeping and drawing room cars, with the conveniences usually afforded by such cars for night travel; but it by no means follows that the railway is in law obliged to arrange with the Pullman Company for such accommodations. According to the bill itself, two such car companies cannot successfully carry on a competing business on the same road; and the custom has been for the Pullman Company, if possible, to contract for the exclusive right. The business is always done under special written contracts. These contracts must necessarily vary, according to the special circumstances of each particular case. Certainly, it cannot be claimed that a court of chancery is competent to require these companies to enter into such a contract for the furnishing and hauling of Pullman cars, as the court may deem reasonable. A mere statement of the proposition is sufficient to show that it is untenable."

In the *Atchison etc. R. R. Co. v. Denver etc. R. R. Co.* 110 U. S. 667 (Bk. 28, L. ed. 291), the sections (4 and 6 of article 15) of the Constitution of Colorado, under consideration, were as follows:

"Sec. 4. All railroads shall be public highways and all railroad companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any designated points within this State, and connect at the state line with railroads of other States or Territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad.

"Sec. 6. All individuals, associations, and corporations shall have equal rights to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers within this State, and no railroad company, nor any lessee, manager, or employee thereof, shall give any preference to individu-

Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company are members, in which the following rule appears:

"Live Stock in car loads, carriers risk, class 2. Note.—Live stock transported in special or palace live stock cars, not the property of railway companies, will be charged as follows: in cars not exceeding 30 ft. in length internal measurement, 120 per cent of tariff rate. For each additional foot or fraction thereof in excess of 30 feet in length, internal measurement, an additional charge of 8 per cent per foot, or fraction thereof, will be made. For example: live stock in a palace car, 36 ft. in length, internal measurement, will be charged 188 per cent of tariff rate. Live stock in a palace car 40 feet in length, internal measurement, will be charged 150 per cent of tariff rate, it being optional with any railway company to receive cars exceeding 34 feet in length."

This rule is still in force. The Chicago and Alton Railroad Company did not accept the western classification in this respect, but provided by a circular dated May 30, 1887, for a charge of five cents per mile on empty cars, and for ordinary tariff rates on cattle in special cars of 30 feet in length; over 30 and not exceeding 33 feet, 10 per cent additional; and a further charge of 8 per cent for each foot or fraction thereof above 33 feet.

The extra charge to shippers in the western classification above quoted was intended to be in lieu of the former charge of five cents per mile for hauling back empty cars, and was adopted after a suggestion of one of the officials of complainant, to the effect that the public objected to paying tariff rates and five cents additional for the empty cars, and that it would be better to put it in the form of a percentage on the tariff. The Commission does not understand however that complainant thereby acceded to the justice of either charge, but merely that it preferred the one method to the other in case an additional charge was to be enforced.

The traffic in live stock upon the roads leading from the West to Kansas City, Chicago and St. Louis is almost wholly east bound, the west bound shipments being chiefly of fine stock for breeding purposes. It is a matter of material importance to the railroads to be able to get return loads upon cattle cars going back from those cities to the West. The chief opportunities for back loading are found in lumber, steel rails and ties. Lumber cannot conveniently be loaded in the Burton cars. Steel rails also cannot be taken upon those cars, but are at times loaded in ordinary cattle cars through doors placed at the ends for that purpose. Practically the special stock cars are not available for back loading to any considerable extent, upon the roads of the defendant companies.

Upon the foregoing facts one question largely discussed by counsel was as to whether a railroad company is by law required to accept for transportation the cars of complainant, and whether the Commission has authority to direct such cars to be so accepted when tendered in good order, properly constructed, mechanically correct and loaded with live stock.

It was argued by defendants that a railroad company is not bound to accept all cars and other instrumentalities of traffic offered to it,

but on the other hand, is required by the law to provide for itself all equipment necessary for the transaction of its business, and having done this, has performed its duty to the public; and also that the Act to Regulate Commerce contains no suggestion of a power in the Commission to decide upon the quality or fitness of the equipment of railroad companies. It is apparently conceded that the general subject of the safe and proper operation of railroads is within the power of State Legislatures, and of Congress, to regulate within their respective spheres of jurisdiction; a large part of the duties conferred upon some of the existing state railroad commissions is in the supervision of such matters, extending to the safety of bridges and railway, as well as of rolling stock and other instrumentalities and conveniences used in transporting persons and property. But it is claimed that the supervision of interstate commerce in these respects was not contemplated by Congress in the Act under which the Commission is organized, and that no powers have been conferred upon the Commission in that behalf; that the Act regulates the transportation of property, which is called commerce; but that the subject of procuring the adequate means for the transaction of the business of transportation is not commerce, and is not within the jurisdiction of the Commission.

On the other hand the complainant insists that the only way to regulate commerce is by regulating the instrumentalities of commerce; which necessarily includes power to regulate the cars, bridges, heating apparatus, and all other means and appliances by the use of which the interstate commerce is carried on.

The complaint however does not allege a refusal by the defendants or any of them to accept and haul complainant's cars, and the evidence does not disclose any such refusal. On the contrary the evidence clearly shows that most of the defendants publicly announce the terms on which live stock offered for transportation in special cars will be received and transported. For these reasons it is apparent that the question whether defendants are bound to receive complainant's cars is not presented; nor the question whether the Act confers jurisdiction upon the Commission over the instrumentalities of commerce; and no opinion is expressed upon those questions.

In view of the general demand among intelligent shippers for more satisfactory, although more expensive, conveniences for the safe and rapid transportation of live stock, it is scarcely conceivable that any railroad company will deliberately exclude from its lines the improved stock cars which modern invention has introduced, and which are recognized in the official tariffs and classifications of the carriers.

The question presented by the complaint, and the only question properly to be decided here is whether the terms upon which the defendants take the special stock cars are just and reasonable. This question divides itself into two branches:

First, Should the defendants be required to pay three fourths of a cent per mile run to complainant by way of car service?

Second, Is the tariff rate charged shippers for transportation of live stock in special cars a just and reasonable rate?

Upon the first question it is admitted that the defendant carriers refuse to pay to the complainant mileage upon the distance run by complainant's cars over their roads. This refusal is claimed to be an unjust discrimination against the complainant.

As is well known, freight cars belonging to the different railroad companies throughout the land are to a large extent used interchangeably. A record of their mileage when away from home is made the basis of the payment of "car service" at the rate of three fourths of a cent per mile. Of course if the cars of a carrier are used as much away from home as it uses the cars of other roads on its line, the monthly payment for car service will be offset by the amounts received. This is theoretically the nature of the transaction, a matter of mutual convenience which costs neither party anything. The payments and receipts in any one month could not be expected to exactly balance, but if each road has cars sufficient for its use, the result in the long will be very nearly equalized. In view of this fact it is obvious that no great importance attends the making this payment an exact compensation for the use of the cars, and it would not be fair to make it the measure of payment required to be made for the use of cars hired from other persons.

The Burton Stock Car Company does not receive and use the cars belonging to other carriers and there is no possible mutuality in this respect such as exist between carriers exchanging cars in the ordinary way. The Burton Stock Car Company is in no sense a "connecting line," entitled to equal facilities for interchange of traffic under the provisions of the second paragraph of section 3 of the Act to Regulate Commerce. Its counsel insists that it is not a common carrier. When freight is tendered to defendants in loaded cars by other carriers, they have the option to take the car or to reload the freight into their own cars; and the latter course is often pursued when the cost of unloading is less than the car service for the proposed trip. The fact that carriers interchange cars with one another in the manner and on the terms above stated does not entitle the complainant to claim that it is unjustly discriminated against by a refusal to pay it the same rate which carriers adopt as a basis in adjusting their car service accounts with each other. The claim of the Burton Car Company for payment by the railroad companies for the use of its cars is matter of contract and agreement between the parties so far as the proofs before us show, which does not present the feature of unjust discrimination. It seems that some carriers find the use of Burton cars, or of other improved stock cars, to be a service desired and demanded by the public, and are willing to concede to the complainant a reasonable payment for such use. So long as the carriers have no like cars in their own equipment, upon which live stock can be watered and fed without unloading, there is apparent justice in making such compensation. But complainant, which charges and receives from the public two and a half cents per mile for the use of its cars, is not in a position which entitles it to demand an additional three fourths of a cent per mile from the

carrier, upon the ground that the carriers pay that sum to each other upon exchanging cars under the circumstances above stated, and that their refusal to pay the same sum to complainant is an unjust discrimination. Nor is any ground apparent upon which such a payment can be ordered by this Commission.

The other ground of complaint is that the charge made to shippers of live stock is too high.

The extra charge provided for in the western classification is justified by the carriers, upon the ground that the cars have to be taken empty to the point where they ought to be loaded, or returned empty from the point where they are unloaded, while ordinary cars are more susceptible of being loaded in both directions and are often so loaded in fact. This was explained in detail in respect to the Chicago, Burlington & Quincy Railroad, upon which a large proportion of the Company's cattle cars are used in both directions.

It appears to the Commission that the expense of hauling complainant's cars in one direction unloaded, as compared with the greater ability to load back the ordinary cattle cars in use by the defendants, and the fact that a large percentage of the ordinary cattle cars are so back loaded upon the long hauls of the western roads, are considerations which justify a difference in charge against shippers who prefer to hire the improved stock cars for the transportation of their live stock.

The fact that cattle are transported in better condition and with less shrinkage in the special cars, and on that account are worth more at the end of the journey, is not a reason which the carriers can properly make use of as justifying an increased charge; it is in view of this fact that the shippers pay two and a half cents per mile to complainant for the use of its cars; and the legal duties of carriers in respect to all property which they accept for transportation cannot be forgotten.

Nor is the fact that these special stock cars are chiefly used for higher grades of stock a proper ground for additional charge, based upon the kind of car employed in the service. The car is the same whether used for Morgan horses or Texas steers. Any addition to the transportation based upon the value of the article carried is, in part at least, in the nature of an insurance premium paid for the risk, and should be applied to the articles themselves, and not to the vehicles in which they are transported. This is recognized in the amended classification recently filed with the Commission by the joint committee of the trunk lines, in which a maximum value is given upon which the tariff rates are based, and the terms upon which added liability will be assumed for live stock of more than ordinary value are stated in detail. To place an additional burden upon all live stock carried in special stock cars, upon the ground that such cars are often used for fine stock having high value, is obviously unreasonable.

But the question remains whether the additional percentages provided for in the classification constitute a just and reasonable charge to shippers, in consideration of the single fact that the special stock cars usually hauled empty in one direction. The effect of this charge

New York, on behalf of 281 merchants of Michigan, Illinois, Indiana, Ohio, Pennsylvania, and Delaware, that the present classification in use for west bound traffic by the New York Central, Delaware, Lackawanna & Western, Pennsylvania, Baltimore & Ohio, and Erie Railroad Companies, "as regards the unjust differences now made in classification and freight charges between car loads and less than car loads on the same articles between the same points, is in violation of the sections of the Interstate Commerce Law forbidding undue preferences to individuals or localities." The complainants ask for a restoration of the principle of uniform rates without regard to quantity which was in force from the seaboard for twenty years.

Complaints have also been received from Francis H. Leggett & Co., of New York City, against the trunk lines, charging that the present classification in respect of the higher rates charged upon less than car load shipments is in violation of the provisions of the Interstate Commerce Law and petitioning for relief.

Ralph W. THATCHER

v.

FITCHBURG R. R. CO. *et al.**

The complainant, the owner of a grain elevator at Schenectady, N. Y., ships grain from his elevator to Boston, over the roads of the defendant companies. Prior to the Act to Regulate Commerce, the defendants carried complainant's shipments at the proportion of through rates from Chicago to Boston allowed to the lines from Schenectady to Boston, but since the Act took effect they have refused to accept this proportion, on the ground that it would violate the fourth section of the Act, since the rates from other points nearer Boston than Schenectady is, are greater than such proportion would be. The complainant asks that the defendants be compelled to accept such proportion of the through rate. *Held,*

(a) That the complaint, in effect asks from the Commission an order that shall require the defendant roads to receive freights at Schenectady for transportation to Boston, at rates less than are now charged by the same roads for the transportation of like freights to Boston from stations nearer Boston, under substantially similar circumstances and conditions.

(b) That such order, if issued, would require the roads to depart from the general rule laid down in the fourth section of the Act.

(c) That while the Act authorizes the Commission to permit exceptions, it does not authorize it to require exceptions.

(d) That the Commission has not power to make rates generally, but

only to determine whether rates imposed by the railroads are in conflict with the Statute.

(e) That the question whether the rates now charged complainant are excessive is not raised by the complaint.

(f) That the complaint must be dismissed.

(Decided July 25, 1887.)

REPORT AND OPINION OF THE COMMISSION.

Schoonmaker, Commissioner:

The complaint in this case charges, in substance, that the various railroad companies named as defendants, unjustly discriminate against the complainant by refusing to carry grain and flour for the complainant from Schenectady, New York, to Boston and other New England points, at the proportion of all rail rates from Chicago to Boston and the other points reached by through shipments, allowed from Schenectady by the joint tariffs for such through shipments, and demands that all the railroads which participate in the traffic of through lines, which pass Schenectady eastward over the tracks of the Delaware & Hudson Canal Company, shall be required to receive and forward from the Schenectady elevator, possessed and used by complainant, all grain and other merchandise received at said elevator, either by canal or railroad, and shipped to said elevator for the purpose of being forwarded further east over the routes of the defendants and to furnish cars and all needed facilities for transportation of grain, feed, and flour from the Schenectady Elevator & Steam Mills to eastern points, and that they accept as compensation therefor the same amounts of money they severally accept and receive for similar service as parts of the through lines from Chicago.

The answers, in substance, deny the charge of discrimination, and aver that the shipments east from the Schenectady elevator of the complainant are local shipments, and that the defendants have the right and that it is their duty under the Statute, in order to avoid a violation of the long and short haul provision of the fourth section, to charge local rates or rates not less than from Mechanicsville, Greenfield, and other local and more eastern points to Boston.

The Commission finds the facts material to the disposition of the case to be as follows:

The complainant is the proprietor of a valuable elevator and flour mills, at Schenectady, conveniently located adjacent to the Erie Canal, and to the tracks of the Rensselaer & Saratoga Railroad, leased to and operated by the Delaware & Hudson Canal Company, and has for several years, under contract with the Rensselaer & Saratoga Company continued with the Delaware & Hudson Company, had a privilege which has been practically the privilege of shipping grain, feed, and flour from his elevator over the said railroad to and over its connecting roads leading to Boston and other eastern points.

The complainant receives the bulk of his grain from the West transported by water over the lakes and Erie Canal and consigned to him

*See ante, 24, 317, sub nom. *Re Thatcher and Thatcher v. Delaware & Hudson Canal Co.*

at Schenectady, where it is taken into his elevator and retained until he finds a market for it in New England. He also purchases grain locally at and near Schenectady, which is taken indiscriminately like all the other grain received into the same elevator, and for the same purposes. The elevator is also open to the public, and is used to some extent by other persons than complainant, for the transshipment and storage of grain.

Prior to the time the Act to Regulate Commerce took effect the defendant roads all carried complainant's grain, feed, and flour at the proportion of through rates from Chicago to Boston allowed to the lines from Schenectady to Boston. The percentage of those through rates was twenty per cent of the Chicago rate of thirty cents per hundred pounds, or practically six cents per hundred. The subdivision of the Fitchburg Road from Mechanicsville to Boston of this proportion was five cents and seven hundred and seventy eight one thousandths. Since the Act to Regulate Commerce took effect the several roads have refused to accept this proportion from complainant, giving as the reason therefor that it would violate the fourth section of that Act, since the rates from Albany, Troy, Mechanicsville, and North Adams, which are further east and nearer Boston than Schenectady, on the Fitchburg line, are greater than such proportion would be.

The principal shipments from complainant's elevator have been over the Delaware & Hudson Road to Mechanicsville, and thence over the Fitchburg lines to Boston. He makes no shipments by way of Albany over the New York Central and Boston & Albany Roads. The Fitchburg Road now controls the Troy & Boston line and the Boston, Hoosac Tunnel & Western Road. Since the change above stated, the complainant has made no shipments over these lines, on account of the rates.

Upon this statement of facts it is seen that what the complainant asks from the Commission is an order that shall require the several defendant roads to receive freights at his elevator at Schenectady for transportation to Boston and Boston points at rates less than are now charged by the same roads for the transportation of like freights to Boston and Boston points, from stations on the same lines nearer to the points of destination, and the transportation of which freights would, so far as we can now see, be under substantially similar circumstances and conditions. Such an order, if issued, would require the roads to depart from the general rule laid down in the fourth section of the Act to Regulate Commerce. While that Act authorizes the Commission to permit exceptions under some circumstances and conditions indicated by the law, it does not empower the Commission to require exceptions.

This is the only question which is so presented by the complaint that the Commission can pass upon it. It may be truthfully said that the several defendants might avoid any conflict with the fourth section of the Act by reducing their charges to Boston and Boston points from the stations east of Schenectady; but this complaint does not ask the Commission to compel such reduction, nor has any evidence been given or offered which would

enable us to determine what would be proper and just rates from any such stations. It is therefore impossible to fix them in this case, even if the Commission had power to make rates generally, which it has not. Its power in respect to rates is to determine whether those which the roads impose are for any reason in conflict with the statute.

The rates with which complainant finds fault it is not claimed are in conflict with the statute, unless the conflict is found in the fact that they exceed what the roads accept on the through business as their proportion of the rates fixed at distant points. If that is in any sense contrary to the Law, the illegality would not be corrected by compelling the roads to accept upon shipments from Schenectady rates less than are charged from the stations further east. We cannot correct one alleged violation of law by compelling another.

If complainant thinks the rates from Schenectady and intermediate points to Boston and Boston points are excessive, he can raise that question directly and distinctly, and the Commission can then enter upon a full investigation of the facts bearing upon it. But the question is not made here.

It is proper to state that the question whether a proportion of through rates less than the local rates over the same line can lawfully be accepted, is involved in a pending case, and is awaiting further evidence and argument.

The complaint must be dismissed.

In this opinion all concur.

CHICAGO & ALTON R. R. CO.

PENNSYLVANIA CO.*

CHICAGO & ALTON R. R. CO.

PENNSYLVANIA R. R. CO.

CHICAGO, ROCK ISLAND & PACIFIC
R. R. CO.

NEW YORK CENTRAL & HUDSON
RIVER R. R. CO.

1. In the absence of statutory authority one railroad company can sell tickets and check baggage over the road of another company only by agreement; and the Act to Regulate Commerce does not in terms require one railroad company to sell through tickets over the road of another company.
2. Railroad companies may, under their right to control the official conduct of their own agents, forbid their agents to receive commissions from other companies for the sale of tickets over such other companies' roads, and may direct them not to sell tickets over roads of companies which refuse to recognize this corporate authority but which insist on subsidizing such agents. One person or corporation has no right to interfere

with the employees of another, and the Act does not disturb this principle.

3. The practice of one company's paying the agents of another company a commission for selling tickets over the former's road is not reasonable or proper.
4. Hence, held, that the defendant companies, in prohibiting their agents from receiving commissions and in refusing to sell through tickets over the roads of complainants while the latter insist on paying commissions to defendant's agents, have not contravened the provisions of the third section of the Act, which require that railroad companies shall "afford all reasonable, proper and equal facilities" to connecting lines, etc.

(Morrison, C., dissents.)

(Decided July 14, 1887.)

REPORT OF THE COMMISSION.

Schoonmaker, Commissioner:

The complaints in these cases are founded upon the third section of the Act to Regulate Commerce, and charge violations of that section by the defendant companies in refusing certain facilities for receiving, forwarding, and delivering passengers to complainants' lines, consisting of through or coupon tickets, which, being afforded to other and competing companies, give, the complainants allege, undue and unreasonable preference to those companies. The questions involved in these three cases are so similar that they can properly be considered and disposed of together.

The material facts found by the Commission are as follows:

The Pennsylvania Companies, defendants herein, own or control connecting lines of railroad from New York and Philadelphia to Chicago and St. Louis. The New York Central Company, defendant, owns or controls connecting lines from New York to Chicago. Through passenger tickets are sold by the defendants over the routes they control to the terminal points reached by their respective lines. At Chicago the roads of the complainants have their eastern terminus in proximity to the terminus of the defendants' lines, and from there extend westerly to Kansas City and other points. Several other roads, competitors of complainants, also lead from Chicago to Kansas City and other western points, and have substantially similar means of connection with the defendants' lines for the transfer of passengers and baggage.

By mutual arrangement between the various companies whose roads form continuous lines from New York, Philadelphia, and other places on the routes of defendants' roads in New York and Pennsylvania to Kansas City, through or coupon passenger tickets have been sold by the defendant companies at their stations in New York and Pennsylvania, over their own respective lines, to Chicago, and thence to Kansas City, over the roads of the complainants or other such connecting roads as passengers might prefer. For passengers from the West to the East through tickets of a like character have been sold by the complainants and

other companies from Kansas City to points on the roads of the defendants desired to be reached by travelers, in New York, Pennsylvania, or other States. Through tickets of this character with corresponding checking of baggage are a manifest accommodation to travelers and afford material facilities in making long journeys. In the sale of these tickets the company selling them was understood to act as the agent of the other roads over which the traveler might pass on his journey, and each company was deemed responsible to the traveler for its own acts in conveying the holder of the ticket.

For several years prior to the 5th of April, 1887, when the Act to Regulate Commerce took effect, substantially all the railroad companies of the country, including the complainants and defendants, paid commissions varying in amount from two dollars to five dollars a ticket, to the ticket agents of other companies by whom the through tickets were sold. These commissions sometimes aggregated as much as the salaries paid the ticket agents by the companies that employed them. The commissions paid by complainants and some other companies since the first of April last have been fixed by agreement at one dollar a ticket from Chicago to Kansas City.

The defendant companies and some others for about two years have made earnest efforts to abate the practice of paying commissions. The testimony shows that the commissions paid on through tickets have usually amounted to from 20 to 25 per cent of the receipts from such sales, and that the official reports of the companies have concealed this expense and only showed the net receipts from passenger tickets after deducting the commissions.

About a month before the Act to Regulate Commerce became operative the defendant companies took steps to procure agreements with their connecting companies to abolish the commission business altogether.

With this end in view they sent printed circulars, on or about the 15th of March last, to their connecting companies, expressing their willingness to continue to act as agents in the sale of through tickets and stating the nature of the agreement required. The circular of the Pennsylvania Company stated as follows:

"In view of the severe penalties for infractions of the Law neither of these companies can consent to act as agents for your company (if you should desire it to do so) in the issuance and sale of through tickets except upon the following conditions:

"First, your authority to so act.

"Second, your agreement that the proposed joint tariffs will be satisfactory.

"Third, your agreement not to issue or cause to be issued any new forms of through tickets over any of our lines without our formal consent thereto.

"Fourth, your promise not to pay, either directly or indirectly, a commission or any consideration whatsoever to agents or employees of these companies, or to any other person or persons, on account of the purchase or sale of tickets issued by either of these companies at its regular ticket offices or at other places in the territory adjacent thereto.

"Fifth, your agreement to confine your own

issue of tickets and orders for tickets or transportation exclusively to offices immediately on the line of railroad controlled by your own company, thereby permitting us to ticket all passengers over your line or lines, at lawful rates, from all points where either of these companies has a line of railroad and you have none.

If it be your desire, these companies will cheerfully continue to act as agents for your company on and after April 1, 1887, upon similar premises and conditions to those above cited."

The circular of the Pennsylvania Railroad Company was identical in this respect with that of the New York Central Company herein after set forth.

The complainant, the Chicago & Alton Railroad Company, received these circulars signed by the general passenger agents of the Pennsylvania Company, and the Pennsylvania Railroad Company, respectively, and refused to enter into the agreement proposed, claiming the right to continue to pay commissions to the agents of the Pennsylvania Companies, upon their sales of through tickets.

The circular sent by the New York Central Company and the Pennsylvania Railroad Company contained the following statement:

"In view of the severe penalties to be inflicted in cases of violations of the Law, this company cannot consent to act as agent for any other company in the issuance of through tickets, unless notified that it is authorized to so act that the proposed joint tariff will be satisfactory for the time, and that the companies whose authority is thus obtained will refrain from the payment of a commission, drawback, rebate, or any form of consideration to the agents or employees of this company, or to any other person or persons on account of the purchase or sale of this company's issue of tickets in the territory adjacent to our lines."

The complainant, the Chicago, Rock Island & Pacific Railroad Company, received a copy of the circular of the New York Central Company, containing this statement, and refused to consent thereto, claiming the right to continue to pay commissions.

A large preponderance of the companies to which these circulars were addressed, assented to the propositions they contained, and signed agreements to make them effective.

From 70 to 80 per cent of the companies having connections with the Pennsylvania systems agreed to discontinue commissions. Of 234 companies to which the circulars of the New York Central Company were addressed, 215 assented, and only nineteen refused. A large number of other companies in the territory east of the Mississippi and Illinois Rivers and the eastern shore of Lake Michigan, and twenty-nine southern companies, 110 in all, entered into similar agreements. Sixteen companies in the territory named, and three southern companies refused. It also appeared by the complainants' testimony that of 236 roads with which they do business, including all of the New England Roads, all except twelve agree to allow commissions. On account of the refusal of the complainant companies to discontinue the payment of commissions to the agents of the defendant companies, and to

agree to refrain from that practice, the defendants, after the 4th of April last, refused to sell through tickets over the complainants' roads from Chicago and St. Louis to Kansas City, and still refuse, solely for those reasons. They express their willingness to sell through tickets over the complainants' roads whenever they will agree to discontinue commissions upon the defendants' issue of tickets. The defendants continue to sell through tickets over the connecting roads of companies that have assented to the agreements. The testimony does not show that the defendants have knowingly sold through tickets since the 4th of April, over the roads of companies that have refused to enter into the agreements.

On these facts the complainants aver that the defendants refuse to afford to them reasonable, proper, and equal facilities for receiving, forwarding, and delivering passengers, and give undue preference to competing roads, in contravention of the provisions of the Act to Regulate Commerce.

The defendants deny that they have violated the provisions of the Act, and claim that they have the exclusive right to control their own agents, to fix the amount of their compensation and to pay it themselves; that the payment of commissions by other companies is demoralizing to their agents, and often leads to discriminations to passengers for roads paying large commissions, by division of the commission between the agent and the passenger; that commissions consume a considerable percentage of the revenue from the sale of through tickets; that without commissions all connecting roads stand on a basis of equality, and passengers select their own routes uninfluenced by agents having an interest in the form of commissions in persuading them to choose some particular route.

The thirteenth section of the Act to Regulate Commerce provides that for anything done or omitted to be done by any common carrier subject to the provisions of the Act, in contravention of the provisions thereof, application may be made to the Commission by petition, which shall briefly state the facts, and the further proceedings to be taken by the Commission are then specified. This indicates the jurisdiction of the Commission in respect to complaints by persons or corporations for the causes described. The offenses of which the Commission has cognizance are anything done or omitted to be done in contravention of the provisions of the Act.

In the cases under consideration it is necessary that it should reasonably appear that the acts of the defendants of which complaint is made are in contravention of the provisions of the Act. This involves the question whether the Act makes it the duty of the defendants without any agreement or arrangement for the purpose to sell through tickets over the roads of the complainants, and also whether the complainants can insist on paying commissions to the agents of the defendants notwithstanding the opposition of the defendants thereto.

Railroad corporations in the States are creations of the State Governments, and their powers and duties are defined by their charters or by general laws. In the Territories, which

are subject to the exclusive jurisdiction of Congress, railroads may be chartered by the Federal Government or by its authority. The Act to Regulate Commerce does not make it the duty of state railroads to organize and operate through lines of transportation consisting of separate roads owned by different companies. The organization of such lines is left under the Act to the voluntary action of railroad companies, as it existed previously. But when railroad companies associate to constitute through lines for interstate traffic they become agencies of commerce as the courts have adjudged, and in the conduct of the business so assumed, voluntarily subject themselves to the control of Congress under the power contained in the Constitution, "To regulate commerce with foreign Nations and among the several States and with the Indian Tribes." Congressional regulation is necessarily exercised by laws enacted for the purpose, and the extent of the regulation intended is measured by the terms of the law. The law in this instance does not in terms require one railroad company to sell through tickets over the road of another company. It is substantially a reproduction of the corresponding provision of the English Railway and Canal Traffic Act of 1864, under which the English companies claim they were not authorized to sell through tickets over other roads.

In the absence of statutory authority one railroad company can only sell tickets and check baggage over the road of another company by agreement. The English Statute of 1873 amending the Act of 1864 was enacted to give this authority and to make its performance a duty.

That statute so far as material is as follows: "The said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding, and delivering by every railway company and canal company, and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares." As no such provision exists in our statute the decisions of the English Commission and courts relating to through booking, founded on a statute declaring in terms the duty of "through rates, tolls, and fares," under which through booking is mandatory, are not applicable.

By agreement between companies, however, through tickets very properly are sold and used over connecting roads as a convenience of passenger traffic and an inducement for patronage. Such tickets very evidently are a great convenience to travelers, and perhaps to connecting roads, but they are a part of the voluntary arrangements for business purposes, like joint tariffs, interchange of cars, and common use of depots. It being, therefore, under our statute, matter of mutual agreement whether coupon or through tickets shall be sold by a railroad company over roads of other companies, it follows that the form of such tickets and the manner of their sale are also matters of agreement by the companies interested. If companies can agree upon their tariffs, the form of their tickets, and how they

should be sold, they have the right to do so, and by such agreement become interstate carriers; but if they cannot agree the Act does not undertake to coerce them to do business together upon terms that may be justly objectionable or injurious.

It is true as urged by complainants that the third section of the Act requires that "Every common carrier subject to the provisions of the Act shall, according to their respective powers, afford all reasonable proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines."

Through tickets are not indispensable for these purposes; but assuming for the sake of the argument that they may be deemed "facilities" for the receiving, forwarding, and delivering of passengers to connecting lines, carriers are only required to afford reasonable, proper and equal facilities. They are not required to afford special, unreasonable, improper, or unequal facilities.

This presents the question whether the payment of commissions is in itself, or as incidental to the enjoyment of a facility, reasonable and proper within the purview of the Statute. The facility of through tickets is equally offered to all and may be enjoyed without commissions. If the company selling the tickets should charge a commission, it would doubtless be regarded as an imposition, and therefore unreasonable and improper. These commissions are gratuities to induce special efforts for the company paying them. If the statute does not give one company authority to subsidize the agents of another company, and if the practice is injurious in its effects, it certainly cannot be reasonable and proper.

The statute does not devote a railroad company of the exclusive right to control its own internal affairs, to employ its own agents, to regulate its own duties, and to pay them such compensation as it may deem proper. The right of ownership of railroad property, with the power to control over employees and management of the property, is as absolutely under the Act as before its passage. The regulation of commerce between the States, which is all that the Act contemplates, does not involve community of property, or joint control of subordinates among the several companies that honor through tickets. The corporate powers of every company, for all administrative and governing purposes within its prescribed sphere, remain unimpaired. With the legitimate exercise of these powers another company has no concern, and no right to interfere.

For the proper government of their own subordinates the defendant companies have forbidden their agents to receive commissions from other companies, and directed them not to sell tickets over roads of companies that refuse to recognize this corporate authority, but insist on subsidizing the agents. In these directions the defendants have not transcended their reasonable rights. One person or corporation

has no right to interfere with the employees of another, and the statute does not disturb this old and sound principle.

The defendants might rest upon their right to control the official conduct of their own agents. But they go further and show by evidence the practical effects of commissions, and that their natural and usual tendencies are to a variety of abuses. A witness of experience and large opportunities for observation testified as follows:

"It is in the articles of the organization of the Pennsylvania Company, and I believe in the organization of the Pennsylvania Railroad, that any officer, no matter who, from president down, shall not be permitted to receive any compensation from any other corporation without a resolution of the board of directors to that effect; and all the salaries and compensation so received are required to be covered into the treasury of the Pennsylvania Company and accounted for. This is done simply for the reason that we do not believe any railroad company can properly conduct its affairs when it permits its agents and employees to receive compensation for doing the same service for other companies. We know we had in our examination of this matter found that some of our ticket agents were receiving a greater amount of commissions from foreign railroad companies than we were paying them salaries, and instead of being our employees they were the employees of the other railroad companies, and so far as our company was concerned we lost control of them entirely."

He further testified that the commissions were paid for two purposes: one was for the purpose of inducing the agent to sell tickets over lines which paid the commission, by paying him a sum of money for so doing, and so large a sum as would enable him to pay a portion of it to the party whose traffic he wished to obtain.

Another witness testified that he had personal knowledge of a great many cases too numerous to be cited where ticket agents had divided the commission with the passenger, thereby constituting a different fare for the same ticket for the same company; that connecting lines give agents of initial companies orders to divide these commissions, contrary, in a great many cases, to the orders of the company by which the agents were employed; that these commissions had been for base purposes and to demoralize the agents.

A practice capable of producing and having a tendency to produce results thus described, cannot be reasonable or proper, and a railroad company is fully justified in the use of all lawful precautions to protect itself and its agents against such invasions of its corporate authority and of its business morality. According to the testimony the defendants are supported in their position on this question by a very large majority of connecting roads showing a decided preponderance of opinion against the practice.

The complainants insist that the payment of commissions is only additional compensation for services rendered by the agents, and that they have the right to pay them.

An officer of one of the complainants in answer to the question, What object is to be ac-

complished by paying an agent commissions by different companies if he has already a full salary from the company which employs him? testified: "I should say to induce him to sell their tickets in the first place, and the next place to explain the routes which lead from one city to another, and that he may be able to make himself advantageous to the passenger who is in New York City who is not posted on the routes west of Chicago."

The claim of the complainants was stated by their counsel as follows: "We simply claim that we have the right to pay anybody for services rendered, and that we have the right to determine whether it shall be by salary or commissions."

The scope of the complainants' position is clearly presented by these statements. It is the distinct assertion of a right of one corporation to employ and pay, for its own interests, an official servant of another corporation to which his service is primarily and exclusively due. A theory of this character ought not to be and is not recognized in business affairs, or in official life. A divided service between many masters cannot be satisfactory to any, and as a rule is injurious to the person so employed.

It follows from these views that the defendant companies, in prohibiting their agents from receiving commissions and in refusing to sell through tickets over the roads of complainants, while they insist on paying commissions to defendants' agents, have not contravened the provisions of the Act. The defendants reasonably and fairly offered to afford all reasonable, proper, and equal facilities for the receiving and delivering of passengers to and from their several lines and those connecting therewith, and did not discriminate in any respect between such connecting lines. In requiring the cessation of commissions to their agents, when entering into business arrangements with connecting roads, the defendants only demanded what was reasonable and proper; and the complainants, by their refusal to refrain from paying commissions on tickets issued by defendants, voluntarily excluded themselves from the reasonable, proper, and equal facilities offered to them in common with all other connecting lines.

The complaints in these several proceedings must therefore be dismissed.

All concur except **Morrison**, Commissioner, who delivered the following dissenting opinion:

The same question is made in these several cases which, for convenience, may be considered as presented in the case of the Chicago & Alton Railroad Company against the Pennsylvania Company.

At Chicago these companies, complainant and defendant, occupy the same depot with the Chicago, Burlington & Quincy Railroad Company, a competitor of the Chicago & Alton Road for Chicago and Kansas City business.

Before the "Act to Regulate Commerce" was passed, the Pennsylvania Company was accustomed to sell through tickets over its line, and the lines of both the Chicago & Alton and Chicago, Burlington & Quincy Railroad Companies. Up to that time it had been the custom of railroad companies, including the par-

ties to this suit, and the said Chicago, Burlington & Quincy Company, to offer and to pay commissions for the sale of tickets over their lines. After the enactment of the said Law, the defendant, assuming the payment of such commissions to be in conflict therewith, refused to continue the sale of tickets over such of its connecting lines (including the complainant's), as might continue to pay or offer to pay commissions. These conditions, upon which the defendant would continue the sale of complainant's tickets, appear above in the circular letter of March 15, 1887, clauses 4 and 5, and to which defendant made its request for prompt reply, "to prevent inconvenience to the traveling public."

The Chicago & Alton Company refused compliance with these conditions and continued to offer commissions to the agents of other companies, including the agents of the defendant. The defendant continued in its refusal to sell through tickets over complainant's line. The Chicago, Burlington & Quincy Company, while continuing to offer commissions to the agents of other companies than the defendant, assented to the conditions of the defendant, and the defendant continued the sale of through tickets over the line of the Chicago, Burlington & Quincy Company.

These facts are undisputed and they present the simple question, whether a common carrier, subject to the provisions of said Act, may withhold from a railroad company and those who wish to use it, the same equal facilities for the "interchange of traffic," and "forwarding and delivery of passengers and property," afforded to a competing line and those who use it, until the prescribed line shall promise not to offer or pay commissions to the agents of the company exacting such promise.

The provision in the third section of the Interstate Law, fixing the duties of companies operating connecting lines, says:

"Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivery of passengers and property to and from their several lines and those connecting therewith."

By this provision, the operation of through lines with through ticketing and checking of baggage would seem to be, not a matter of agency or agreement dependent on the voluntary action of, or contract between railroad companies, but a public duty imposed by law. So the English Statute on the same subject is construed, and our statute is substantially the English Statute of 1854, as amended in 1873, cited in the report of the Commission above. With the English statutes the English interpretation of their meaning becomes important by a familiar rule of construction. And this view is supported by the 7th section of the Act to Regulate Commerce, the obvious meaning of which is that connecting lines are to be treated as continuous or through lines for the purposes of commerce "among the several States."

The answer of the defendant avers that "It is ready, and has been since the 5th of April, 1887, to instruct its agents to sell tickets over complainant's railway, and to afford the com-

plainant equal facilities with other railway companies in this respect, provided the complainant will cease, as other companies have ceased (including the Chicago, Burlington & Quincy Railroad Company), to offer and to pay commissions, bribes or gratuities to respondent's agents for the sale of tickets." The defendant here virtually admits its refusal to sell tickets over complainant's line to be a refusal of equal facilities, and has admitted it by conceding it to others. It should not, therefore, be allowed to deny the same equal facilities to complainant.

But, waiving the question whether, under the above clause of section 8 of said Act, it is the duty of carriers subject to the provisions of said Act, to furnish to the traveler who demands and is ready to pay for it a through ticket as a "reasonable facility," yet it can hardly be questioned that if the carriers of the country choose to do so as to one connecting line, it must do so as to others. A common carrier may not make discriminations whereby it will afford A a facility if he will take the Chicago, Burlington & Quincy Road, and deny it to B because he will take the Chicago & Alton Road. And this is precisely what the defendant insists it may lawfully do.

The defendant rests the refusal to afford the same equal facilities to the complainant and to those who travel over complainant's line which defendant affords to the Chicago, Burlington & Quincy Company and those who travel over its line, on the refusal of complainant to discontinue payment or the offer of payment of commissions to the agents of other lines, including defendant's, which defendant condemns as an objectionable and demoralizing practice, and which it characterizes as bribes disguised in the form of commissions. It already appears that the defendant, with other common carriers, has long participated in this practice, which is yet very general. In the said Act, pooling, rebates, drawbacks, and all unjust discriminations are declared to be illegal. The paying or offering to pay commissions on the sale of tickets is not. In the ten or more years of the interstate congressional contests these commissions were not mentioned in any bill presented or report made to the House or Senate. But, independent of the legality, or any question of domestic policy as to payment of commissions between the companies whose roads make connecting lines, the public, or so much of the public as may desire to travel over complainant's line, is entitled to that reasonable and equal facility afforded to those who seek the competing line. It is no answer to the public desirous of using railways as a continuous line that there are differences as to the rights of companies among themselves. And so the law is declared in the case of *Hamman v. G. W. R. & Can. Traf. Cases*, 181.

In any view of the case it seems to me that the defendant must sell through tickets to those who want them over the Chicago & Alton Road, as it does over the Chicago, Burlington & Quincy. And I dissent from the views of my associates with greater diffidence, for the reason that this question is presented both as a question of law and of railroad ethics or morals. I would not willingly delay any re-

form in railroad administration, nor hinder the defendant in any well meant effort to reform itself, which is the measure of its present effort, for it only exacts from companies with connecting lines that they shall discontinue the offer of commissions to its own, while they offer them to the agents of all other companies. The payment of commissions may be subject to such abuses as to demand discontinuance; but until declared illegal, they should not be made to excuse common carriers from the performance of obligations to the public, to enforce which obligations was the object of the law creating this Commission.

PROVIDENCE COAL CO.

PROVIDENCE & WORCESTER R. CO.*

1. Defendant railway company published a tariff containing the following: "For the purpose of facilitating quick dispatch of the coal cars of this company, a discount of 10 per cent will be made from the following rates, to any person, firm or company, who shall receive consignments of coal, in any one year, amounting to 30,000 tons or upwards, at any one station on the line of this road. Quick dispatch to be construed as immediate unloading of coal on its arrival at destination." Defendant claimed that this discount was offered to secure, and was conditioned upon, quick dispatch in unloading its coal cars, and that it was a reasonable regulation for the proper conduct of its business.

Held,

(a) That, by the wording of the offer, "quick dispatch" was not made a condition of the offer, and, therefore, it cannot be supported on that ground.

(b) That even if "quick dispatch" were made a condition of the discount, such offer would have neither justice nor reason to support it, as its limitation to consignees receiving a specified number of tons would be an unjust discrimination.

(c) That the offer of discount cannot be supported on the consideration of quantity, on the analogy of the distinction usually made in ordinary business transactions, between wholesale and retail dealers.

2. Defendant railway company has two lines of nearly equal length, one starting from Providence and the other from East Providence, which unite at Valley Falls, whence the main line runs into Massachusetts. The rate charged by defendant on coal shipped at Providence is the same as on coal shipped at East Providence as far as Valley Falls and the next station, but beyond that point the rate on coal from Providence is ten cents per gross ton more than on coal from East Providence.

Held,

*See ante, 316.

(a) That this is an unjust discrimination; that if it is fair and reasonable for the defendant to make the charge to Valley Falls from the two termini the same, there can be no justification for making different rates to stations beyond, based on the fact that the coal comes from one terminus rather than from the other.

(b) That the evidence fails to support the contention of defendant that the extra rate upon coal received at Providence is only a fair equivalent for the additional cost of handling it there.

(c) That under all the circumstances it is not admissible for defendant to impose upon its patrons at Providence, whose investments were made before the East Providence line was constructed, an additional charge because of the inconvenience attending the transaction of its business at that station and for which they are in no way responsible.

3. The defendant railway company had for some time paid the cost of hauling coal shipped by complainant, from complainant's wharf to defendant's freight station in Providence, without any contract obligation to that effect, but now refuses so to do. *Held*, that defendant can not be compelled to continue paying for such hauling; that what defendant did for a time as a favor or by way of encouragement, it might discontinue at pleasure, and that there is nothing in the nature of a binding usage about it.

(Decided July 23, 1887.)

REPORT AND OPINION OF THE COMMISSION.

Cooley, Chairman:

The complainant in this case is a copartnership composed of Henry C. Clark and another, doing business as dealers in coal at Providence, Rhode Island.

The petition by which this proceeding was commenced avers that complainant has its coal yards and wharves and place of business upon what is known as the Dorrance Street Wharf estate upon the westerly side of the Providence River, and lying between said River and Dyer Street, which estate is owned by Henry C. Clark, and in the purchase and improvement of which he has expended large sums of money for the purpose of said business.

That the main line of defendant's road extends from Providence to Worcester, Massachusetts, but it has also a branch road extending from its tide water pier and wharf estate in East Providence, Rhode Island, and connecting with its main line at Valley Falls, and also a branch road extending from its main line at or near its freight depot in Providence across the bridges and through and upon Dyer Street to and connecting with complainant's wharf estate, and with other wharf estates upon the westerly side of the said river, and another branch road extending from the main line at or near its said freight depot across the bridges and through and upon South Water Street in Providence, and connecting with the

wharf estates there, upon the easterly side of the river.

That said Henry C. Clark, when the Dyer Street line of said Railroad was first laid, acting in co-operation with defendant, expended large sums of money in laying rails upon his wharf estate and in making switch tracks connecting the same with said street line, and has also made further expenditures since in maintaining the same, to accommodate and facilitate the transportation of coal and other merchandise to and from said wharf estate over the roads of defendant.

That complainant has thus the facilities for selling coal for shipment over said roads, and for delivery at the various stations thereon, if transportation can be obtained therefor at the same rates of freight that coal is transported at for other parties; but defendant in contravention of complainant's rights and of the provisions of the Act to Regulate Commerce, has issued a tariff of freight rates for coal over its road which practically excludes complainant and many others from selling and delivering coal over and upon the line of its roads, in that, besides making unjust discrimination in favor of shipments consigned to its East Providence wharf by receiving such shipments free of wharfage there, it also gives undue and unreasonable preferences and advantages in making a discount or rebate of 10 per cent to any person, firm or corporation who shall receive consignments of coal in any one year amounting to 30,000 tons or upwards at any one station on the line of the road; it being, as complainant avers, well understood and known that there is but one person on the whole line of the road who, under the unjust discrimination made by the defendant in his favor, has ever received, or in future, under the unjust discrimination made by the published tariff, can receive 30,000 tons of coal in any one year at any one station upon the road, namely: a dealer at Worcester in whose favor, as complainant avers, large and unjust discriminations and undue advantages in rates of freight, drawbacks, allowances and other privileges have for many years past been made by defendant, to the great injury and loss of trade over the road, not only by complainant but other dealers, and at times almost to their entire exclusion therefrom.

That the tariff of published rates is also in contravention of said Act, in that although the distance from the East Providence wharf of defendant to Valley Falls, and to all stations on the line of its road above Valley Falls, is greater than the distance from Providence to the same stations, yet the rates of freight to all of said stations which are above Lonsdale are greater from Providence than from East Providence.

Moreover, all persons, including complainant, shipping coal over said street lines are obliged to pay further sums for street hauling, so-called; that is, for hauling for the distance between their wharves and the freight stations of defendant in Providence, which street hauling was formerly, and as complainant claims should now be, furnished by defendant.

The petition then avers the making of applications to the defendant to modify and cor-

rect its tariffs and the failure of complainant's efforts in that direction; and it prays that defendant may be required to cease and desist from its unlawful, unjust and unreasonable discriminations, preferences and advantages aforesaid, and to make due and proper reparation to complainant for damages sustained.

The answer admits the facts stated in the petition regarding the business of complainant, and proceeds to say that as to the branch railroad on Dyer Street and South Water Street in Providence, defendant owns and has for many years maintained railroad tracks on said streets for the benefit of complainant and other owners and dealers thereon, but that it owns no right of way on either of said streets; that said tracks were laid by permission of the City Council of Providence which controls the mode of maintaining and using the same, and claims the right to cause the tracks to be removed upon reasonable notice without compensation, and that defendant is unable to use steam as a motive power on said tracks, and cars can only be moved thereon by horse power, the tracks constituting what is known as a street or horse railroad. Defendant admits the establishment of a freight tariff as charged, but denies that any unjust discrimination is thereby established or provided for, and further denies that only one person can receive the benefit of the discount offered to a consignee receiving 30,000 tons of coal within a year at any one station, and says it has reason to believe that within the present year not less than three persons will be entitled to such benefit.

Defendant further denies that the tariff makes any unjust discrimination in rates as between the coal taken from Providence and that taken from East Providence to points above Lonsdale, and says that its road was built almost wholly for carrying coal, and defendant was compelled by the City of Providence to build a branch to East Providence by threats to compel the defendant to remove its street tracks and so prevent it from receiving coal at tide water, and that the lower price for carrying coal over said branch railroad is rightful and just, and in no way involves discrimination in favor of one consignee and against another; that owing to the want of proper facilities at its station in Providence, which it is unable to enlarge without the permission of the city—which refuses to grant the same—coal cannot be received at and carried from that station at the same price as from East Providence, and that the difference in the rates given in said tariff is not sufficient to cover the additional expense and risk incurred by defendant in taking coal in Providence instead of taking it at East Providence.

And defendant avers that all its charges are just and reasonable, and that the 30,000 ton provision is so, because it says that the benefit thereof is reciprocal, inasmuch as the consignee entitled to a rebate on the said provision must have supplied all the best facilities for the speedy handling of coal, and thereby enabled defendant to save expense of handling, hauling and delivering his coal, equal to the amount of the rebate, and further that complainant by selling coal to the consignees may

entitle itself to such rebate and therefore is not in any sense injured or discriminated against by said provision.

The case was heard on evidence taken in the main orally at the hearing, and we find the facts to be that Mr. Henry C. Clark, the senior member of the complaining firm, many years ago established a coal yard and wharf in the City of Providence and on Providence River, to be used in connection with the transportation of coal over the road of defendant; that the cost of real estate and improvements for that purpose has been a quarter of a million of dollars; that the complaining firm is now in the possession and occupancy of all of the said real estate and improvements for the purpose of its said business; that the said coal yards and wharf are a considerable distance from the freight station of defendant, and could only be reached by cars over rails laid by defendant along the streets with the co-operation of said Henry C. Clark, and by the consent of the said city authorities; that the city authorities have allowed cars to be drawn through the streets only by horse power, and that for many years defendant paid the expense of the handling of cars from complainant's yard and wharf to defendant's freight station in Providence but never contracted to do so; that the facilities of defendant for transacting its freight business in Providence have long been unsatisfactory and limited, and that defendant, to obtain better facilities, has now constructed a branch road connecting with its main line at Valley Falls six miles from the Providence Station and extending from Valley Falls seven miles to a terminus in East Providence on Providence River across from a little below the wharf of complainant; that defendant since the construction of said branch road had been desirous as far as possible to do its coal business over such branch road, and that it now refuses any longer to be at the expense of handling coal from complainant's wharf through the streets to its Providence Station. Defendant has been in the practice of offering a discount of 10 per cent on the freight paid by consignees receiving some specified quantity at any one station within a year, beginning with a quantity of 5,000 tons, which was increased in 1886 to 20,000 tons, at which quantity only one dealer, whose place of business was Worcester, earned and received the discount. The offer in the tariff taking effect April 4, 1887, was changed as to quantity and reads as follows:

"For the purpose of facilitating quick dispatch of the coal cars of this Company, a discount of 10 per cent will be made from the following rates, to any person, firm or corporation, who shall receive consignments of coal, in any one year, amounting to 80,000 tons or upwards, at any one station on the line of this road.

"Quick dispatch to be construed an immediate unloading of coal on its arrival at destination."

There was no reasonable probability when this tariff was put out that 80,000 tons would be received by any one consignee at more than three places on defendant's road; and it was doubtful if the quantity would be received by any other station than at Worcester, and it

would probably be received by only one dealer there.

In the tariff of rates so put out the charge per gross ton of coal from Providence and East Providence respectively to Valley Falls was made sixty cents; to Lonsdale the first station above it was sixty-five cents; but to the stations further on a difference was made in favor of the coal shipped from East Providence, which difference to all towns beyond the Rhode Island Line was made ten cents per gross ton. The rate for Worcester by the East Providence Line was fixed at \$1 a ton. Complainant endeavored without avail to secure a change in this tariff which should place Providence and East Providence on the same footing, and also to have the offer of discount withdrawn; that offer being thought to give the dealer at Worcester, who had the benefit of the offer in 1886, an advantage which would preclude complainant doing a profitable business. The margin for profit in wholesale dealings in coal is now very small, and may be stated at from ten to fifteen cents per ton.

From the facts as here found the first question of importance that arises concerns the offer by defendant of a 10 per cent discount to any person, firm or corporation who within any one year shall receive consignments of coal aggregating 80,000 tons at any one station. The complainant insists that this is unreasonable discrimination, while defendant, on the other hand, justifies the offer as a reasonable measure of policy in its business.

We have seen above that the published tariff undertakes to state the ground or consideration on which the offer is made. It is "for the purpose of making quick dispatch of the coal cars" of defendant; and the public is told that "quick dispatch" is to be construed an immediate unloading of coal on its arrival at destination. The defendant gave evidence that this immediate unloading of cars was important, but this is so obvious that the evidence was scarcely necessary. It was entirely admissible, therefore, that the defendant should make some regulation or adopt some decisive measures to insure the quick dispatch which seems to have been in mind in making the offer.

When, however, we look at the terms of the offer, we perceive immediately that although the purpose may be to facilitate quick dispatch, the offer is neither expressly nor by any necessary implication made conditional on the quick dispatch being facilitated. It seems to be expected that the parties who accept the offer will be prompt in unloading the coal; but they are put under no obligation to do so by the terms of the offer, and their legal duty in that regard will therefore be no greater than that of any other consignee receiving coal over the road. No promise of quick dispatch is exacted; no performance is made imperative. The authorities of the road, in making the offer, appear to have expected and assumed that any customer of the road, to the extent indicated, would, as a matter of course, and in his own interest, make quick dispatch, and that the attaching to the offer of any condition to that effect would be altogether unnecessary. They therefore attach none. Such being the case, it follows that any customer of the road who should become consignee to the extent

specified would thereby perform the only condition on which the offer is based, so that whether the expectation of quick dispatch was or was not realized, he would be entitled to claim the rebate. No failure in immediate unloading would be an answer to a claim for the discount, when the discount had been offered upon another and distinct condition which had been fully performed.

The answer of the defendant, no more than the published tariff, shows an understanding on the part of the railroad officials that the offer of discount is conditional on quick dispatch. By that pleading we are told that "The consignee entitled to a rebate, under said provision, must have supplied all the best facilities for speedy handling of coal;" but it is not pretended or intimated that the offer requires this, or that anything more than the interest of the consignee, and the requirements of convenience in his business are relied upon to secure this result. Whether the result is secured or not the promise is left to stand on the single condition of quantity; and when the quantity is reached, the promised discount is, by the terms of the offer, due. And this very remarkable consequence might possibly follow if several persons should endeavor to earn the discount, namely: that while a consignee who had received the necessary quantity, but had been blamably negligent in unloading, might then demand and receive the rebate, another who had endeavored to reach the quantity, but had fallen somewhat short, but who all the year had been prompt and punctilious in making quick dispatch, could have no benefit whatever in complying with the only consideration on which the rebate is professedly supported, and for which it purports to be offered.

It is very manifest from this statement, and from the illustration of what might naturally happen, that the pretended consideration is purely imaginary, and that the promise of a discount, so far as regards the consideration on which it purports to be based, is deceptive and misleading. The published tariff is calculated and intended to lead the public to suppose that the offer is based upon a consideration of quick dispatch. But in fact the quick dispatch has no necessary connection with the offer; it is put forth as something confidently expected because of the offer, but it is not required or insisted upon. The defendant has therefore failed, both in its published tariff and in its answer, to show any ground on which its offer can be supported; the mere expectation of a quick dispatch while at the same time such dispatch is not required, being no ground whatever.

If we look into the evidence with a view to satisfy ourselves whether any such offer of discount could reasonably and lawfully have been made on an express condition of quick dispatch, we shall have no difficulty in perceiving that any such conditional offer would have had neither justice nor reason in support of it. The evidence in the case shows beyond question what indeed common observation would teach us without other proof: that a party receiving a much smaller quantity than 30,000 tons, can comply with a condition of quick dispatch as promptly, fully and completely as can any larger dealer. If therefore a discount

were to be offered in order to insure quick dispatch, a discrimination which should so limit the offer that a part of those who could and might desire to accept it would be excluded from its benefits, would for that very reason be unjust and indefensible. The discount in this case must consequently be held supportable neither on the published offer, nor on the statement in the answer, nor, so far as the consideration is concerned, on the evidence; and unless some other support can be found for it, it must be adjudged illegal.

On the argument an effort was made to uphold the discrimination on a consideration of quantity merely; the consignee who should receive more than 30,000 tons in a year at any one station, being likened to a purchaser of goods at wholesale, and the consignee who received a lesser amount being compared to a purchaser at retail. It was said that a distinction in price is universally made as between these two classes of customers, and that distinction would be as reasonable in the case of purchasers of railroad service as in that of purchasers of cloths or lumber.

One difficulty with this argument is that it is an afterthought. The defendant has publicly selected the ground on which it will base the discrimination proposed, and has published it in a paper required of it by law for the purposes of general information. It would be entirely admissible for defendant to change its ground in making a new offer; but the offer now under consideration must stand or fall, on the ground selected for it.

But if this defendant should attempt to make a new offer based upon quantity merely, the analogy between the case and that of wholesale and retail purchasers of merchandise would not be found to be very close. The wholesale dealer is allowed concessions in prices because his transactions in proportion to the amount purchased are fewer in number, they take less of the time and attention of the seller, and it costs him very much less to make them. It is perfectly reasonable that these facts should be taken into account in making bargains. But there is no certainty, and scarcely any probability that the dealer who receives 30,000 tons of coal at some one station within a year will make his business cost less to the railroad company in proportion to quantity than the dealer who receives 35,000 tons only, or 20,000, or half that quantity. Indeed, the selection of 30,000 tons as the test of what should be considered wholesale business would obviously be purely arbitrary, as also would be the naming of any other considerable quantity, say 5,000, or 15,000, or 50,000. The selection of any one of these quantities could be defended on a distinction between wholesale and retail dealings as logically, if not as plausibly, as that of any other; and the evidence in this case shows that defendant in years past has based its offer of discount on a receipt of consignments much below the 30,000 tons now required. The quantity named last year was 20,000 tons; so that on the argument now advanced what was wholesale last year is retail this.

A distinction in rates as between car loads and smaller quantities is readily understood and appreciated; but no such distinction is made in this offer, and a customer of the road

who should receive all his coal by car load or even by train load would be excluded if he fell short in quantity. And some possible results of the offer might be utterly inconsistent with considerations acted upon in wholesale trade. If a consignee, for example, earns the rebate by receiving 30,000 tons at a station to which the freight is a dollar a ton, he pays but \$27,000 for the transportation; but his rival at the same place who reaches to 29,000 tons only, must pay for a less service presumptively accomplished at less cost, and which is of less value to him, \$2,000 more. Such a result could not possibly be defended. The one consignee would be a wholesale dealer as much as the other, and common sense would pronounce unhesitatingly that if the larger charge for carrying the smaller quantity was reasonable, the discount to the other dealer must be without any just or reasonable support.

But when a question of rebates or discounts is under consideration, it might be misleading to consider them in the light of the principles which merchants act upon in the case of wholesale and retail transactions. There is a very manifest difficulty in applying those principles to the conveniences which common carriers furnish to the public, a difficulty which springs from the nature of the duty which such carriers owe to the public. That duty is one of entire partiality of service. The merchant is under no corresponding duty, and may make his rules to suit his own interest, and discriminate as he pleases. There is no occasion to enlarge upon this now.

A discrimination, such as the offer and its acceptance by one or more dealers would create, must have a necessary tendency to destroy the business of small dealers. Under the evidence in the case it appears almost certain that this destruction must result, the margin for profit on wholesale dealings in coal being very small. The discrimination is therefore necessarily unjust within the meaning of the Law. It cannot be supported by the circumstance that the offer is open to all; for although made to all, it is not possible that all should accept. Moreover, in testing such a discrimination we must consider the principle by which it must be supported; and the principle which would support a 30,000 ton limitation would support one of 50,000 or 100,000 equally well; the quantity named would be arbitrary in any case. It might easily be so high as practicably to be open to the largest dealer only. A railroad company, if allowed to do so, might in this way hand over the whole trade on its road in some necessary article of commerce to a single dealer; for it might at will make the discount equal to or greater than the ordinary profit in the trade; and competition by those who could not get the discount would obviously be then out of the question. So extreme a case would not, however, be needful to show the inadmissibility of such a discount as is here offered; the injustice would be equally manifest if several dealers instead of one were able to accept the offer. A railroad company has no right, by any discrimination not grounded in reason, to put any single dealer, whether a large dealer or a small dealer, to any such destructive disadvantage.

In what is said above we do not mean to be

understood as intimating that defendant is not saved something in cost and in labor by having the coal carried by it received in large quantities by single consignees. On the contrary, we readily agree that its service for large dealers is somewhat less in proportion to quantity of freight transported than is the like service performed for small dealers. We also agree that defendant may therefore seem to have an interest in restricting its dealings so far as possible to large dealers. But this is an interest that can only be consulted and acted upon in strict subordination to the rules of law; and one of the most important of those rules is that in any discrimination between dealers justice, if not a paramount consideration, shall at least be kept in view. The carrier cannot regard its own interests exclusively—if it could, it might at pleasure, by methods easily available, drive all small dealers off its line, and center the whole trade in a few hands. The state of things that would result might be altogether for its interest and convenience, since it would then have fewer customers to deal with and fewer transactions for the same aggregate trade; but the wrong would be flagrant. The case suggested is more extreme than the one before us, but the wrong is sufficiently palpable here. And without further comment on this branch of the case it will be sufficient to repeat that when the defendant makes an offer of discount or rebate based on the 30,000 ton limit, the limitation is unreasonable and unlawful, because necessarily resulting in unjust discrimination. There is nothing in the showing in this case to justify the fixing of a limitation as the ground of rebate at any specified quantity; and therefore if the discount is paid to one dealer, the payment will be evidence of the right of all other dealers to a like and proportionate discount.

A further question of importance concerns the difference in defendant's rates on coal shipped to stations on its main line from Providence and East Providence respectively. The facts important to an understanding of this question are that defendant's road was first constructed from Providence through Valley Falls to Worcester, and that complainant, at very great expense to its members, provided itself with land and all necessary requirements for carrying on extensive dealings in coal near the terminus of defendant's road in Providence, and by co-operation with it secured tracks into its yards and to its dock. But defendant's accommodations at Providence were limited and could not be enlarged unless at great expense; the city authorities it is said were disposed to interpose obstacles to such use of the city streets for railroad service as was essential, and defendant found it necessary to construct a new line from Valley Falls to East Providence, where ample accommodations were secured, and where its business could be more conveniently and cheaply conducted. The distance from Providence to Valley Falls is six miles and from East Providence seven. Coal trains are made up at Valley Falls of loaded cars brought from Providence and East Providence without distinction. By the published tariff the rate upon coal from Providence and from East Providence respectively to Valley

are subject to the exclusive jurisdiction of Congress, railroads may be chartered by the Federal Government or by its authority. The Act to Regulate Commerce does not make it the duty of state railroads to organize and operate through lines of transportation consisting of separate roads owned by different companies. The organization of such lines is left under the Act to the voluntary action of railroad companies, as it existed previously. But when railroad companies associate to constitute through lines for interstate traffic they become agencies of commerce as the courts have adjudged, and in the conduct of the business so assumed, voluntarily subject themselves to the control of Congress under the power contained in the Constitution, "To regulate commerce with foreign Nations and among the several States and with the Indian Tribes." Congressional regulation is necessarily exercised by laws enacted for the purpose, and the extent of the regulation intended is measured by the terms of the law. The law in this instance does not in terms require one railroad company to sell through tickets over the road of another company. It is substantially a reproduction of the corresponding provision of the English Railway and Canal Traffic Act of 1854, under which the English companies claim they were not authorized to sell through tickets over other roads.

In the absence of statutory authority one railroad company can only sell tickets and check baggage over the road of another company by agreement. The English Statute of 1873 amending the Act of 1854 was enacted to give this authority and to make its performance a duty.

That statute so far as material is as follows: "The said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding, and delivering by every railway company and canal company, and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares." As no such provision exists in our statute the decisions of the English Commission and courts relating to through booking, founded on a statute declaring in terms the duty of "through rates, tolls, and fares," under which through booking is mandatory, are not applicable.

By agreement between companies, however, through tickets very properly are sold and used over connecting roads as a convenience of passenger traffic and an inducement for patronage. Such tickets very evidently are a great convenience to travelers, and perhaps to connecting roads, but they are a part of the voluntary arrangements for business purposes like joint tariffs, interchange of cars, and common use of depots. It being, therefore, under our statute, matter of mutual agreement whether coupon or through tickets shall be sold by a railroad company over roads of other companies, it follows that the form of such tickets and the manner of their sale are also matters of agreement by the companies interested. If companies can agree upon their tariffs, the form of their tickets, and how they

should be sold, they have the right to do so, and by such agreement become interstate carriers; but if they cannot agree the Act does not undertake to coerce them to do business together upon terms that may be justly objectionable or injurious.

It is true as urged by complainants that the third section of the Act requires that "Every common carrier subject to the provisions of the Act shall, according to their respective powers, afford all reasonable proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines."

Through tickets are not indispensable for these purposes; but assuming for the sake of the argument that they may be deemed "facilities" for the receiving, forwarding, and delivering of passengers to connecting lines, carriers are only required to afford reasonable, proper and equal facilities. They are not required to afford special, unreasonable, improper, or unequal facilities.

This presents the question whether the payment of commissions is in itself, or as incidental to the enjoyment of a facility, reasonable and proper within the purview of the Statute. The facility of through tickets is equally offered to all and may be enjoyed without commissions. If the company selling the tickets should charge a commission, it would doubtless be regarded as an imposition, and therefore unreasonable and improper. These commissions are gratuities to induce special efforts for the company paying them. If the statute does not give one company authority to subsidize the agents of another company, and if the practice is injurious in its effects, it certainly cannot be reasonable and proper.

The statute does not deplete a railroad company of the exclusive right to control its own internal affairs, to employ its own agents, to regulate its own duties, and to pay them such compensation as it may deem proper. The right of ownership of railroad property, with the power to control over employees and management of the property, is as absolutely under the Act as before its passage. The regulation of commerce between the States, which is all that the Act contemplates, does not involve community of property, or joint control of subordinates among the several companies that honor through tickets. The corporate powers of every company, for all administrative and governing purposes within its prescribed sphere, remain unimpaired. With the legitimate exercise of these powers another company has no concern, and no right to interfere.

For the proper government of their own subordinates the defendant companies have forbidden their agents to receive commissions from other companies, and directed them not to sell tickets over roads of companies that refuse to recognize this corporate authority, but insist on subsidizing the agents. In these directions the defendants have not transcended their reasonable rights. One person or corporation

has no right to interfere with the employees of another, and the statute does not disturb this old and sound principle.

The defendants might rest upon their right to control the official conduct of their own agents. But they go further and show by evidence the practical effects of commissions, and that their natural and usual tendencies are to a variety of abuses. A witness of experience and large opportunities for observation testified as follows:

"It is in the articles of the organization of the Pennsylvania Company, and I believe in the organization of the Pennsylvania Railroad, that any officer, no matter who, from president down, shall not be permitted to receive any compensation from any other corporation without a resolution of the board of directors to that effect; and all the salaries and compensation so received are required to be covered into the treasury of the Pennsylvania Company and accounted for. This is done simply for the reason that we do not believe any railroad company can properly conduct its affairs when it permits its agents and employees to receive compensation for doing the same service for other companies. We know we had in our examination of this matter found that some of our ticket agents were receiving a greater amount of commissions from foreign railroad companies than we were paying them salaries, and instead of being our employees they were the employees of the other railroad companies, and so far as our company was concerned we lost control of them entirely."

He further testified that the commissions were paid for two purposes: one was for the purpose of inducing the agent to sell tickets over lines which paid the commission, by paying him a sum of money for so doing, and so large a sum as would enable him to pay a portion of it to the party whose traffic he wished to obtain.

Another witness testified that he had personal knowledge of a great many cases too numerous to be cited where ticket agents had divided the commission with the passenger, thereby constituting a different fare for the same ticket for the same company; that connecting lines give agents of initial companies orders to divide these commissions, contrary, in a great many cases, to the orders of the company by which the agents were employed; that these commissions had been for base purposes and to demoralize the agents.

A practice capable of producing and having a tendency to produce results thus described, cannot be reasonable or proper, and a railroad company is fully justified in the use of all lawful precautions to protect itself and its agents against such invasions of its corporate authority and of its business morality. According to the testimony the defendants are supported in their position on this question by a very large majority of connecting roads showing a decided preponderance of opinion against the practice.

The complainants insist that the payment of commissions is only additional compensation for services rendered by the agents, and that they have the right to pay them.

An officer of one of the complainants in answer to the question, What object is to be ac-

complished by paying an agent commissions by different companies if he has already a full salary from the company which employs him? testified: "I should say to induce him to sell their tickets in the first place, and the next place to explain the routes which lead from one city to another, and that he may be able to make himself advantageous to the passenger who is in New York City who is not posted on the routes west of Chicago."

The claim of the complainants was stated by their counsel as follows: "We simply claim that we have the right to pay anybody for services rendered, and that we have the right to determine whether it shall be by salary or commissions."

The scope of the complainants' position is clearly presented by these statements. It is the distinct assertion of a right of one corporation to employ and pay, for its own interests, an official servant of another corporation to which his service is primarily and exclusively due. A theory of this character ought not to be and is not recognized in business affairs, or in official life. A divided service between many masters cannot be satisfactory to any, and as a rule is injurious to the person so employed.

It follows from these views that the defendant companies, in prohibiting their agents from receiving commissions and in refusing to sell through tickets over the roads of complainants, while they insist on paying commissions to defendants' agents, have not contravened the provisions of the Act. The defendants reasonably and fairly offered to afford all reasonable, proper, and equal facilities for the receiving and delivering of passengers to and from their several lines and those connecting therewith, and did not discriminate in any respect between such connecting lines. In requiring the cessation of commissions to their agents, when entering into business arrangements with connecting roads, the defendants only demanded what was reasonable and proper; and the complainants, by their refusal to refrain from paying commissions on tickets issued by defendants, voluntarily excluded themselves from the reasonable, proper, and equal facilities offered to them in common with all other connecting lines.

The complaints in these several proceedings must therefore be dismissed.

All concur except **Morrison, Commissioner**, who delivered the following dissenting opinion:

The same question is made in these several cases which, for convenience, may be considered as presented in the case of the Chicago & Alton Railroad Company against the Pennsylvania Company.

At Chicago these companies, complainant and defendant, occupy the same depot with the Chicago, Burlington & Quincy Railroad Company, a competitor of the Chicago & Alton Road for Chicago and Kansas City business.

Before the "Act to Regulate Commerce" was passed, the Pennsylvania Company was accustomed to sell through tickets over its line, and the lines of both the Chicago & Alton and Chicago, Burlington & Quincy Railroad Companies. Up to that time it had been the custom of railroad companies, including the par-

ties to this suit, and the said Chicago, Burlington & Quincy Company, to offer and to pay commissions for the sale of tickets over their lines. After the enactment of the said Law, the defendant, assuming the payment of such commissions to be in conflict therewith, refused to continue the sale of tickets over such of its connecting lines (including the complainant's), as might continue to pay or offer to pay commissions. These conditions, upon which the defendant would continue the sale of complainant's tickets, appear above in the circular letter of March 15, 1887, clauses 4 and 5, and to which defendant made its request for prompt reply, "to prevent inconvenience to the traveling public."

The Chicago & Alton Company refused compliance with these conditions and continued to offer commissions to the agents of other companies, including the agents of the defendant. The defendant continued in its refusal to sell through tickets over complainant's line. The Chicago, Burlington & Quincy Company, while continuing to offer commissions to the agents of other companies than the defendant, assented to the conditions of the defendant, and the defendant continued the sale of through tickets over the line of the Chicago, Burlington & Quincy Company.

These facts are undisputed and they present the simple question, whether a common carrier, subject to the provisions of said Act, may withhold from a railroad company and those who wish to use it, the same equal facilities for the "interchange of traffic," and "forwarding and delivery of passengers and property," afforded to a competing line and those who use it, until the prescribed line shall promise not to offer or pay commissions to the agents of the company exacting such promise.

The provision in the third section of the Interstate Law, fixing the duties of companies operating connecting lines, says:

"Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivery of passengers and property to and from their several lines and those connecting therewith."

By this provision, the operation of through lines with through ticketing and checking of baggage would seem to be, not a matter of agency or agreement dependent on the voluntary action of, or contract between railroad companies, but a public duty imposed by law. So the English Statute on the same subject is construed, and our statute is substantially the English Statute of 1854, as amended in 1873, cited in the report of the Commission above. With the English statutes the English interpretation of their meaning becomes important by a familiar rule of construction. And this view is supported by the 7th section of the Act to Regulate Commerce, the obvious meaning of which is that connecting lines are to be treated as continuous or through lines for the purposes of commerce "among the several States."

The answer of the defendant avers that "It is ready, and has been since the 5th of April, 1887, to instruct its agents to sell tickets over complainant's railway, and to afford the com-

plainant equal facilities with other railway companies in this respect, provided the complainant will cease, as other companies have ceased (including the Chicago, Burlington & Quincy Railroad Company), to offer and to pay commissions, bribes or gratuities to respondent's agents for the sale of tickets." The defendant here virtually admits its refusal to sell tickets over complainant's line to be a refusal of equal facilities, and has admitted it by conceding it to others. It should not, therefore, be allowed to deny the same equal facilities to complainant.

But, waiving the question whether, under the above clause of section 8 of said Act, it is the duty of carriers subject to the provisions of said Act, to furnish to the traveler who demands and is ready to pay for it a through ticket as a "reasonable facility," yet it can hardly be questioned that if the carriers of the country choose to do so as to one connecting line, it must do so as to others. A common carrier may not make discriminations whereby it will afford A a facility if he will take the Chicago, Burlington & Quincy Road, and deny it to B because he will take the Chicago & Alton Road. And this is precisely what the defendant insists it may lawfully do.

The defendant rests the refusal to afford the same equal facilities to the complainant and to those who travel over complainant's line which defendant affords to the Chicago, Burlington & Quincy Company and those who travel over its line, on the refusal of complainant to discontinue payment or the offer of payment of commissions to the agents of other lines, including defendant's, which defendant condemns as an objectionable and demoralizing practice, and which it characterizes as bribes disguised in the form of commissions. It already appears that the defendant, with other common carriers, has long participated in this practice, which is yet very general. In the said Act, pooling, rebates, drawbacks, and all unjust discriminations are declared to be illegal. The paying or offering to pay commissions on the sale of tickets is not. In the ten or more years of the interstate congressional contests these commissions were not mentioned in any bill presented or report made to the House or Senate. But, independent of the legality, or any question of domestic policy as to payment of commissions between the companies whose roads make connecting lines, the public, or so much of the public as may desire to travel over complainant's line, is entitled to that reasonable and equal facility afforded to those who seek the competing line. It is no answer to the public desirous of using railways as a continuous line that there are differences as to the rights of companies among themselves. And so the law is declared in the case of *Hammons v. G. W. R. & Can. Traf. Cases*, 181.

In any view of the case it seems to me that the defendant must sell through tickets to those who want them over the Chicago & Alton Road, as it does over the Chicago, Burlington & Quincy. And I dissent from the views of my associates with greater diffidence, for the reason that this question is presented both as a question of law and of railroad ethics or morals. I would not willingly delay any re-

form in railroad administration, nor hinder the defendant in any well meant effort to reform itself, which is the measure of its present effort, for it only exacts from companies with connecting lines that they shall discontinue the offer of commissions to its own, while they offer them to the agents of all other companies. The payment of commissions may be subject to such abuses as to demand discontinuance; but until declared illegal, they should not be made to excuse common carriers from the performance of obligations to the public, to enforce which obligations was the object of the law creating this Commission.

PROVIDENCE COAL CO.

PROVIDENCE & WORCESTER R. CO.*

1. Defendant railway company published a tariff containing the following: "For the purpose of facilitating quick dispatch of the coal cars of this company, a discount of 10 per cent will be made from the following rates, to any person, firm or company, who shall receive consignments of coal, in any one year, amounting to 30,000 tons or upwards, at any one station on the line of this road. Quick dispatch to be construed as immediate unloading of coal on its arrival at destination." Defendant claimed that this discount was offered to secure, and was conditioned upon, quick dispatch in unloading its coal cars, and that it was a reasonable regulation for the proper conduct of its business. *Held,*

(a) That, by the wording of the offer, "quick dispatch" was not made a condition of the offer, and, therefore, it cannot be supported on that ground.

(b) That even if "quick dispatch" were made a condition of the discount, such offer would have neither justice nor reason to support it, as its limitation to consignees receiving a specified number of tons would be an unjust discrimination.

(c) That the offer of discount cannot be supported on the consideration of quantity, on the analogy of the distinction usually made in ordinary business transactions, between wholesale and retail dealers.

2. Defendant railway company has two lines of nearly equal length, one starting from Providence and the other from East Providence, which unite at Valley Falls, whence the main line runs into Massachusetts. The rate charged by defendant on coal shipped at Providence is the same as on coal shipped at East Providence as far as Valley Falls and the next station, but beyond that point the rate on coal from Providence is ten cents per gross ton more than on coal from East Providence. *Held,*

*See ante, 316.

(a) That this is an unjust discrimination; that if it is fair and reasonable for the defendant to make the charge to Valley Falls from the two termini the same, there can be no justification for making different rates to stations beyond, based on the fact that the coal comes from one terminus rather than from the other.

(b) That the evidence fails to support the contention of defendant that the extra rate upon coal received at Providence is only a fair equivalent for the additional cost of handling it there.

(c) That under all the circumstances it is not admissible for defendant to impose upon its patrons at Providence, whose investments were made before the East Providence line was constructed, an additional charge because of the inconvenience attending the transaction of its business at that station and for which they are in no way responsible.

3. The defendant railway company had for some time paid the cost of hauling coal shipped by complainant, from complainant's wharf to defendant's freight station in Providence, without any contract obligation to that effect, but now refuses so to do. *Held,* that defendant can not be compelled to continue paying for such hauling; that what defendant did for a time as a favor or by way of encouragement, it might discontinue at pleasure, and that there is nothing in the nature of a binding usage about it.

(Decided July 23, 1887.)

REPORT AND OPINION OF THE COMMISSION.

Coeley, Chairman:

The complainant in this case is a copartnership composed of Henry C. Clark and another, doing business as dealers in coal at Providence, Rhode Island.

The petition by which this proceeding was commenced avers that complainant has its coal yards and wharves and place of business upon what is known as the Dorrance Street Wharf estate upon the westerly side of the Providence River, and lying between said River and Dyer Street, which estate is owned by Henry C. Clark, and in the purchase and improvement of which he has expended large sums of money for the purpose of said business.

That the main line of defendant's road extends from Providence to Worcester, Massachusetts, but it has also a branch road extending from its tide water pier and wharf estate in East Providence, Rhode Island, and connecting with its main line at Valley Falls, and also a branch road extending from its main line at or near its freight depot in Providence across the bridges and through and upon Dyer Street to and connecting with complainant's wharf estate, and with other wharf estates upon the westerly side of the said river, and another branch road extending from the main line at or near its said freight depot across the bridges and through and upon South Water Street in Providence, and connecting with the

wharf estates there, upon the easterly side of the river.

That said Henry C. Clark, when the Dyer Street line of said Railroad was first laid, acting in co-operation with defendant, expended large sums of money in laying rails upon his wharf estate and in making switch tracks connecting the same with said street line, and has also made further expenditures since in maintaining the same, to accommodate and facilitate the transportation of coal and other merchandise to and from said wharf estate over the roads of defendant.

That complainant has thus the facilities for selling coal for shipment over said roads, and for delivery at the various stations thereon, if transportation can be obtained therefor at the same rates of freight that coal is transported at for other parties; but defendant in contravention of complainant's rights and of the provisions of the Act to Regulate Commerce, has issued a tariff of freight rates for coal over its road which practically excludes complainant and many others from selling and delivering coal over and upon the line of its roads, in that, besides making unjust discrimination in favor of shipments consigned to its East Providence wharf by receiving such shipments free of wharfage there, it also gives undue and unreasonable preferences and advantages in making a discount or rebate of 10 per cent to any person, firm or corporation who shall receive consignments of coal in any one year amounting to 30,000 tons or upwards at any one station on the line of the road; it being, as complainant avers, well understood and known that there is but one person on the whole line of the road who, under the unjust discrimination made by the defendant in his favor, has ever received, or in future, under the unjust discrimination made by the published tariff, can receive 30,000 tons of coal in any one year at any one station upon the road, namely: a dealer at Worcester in whose favor, as complainant avers, large and unjust discriminations and undue advantages in rates of freight, drawbacks, allowances and other privileges have for many years past been made by defendant, to the great injury and loss of trade over the road, not only by complainant but other dealers, and at times almost to their entire exclusion therefrom.

That the tariff of published rates is also in contravention of said Act, in that although the distance from the East Providence wharf of defendant to Valley Falls, and to all stations on the line of its road above Valley Falls, is greater than the distance from Providence to the same stations, yet the rates of freight to all of said stations which are above Lonsdale are greater from Providence than from East Providence.

Moreover, all persons, including complainant, shipping coal over said street lines are obliged to pay further sums for street hauling, so-called; that is, for hauling for the distance between their wharves and the freight stations of defendant in Providence, which street hauling was formerly, and as complainant claims should now be, furnished by defendant.

The petition then avers the making of applications to the defendant to modify and cor-

rect its tariffs and the failure of complainant's efforts in that direction; and it prays that defendant may be required to cease and desist from its unlawful, unjust and unreasonable discriminations, preferences and advantages aforesaid, and to make due and proper reparation to complainant for damages sustained.

The answer admits the facts stated in the petition regarding the business of complainant, and proceeds to say that as to the branch railroad on Dyer Street and South Water Street in Providence, defendant owns and has for many years maintained railroad tracks on said streets for the benefit of complainant and other owners and dealers thereon, but that it owns no right of way on either of said streets; that said tracks were laid by permission of the City Council of Providence which controls the mode of maintaining and using the same, and claims the right to cause the tracks to be removed upon reasonable notice without compensation, and that defendant is unable to use steam as a motive power on said tracks, and cars can only be moved thereon by horse power, the tracks constituting what is known as a street or horse railroad. Defendant admits the establishment of a freight tariff as charged, but denies that any unjust discrimination is thereby established or provided for, and further denies that only one person can receive the benefit of the discount offered to a consignee receiving 30,000 tons of coal within a year at any one station, and says it has reason to believe that within the present year not less than three persons will be entitled to such benefit.

Defendant further denies that the tariff makes any unjust discrimination in rates as between the coal taken from Providence and that taken from East Providence to points above Lonsdale, and says that its road was built almost wholly for carrying coal, and defendant was compelled by the City of Providence to build a branch to East Providence by threats to compel the defendant to remove its street tracks and so prevent it from receiving coal at tide water, and that the lower price for carrying coal over said branch railroad is rightful and just, and in no way involves discrimination in favor of one consignee and against another; that owing to the want of proper facilities at its station in Providence, which it is unable to enlarge without the permission of the city—which refuses to grant the same—coal cannot be received at and carried from that station at the same price as from East Providence, and that the difference in the rates given in said tariff is not sufficient to cover the additional expense and risk incurred by defendant in taking coal in Providence instead of taking it at East Providence.

And defendant avers that all its charges are just and reasonable, and that the 30,000 ton provision is so, because it says that the benefit thereof is reciprocal, inasmuch as the consignee entitled to a rebate on the said provision must have supplied all the best facilities for the speedy handling of coal, and thereby enabled defendant to save expense of handling, hauling and delivering his coal, equal to the amount of the rebate, and further that complainant by selling coal to the consignees may

entitle itself to such rebate and therefore is not in any sense injured or discriminated against by said provision.

The case was heard on evidence taken in the main orally at the hearing, and we find the facts to be that Mr. Henry C. Clark, the senior member of the complaining firm, many years ago established a coal yard and wharf in the City of Providence and on Providence River, to be used in connection with the transportation of coal over the road of defendant; that the cost of real estate and improvements for that purpose has been a quarter of a million of dollars; that the complaining firm is now in the possession and occupancy of all of the said real estate and improvements for the purpose of its said business; that the said coal yards and wharf are a considerable distance from the freight station of defendant, and could only be reached by cars over rails laid by defendant along the streets with the co-operation of said Henry C. Clark, and by the consent of the said city authorities; that the city authorities have allowed cars to be drawn through the streets only by horse power, and that for many years defendant paid the expense of the handling of cars from complainant's yard and wharf to defendant's freight station in Providence but never contracted to do so; that the facilities of defendant for transacting its freight business in Providence have long been unsatisfactory and limited, and that defendant, to obtain better facilities, has now constructed a branch road connecting with its main line at Valley Falls six miles from the Providence Station and extending from Valley Falls seven miles to a terminus in East Providence on Providence River across from a little below the wharf of complainant; that defendant since the construction of said branch road had been desirous as far as possible to do its coal business over such branch road, and that it now refuses any longer to bear the expense of handling coal from complainant's wharf through the streets to its Providence Station. Defendant has been in the practice of offering a discount of 10 per cent on the freight paid by consignees receiving some specified quantity at any one station within a year, beginning with a quantity of 5,000 tons, which was increased in 1886 to 20,000 tons, at which quantity only one dealer, whose place of business was Worcester, earned and received the discount. The offer in the tariff taking effect April 4, 1887, was changed as to quantity and reads as follows:

"For the purpose of facilitating quick dispatch of the coal cars of this Company, a discount of 10 per cent will be made from the following rates, to any person, firm or corporation, who shall receive consignments of coal, in any one year, amounting to 30,000 tons or upwards, at any one station on the line of this road.

"Quick dispatch to be construed an immediate unloading of coal on its arrival at destination."

There was no reasonable probability when this tariff was put out that 30,000 tons would be received by any one consignee at more than three places on defendant's road; and it was doubtful if the quantity would be received by any other station than at Worcester, and it

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would probably be received by only one dealer there.

In the tariff of rates so put out the charge per gross ton of coal from Providence and East Providence respectively to Valley Falls was made sixty cents; to Lonsdale the first station above it was sixty-five cents; but to the stations further on a difference was made in favor of the coal shipped from East Providence, which difference to all towns beyond the Rhode Island Line was made ten cents per gross ton. The rate for Worcester by the East Providence Line was fixed at \$1 a ton. Complainant endeavored without avail to secure a change in this tariff which should place Providence and East Providence on the same footing, and also to have the offer of discount withdrawn; that offer being thought to give the dealer at Worcester, who had the benefit of the offer in 1886, an advantage which would preclude complainant doing a profitable business. The margin for profit in wholesale dealings in coal is now very small, and may be stated at from ten to fifteen cents per ton.

From the facts as here found the first question of importance that arises concerns the offer by defendant of a 10 per cent discount to any person, firm or corporation who within any one year shall receive consignments of coal aggregating 30,000 tons at any one station. The complainant insists that this is unreasonable discrimination, while defendant, on the other hand, justifies the offer as a reasonable measure of policy in its business.

We have seen above that the published tariff undertakes to state the ground or consideration on which the offer is made. It is "for the purpose of making quick dispatch of the coal cars" of defendant; and the public is told that "quick dispatch" is to be construed an immediate unloading of coal on its arrival at destination. The defendant gave evidence that this immediate unloading of cars was important, but this is so obvious that the evidence was scarcely necessary. It was entirely admissible, therefore, that the defendant should make some regulation or adopt some decisive measures to insure the quick dispatch which seems to have been in mind in making the offer.

When, however, we look at the terms of the offer, we perceive immediately that although the purpose may be to facilitate quick dispatch, the offer is neither expressly nor by any necessary implication made conditional on the quick dispatch being facilitated. It seems to be expected that the parties who accept the offer will be prompt in unloading the coal; but they are put under no obligation to do so by the terms of the offer, and their legal duty in that regard will therefore be no greater than that of any other consignee receiving coal over the road. No promise of quick dispatch is exacted; no performance is made imperative. The authorities of the road, in making the offer, appear to have expected and assumed that any customer of the road, to the extent indicated, would, as a matter of course, and in his own interest, make quick dispatch, and that the attaching to the offer of any condition to that effect would be altogether unnecessary. They therefore attach none. Such being the case, it follows that any customer of the road who should become consignee to the extent

specified would thereby perform the only condition on which the offer is based, so that whether the expectation of quick dispatch was or was not realized, he would be entitled to claim the rebate. No failure in immediate unloading would be an answer to a claim for the discount, when the discount had been offered upon another and distinct condition which had been fully performed.

The answer of the defendant, no more than the published tariff, shows an understanding on the part of the railroad officials that the offer of discount is conditional on quick dispatch. By that pleading we are told that "The consignee entitled to a rebate, under said provision, must have supplied all the best facilities for speedy handling of coal;" but it is not pretended or intimated that the offer requires this, or that anything more than the interest of the consignee, and the requirements of convenience in his business are relied upon to secure this result. Whether the result is secured or not the promise is left to stand on the single condition of quantity; and when the quantity is reached, the promised discount is, by the terms of the offer, due. And this very remarkable consequence might possibly follow if several persons should endeavor to earn the discount, namely: that while a consignee who had received the necessary quantity, but had been blamably negligent in unloading, might then demand and receive the rebate, another who had endeavored to reach the quantity, but had fallen somewhat short, but who all the year had been prompt and punctilious in making quick dispatch, could have no benefit whatever in complying with the only consideration on which the rebate is professedly supported, and for which it purports to be offered.

It is very manifest from this statement, and from the illustration of what might naturally happen, that the pretended consideration is purely imaginary, and that the promise of a discount, so far as regards the consideration on which it purports to be based, is deceptive and misleading. The published tariff is calculated and intended to lead the public to suppose that the offer is based upon a consideration of quick dispatch. But in fact the quick dispatch has no necessary connection with the offer; it is put forth as something confidently expected because of the offer, but it is not required or insisted upon. The defendant has therefore failed, both in its published tariff and in its answer, to show any ground on which its offer can be supported; the mere expectation of a quick dispatch while at the same time such dispatch is not required, being no ground whatever.

If we look into the evidence with a view to satisfy ourselves whether any such offer of discount could reasonably and lawfully have been made on an express condition of quick dispatch, we shall have no difficulty in perceiving that any such conditional offer would have had neither justice nor reason in support of it. The evidence in the case shows beyond question what indeed common observation would teach us without other proof: that a party receiving a much smaller quantity than 80,000 tons, can comply with a condition of quick dispatch as promptly, fully and completely as can any larger dealer. If therefore a discount

were to be offered in order to insure quick dispatch, a discrimination which should so limit the offer that a part of those who could and might desire to accept it would be excluded from its benefits, would for that very reason be unjust and indefensible. The discount in this case must consequently be held supportable neither on the published offer, nor on the statement in the answer, nor, so far as the consideration is concerned, on the evidence; and unless some other support can be found for it, it must be adjudged illegal.

On the argument an effort was made to uphold the discrimination on a consideration of quantity merely; the consignee who should receive more than 80,000 tons in a year at any one station, being likened to a purchaser of goods at wholesale, and the consignee who received a lesser amount being compared to a purchaser at retail. It was said that a distinction in price is universally made as between these two classes of customers, and that distinction would be as reasonable in the case of purchasers of railroad service as in that of purchasers of cloths or lumber.

One difficulty with this argument is that it is an afterthought. The defendant has publicly selected the ground on which it will base the discrimination proposed, and has published it in a paper required of it by law for the purposes of general information. It would be entirely admissible for defendant to change its ground in making a new offer; but the offer now under consideration must stand or fall, on the ground selected for it.

But if this defendant should attempt to make a new offer based upon quantity merely, the analogy between the case and that of wholesale and retail purchasers of merchandise would not be found to be very close. The wholesale dealer is allowed concessions in prices because his transactions in proportion to the amount purchased are fewer in number, they take less of the time and attention of the seller, and it costs him very much less to make them. It is perfectly reasonable that these facts should be taken into account in making bargains. But there is no certainty, and scarcely any probability that the dealer who receives 80,000 tons of coal at some one station within a year will make his business cost less to the railroad company in proportion to quantity than the dealer who receives 35,000 tons only, or 20,000, or half that quantity. Indeed, the selection of 80,000 tons as the test of what should be considered wholesale business would obviously be purely arbitrary, as also would be the naming of any other considerable quantity, say 5,000, or 15,000, or 50,000. The selection of any one of these quantities could be defended on a distinction between wholesale and retail dealings as logically, if not as plausibly, as that of any other; and the evidence in this case shows that defendant in years past has based its offer of discount on a receipt of consignments much below the 80,000 tons now required. The quantity named last year was 20,000 tons; so that on the argument now advanced what was wholesale last year is retail this.

A distinction in rates as between car loads and smaller quantities is readily understood and appreciated; but no such distinction is made in this offer, and a customer of the road

who should receive all his coal by car load or even by train load would be excluded if he fell short in quantity. And some possible results of the offer might be utterly inconsistent with considerations acted upon in wholesale trade. If a consignee, for example, earns the rebate by receiving 30,000 tons at a station to which the freight is a dollar a ton, he pays but \$27,000 for the transportation; but his rival at the same place who reaches to 29,000 tons only, must pay for a less service presumptively accomplished at less cost, and which is of less value to him, \$2,000 more. Such a result could not possibly be defended. The one consignee would be a wholesale dealer as much as the other, and common sense would pronounce unhesitatingly that if the larger charge for carrying the smaller quantity was reasonable, the discount to the other dealer must be without any just or reasonable support.

But when a question of rebates or discounts is under consideration, it might be misleading to consider them in the light of the principles which merchants act upon in the case of wholesale and retail transactions. There is a very manifest difficulty in applying those principles to the conveniences which common carriers furnish to the public, a difficulty which springs from the nature of the duty which such carriers owe to the public. That duty is one of entire partiality of service. The merchant is under no corresponding duty, and may make his rules to suit his own interest, and discriminate as he pleases. There is no occasion to enlarge upon this now.

A discrimination, such as the offer and its acceptance by one or more dealers would create, must have a necessary tendency to destroy the business of small dealers. Under the evidence in the case it appears almost certain that this destruction must result, the margin for profit on wholesale dealings in coal being very small. The discrimination is therefore necessarily unjust within the meaning of the Law. It cannot be supported by the circumstance that the offer is open to all; for although made to all, it is not possible that all should accept. Moreover, in testing such a discrimination we must consider the principle by which it must be supported; and the principle which would support a 30,000 ton limitation would support one of 50,000 or 100,000 equally well; the quantity named would be arbitrary in any case. It might easily be so high as practicably to be open to the largest dealer only. A railroad company, if allowed to do so, might in this way hand over the whole trade on its road in some necessary article of commerce to a single dealer; for it might at will make the discount equal to or greater than the ordinary profit in the trade; and competition by those who could not get the discount would obviously be then out of the question. So extreme a case would not, however, be needful to show the inadmissibility of such a discount as is here offered; the injustice would be equally manifest if several dealers instead of one were able to accept the offer. A railroad company has no right, by any discrimination not grounded in reason, to put any single dealer, whether a large dealer or a small dealer, to any such destructive disadvantage.

In what is said above we do not mean to be
INTER S.

understood as intimating that defendant is not saved something in cost and in labor by having the coal carried by it received in large quantities by single consignees. On the contrary, we readily agree that its service for large dealers is somewhat less in proportion to quantity of freight transported than is the like service performed for small dealers. We also agree that defendant may therefore seem to have an interest in restricting its dealings so far as possible to large dealers. But this is an interest that can only be consulted and acted upon in strict subordination to the rules of law; and one of the most important of those rules is that in any discrimination between dealers justice, if not a paramount consideration, shall at least be kept in view. The carrier cannot regard its own interests exclusively—if it could, it might at pleasure, by methods easily available, drive all small dealers off its line, and center the whole trade in a few hands. The state of things that would result might be altogether for its interest and convenience, since it would then have fewer customers to deal with and fewer transactions for the same aggregate trade; but the wrong would be flagrant. The case suggested is more extreme than the one before us, but the wrong is sufficiently palpable here. And without further comment on this branch of the case it will be sufficient to repeat that when the defendant makes an offer of discount or rebate based on the 30,000 ton limit, the limitation is unreasonable and unlawful, because necessarily resulting in unjust discrimination. There is nothing in the showing in this case to justify the fixing of a limitation as the ground of rebate at any specified quantity; and therefore if the discount is paid to one dealer, the payment will be evidence of the right of all other dealers to a like and proportionate discount.

A further question of importance concerns the difference in defendant's rates on coal shipped to stations on its main line from Providence and East Providence respectively. The facts important to an understanding of this question are that defendant's road was first constructed from Providence through Valley Falls to Worcester, and that complainant, at very great expense to its members, provided itself with land and all necessary requirements for carrying on extensive dealings in coal near the terminus of defendant's road in Providence, and by co-operation with it secured tracks into its yards and to its dock. But defendant's accommodations at Providence were limited and could not be enlarged unless at great expense; the city authorities it is said were disposed to interpose obstacles to such use of the city streets for railroad service as was essential, and defendant found it necessary to construct a new line from Valley Falls to East Providence, where ample accommodations were secured, and where its business could be more conveniently and cheaply conducted. The distance from Providence to Valley Falls is six miles and from East Providence seven. Coal trains are made up at Valley Falls of loaded cars brought from Providence and East Providence without distinction. By the published tariff the rate upon coal from Providence and from East Providence respectively to Valley

Falls is the same; sixty cents per gross ton; and it is also made the same to Lonsdale which is the first station above. But to all stations above Lonsdale a higher charge is made from Providence than from East Providence, the difference after the state line is crossed being in every case ten cents per gross ton. This difference is very important to complainant, and necessarily very prejudicial.

It is very evident that if it is fair and reasonable for defendant to make the charge on coal to Valley Falls from the two termini the same, there can be no justification for making different rates to the station beyond, based on the fact that the coal comes from one terminus rather than from the other. The fact that a part of the coal taken from Valley Falls to Worcester was first received by defendant at Providence and another part at East Providence does not in any degree affect the cost or the value of its service in transporting it from Valley Falls on; and a discrimination in rates from Valley Falls based upon the fact that the coal had come from the one terminus instead of the other would have no reason and no justice to support it. The defendant might as well discriminate on the ground of the coal having come from different mines or different dealers. The discrimination made by the defendant's published tariff is therefore presumptively at least without justification.

It is claimed by defendant, however, that the additional cost of doing its business at Providence over the cost at East Providence is fully sufficient to support the difference made in rates, and that the fact of defendant making no difference at Valley Falls and Lonsdale cannot preclude its making them at other points. Passing over this last point for the present as not being one necessarily requiring a decision at this time, we are of opinion that defendant does not justify the making of the additional charge at any station.

The Providence line was first built, and complainant, at very large expense and in co-operation with the defendant, has put itself in position to transact its business there. Defendant because of inconvenience which it will escape has constructed a new line and established a new station where the inconveniences will be less. Its policy now is to force the whole business as much as possible over the new line. We have no doubt its own convenience will thereby be consulted, and the cost of its business somewhat reduced; but there is no evidence before us which would justify us in finding that the additional charge upon the coal received at Providence is only a fair equivalent for the additional cost. On the contrary, we think the increased rate is imposed more from policy than out of regard to additional cost.

But we think also that under all the circumstances it is not admissible for defendant to impose upon its patrons at Providence, whose investments for business with it were made before the East Providence line was constructed, an additional charge because of the inconveniences attending the transaction of its business at that station, and for which they are in no way responsible. These inconveniences are incident to a situation which it is unfortunate the defendant is unable to relieve; but they

cannot justify differences in rates which will force or tend to force the Providence dealers out of business.

As regards the Providence business we think the obligation of defendant is not different now from what it would have been had it constructed for its own convenience a branch road into some other part of the same city. If, for example, it had established a new freight station in Providence, in order that it might have more ample yards, and thus secure greater facilities for its business, it would not have been admissible that upon its shipments to points which were practically the same distance from each station and accessible from each, a difference in rates should be charged when the service was worth no more to its customers and when the reasons for having the two stations concerned its own convenience exclusively. But the establishment of a second station in this case, although in another municipality, and requiring several miles of new line to reach it, was also in the nature of a local convenience in its own business, and should be so considered in the making of rates to points reached from both stations.

Complainant insists that defendant should pay the cost of hauling the coal from the wharf to defendant's freight station in Providence. But we do not think this can be required. It seems that defendant did this formerly, but without any contract obligation to that effect; and probably only by way of encouraging complainant in building up a considerable trade. But what it did for a time as a favor or by way of encouragement, it might discontinue at pleasure. There could be nothing in the nature of a binding usage about it.

Our general conclusion is that complainant is entitled to the relief indicated on the first two grounds of complaint above considered, but not on the third. Order will be entered accordingly.

In this opinion all concur.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly assigned for hearing on the day of _____, 1887, and a hearing having been had upon the pleadings, proofs and arguments of counsel, and the report and opinion of the Commission having been made and filed—wherein the Commission has found as facts that the defendant corporation offers a discount or rebate of 10 per cent from its published rates for the transportation of coal, to all persons who shall receive consignments of coal in any one year amounting to 30,000 tons or upward, at any one station on the line of defendant's road; and also that the charge for the transportation of coal from Providence to stations on defendant's line above Lonsdale is greater than for the transportation of coal from East Providence to such stations respectively; and the Commission having adjudged that the giving or offering to give such discount or rebate is, under the circumstances of this case, in contravention of the provisions of sections 2 and 3 of the Act to Regulate Commerce, unless a like discount or rebate is made to all persons; and that the making of such greater charge for the transportation of coal from Providence is also, under the circumstances of this case, in contravention of the

provisions of said sections of said Act, in so far as it applies to interstate commerce,

Now, It is ordered and adjudged that so much of the prayer of the petition as prays that the complainant be required to cease and desist from the acts above recited be, and the same hereby is, granted; and that the defendant corporation be, and it hereby is, required to cease and desist from said unlawful acts of discrimination, and, within ten days from the date hereof, to modify and correct its published schedules of rates and charges accordingly; and it is further ordered that a notice embodying this order be forthwith sent to the defendant corporation, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of the fifteenth section of the Act to Regulate Commerce.

Louis LARRISON

CHICAGO & GRAND TRUNK R. CO.

MICHIGAN CENTRAL R. R. CO.

CHICAGO & GRAND TRUNK R. CO.

1. The proviso in section 22 of the Interstate Commerce Act "That nothing in this Act shall apply to * * * the issuance of **milage** * * * **passenger tickets**," applies only to the act of issuing or giving out such tickets; the terms, conditions and circumstances upon which the sale of such tickets is made are subject to and must be in accordance with the Act in its general provision.
2. A sale of **milage tickets** to **commercial travelers** at a certain rate, and refusal to sell to other passengers except at a higher rate, is an **unjust discrimination**, within the meaning of the Act.
3. A **release of liability** by commercial travelers to the railroad company does not constitute a **good and sufficient consideration** for such **discrimination**; nor does the fact that they may influence business in favor of the road, etc.
4. **Common carriers** may continue the issuance of **milage passenger tickets**, the charges for which must be reasonable and just and free from unjust discrimination or unreasonable preference.
5. Persons belonging to the class known as **commercial travelers** are not **privileged to ride over railroads at lower rates than other persons**, and to make a difference in this respect is unjust discrimination; this is true whether tickets issued are **milage tickets** or in some other form.
6. **Neglect on the part of a railroad company to publish rates** for **milage tickets**, is a violation of the Act.

(Decided July 25, 1887.)

15728 8.

REPORT AND OPINION OF THE COMMISSION.

Morrison, Commissioner:

In one of these cases the complainant, Louis Larrison, alleges unjust discrimination and neglect to publish fares, rates and charges for milage tickets; in the other, unjust discrimination is alleged. The two cases were, with consent of the parties, heard together, and, after investigation, the facts are found to be as follows:

The defendant, being the same in both cases, is and was, on the 21st of May, 1887, a common carrier of passengers on its railroad from Port Huron, in the State of Michigan, into and through the State of Indiana to the City of Chicago, in the State of Illinois, and was then offering to sell and selling, for \$20, to the class of persons known as commercial travelers, milage tickets, entitling the holder to transportation to the extent of 1,000 miles over its road between said States.

The complainant, Larrison, having occasion to travel on defendant's road between said States, applied on the 21st of May, 1887, at the proper office of the defendant in the City of Detroit, to purchase one of said "thousand mile tickets," offering in payment therefor the sum of \$20. The defendant refused to sell this complainant such ticket for less than \$25, alleging as a reason therefor, as was the fact, that complainant, Larrison, did not belong to the class of persons known as commercial travelers, to which alone defendant sold said tickets for the price of \$20.

The schedule of defendant, kept in its office in said City of Detroit, purporting to show the rates, fares and charges it had established and which were in force May 21, 1887, did not show the rates, fares and charges which it had established and were in force for carrying passengers who purchased milage tickets which it then kept and was offering for sale; but since this complaint was made defendant has caused its schedules of rates, fares and charges to be so amended as to show the rates at which it sells milage tickets.

The other complainant, the Michigan Central Railroad Company, owns and operates a railroad extending from the City of Detroit, in the State of Michigan, into and through the State of Indiana, to Chicago, in the State of Illinois, and is a common carrier of passengers between said States; and, while the defendant was offering to sell and selling to commercial travelers thousand mile tickets for \$20 and refusing to sell for less than \$25 like tickets to persons not commercial travelers, this complainant was selling such thousand mile tickets for \$25 to the public generally, without discrimination in favor of any person or class of persons. And as such common carrier of passengers between said States, this complainant and the defendant are competitors.

The answer of defendant admits the facts as found above, but avers that nothing alleged against the defendant company is in conflict with the Act to Regulate Commerce, because at the date of the passage of said Act the railway companies of the country generally, including the defendant and the complainant companies, were and for many years prior thereto had been doing the things now complained of;

New York, on behalf of 281 merchants of Michigan, Illinois, Indiana, Ohio, Pennsylvania, and Delaware, that the present classification in use for west bound traffic by the New York Central, Delaware, Lackawanna & Western, Pennsylvania, Baltimore & Ohio, and Erie Railroad Companies, "as regards the unjust differences now made in classification and freight charges between car loads and less than car loads on the same articles between the same points, is in violation of the sections of the Interstate Commerce Law forbidding undue preferences to individuals or localities." The complainants ask for a restoration of the principle of uniform rates without regard to quantity which was in force from the seaboard for twenty years.

Complaints have also been received from Francis H. Leggett & Co., of New York City, against the trunk lines, charging that the present classification in respect of the higher rates charged upon less than car load shipments is in violation of the provisions of the Interstate Commerce Law and petitioning for relief.

Ralph W. THATCHER

v.

FITCHBURG R. R. CO. *et al.**

The complainant, the owner of a grain elevator at Schenectady, N. Y., ships grain from his elevator to Boston, over the roads of the defendant companies. Prior to the Act to Regulate Commerce, the defendants carried complainant's shipments at the proportion of through rates from Chicago to Boston allowed to the lines from Schenectady to Boston, but since the Act took effect they have refused to accept this proportion, on the ground that it would violate the fourth section of the Act, since the rates from other points nearer Boston than Schenectady is, are greater than such proportion would be. The complaint asks that the defendants be compelled to accept such proportion of the through rate. *Held,*

(a) That the complaint, in effect asks from the Commission an order that shall require the defendant roads to receive freights at Schenectady for transportation to Boston, at rates less than are now charged by the same roads for the transportation of like freights to Boston from stations nearer Boston, under substantially similar circumstances and conditions.

(b) That such order, if issued, would require the roads to depart from the general rule laid down in the fourth section of the Act.

(c) That while the Act authorizes the Commission to permit exceptions, it does not authorize it to require exceptions.

(d) That the Commission has not power to make rates generally, but

only to determine whether rates imposed by the railroads are in conflict with the Statute.

(e) That the question whether the rates now charged complainant are excessive is not raised by the complaint.

(f) That the complaint must be dismissed.

(Decided July 25, 1887.)

REPORT AND OPINION OF THE COMMISSION.

Schoonmaker, Commissioner:

The complaint in this case charges, in substance, that the various railroad companies named as defendants, unjustly discriminate against the complainant by refusing to carry grain and flour for the complainant from Schenectady, New York, to Boston and other New England points, at the proportion of all rail rates from Chicago to Boston and the other points reached by through shipments, allowed from Schenectady by the joint tariffs for such through shipments, and demands that all the railroads which participate in the traffic of through lines, which pass Schenectady eastward over the tracks of the Delaware & Hudson Canal Company, shall be required to receive and forward from the Schenectady elevator, possessed and used by complainant, all grain and other merchandise received at said elevator, either by canal or railroad, and shipped to said elevator for the purpose of being forwarded further east over the routes of the defendants and to furnish cars and all needed facilities for transportation of grain, feed, and flour from the Schenectady Elevator & Steam Mills to eastern points, and that they accept as compensation therefor the same amounts of money they severally accept and receive for similar service as parts of the through lines from Chicago.

The answers, in substance, deny the charge of discrimination, and aver that the shipments east from the Schenectady elevator of the complainant are local shipments, and that the defendants have the right and that it is their duty under the Statute, in order to avoid a violation of the long and short haul provision of the fourth section, to charge local rates or rates not less than from Mechanicsville, Greenfield, and other local and more eastern points to Boston.

The Commission finds the facts material to the disposition of the case to be as follows:

The complainant is the proprietor of a valuable elevator and flour mills, at Schenectady, conveniently located adjacent to the Erie Canal, and to the tracks of the Rensselaer & Saratoga Railroad, leased to and operated by the Delaware & Hudson Canal Company, and has for several years, under contract with the Rensselaer & Saratoga Company continued with the Delaware & Hudson Company, had a privilege which has been practically the privilege of shipping grain, feed, and flour from his elevator over the said railroad to and over its connecting roads leading to Boston and other eastern points.

The complainant receives the bulk of his grain from the West transported by water over the lakes and Erie Canal and consigned to him

*See ante, 24, 317, sub nom. *Re Thatcher and Thatcher v. Delaware & Hudson Canal Co.*

at Schenectady, where it is taken into his elevator and retained until he finds a market for it in New England. He also purchases grain locally at and near Schenectady, which is taken indiscriminately like all the other grain received into the same elevator, and for the same purposes. The elevator is also open to the public, and is used to some extent by other persons than complainant, for the transshipment and storage of grain.

Prior to the time the Act to Regulate Commerce took effect the defendant roads all carried complainant's grain, feed, and flour at the proportion of through rates from Chicago to Boston allowed to the lines from Schenectady to Boston. The percentage of those through rates was twenty per cent of the Chicago rate of thirty cents per hundred pounds, or practically six cents per hundred. The subdivision of the Fitchburg Road from Mechanicsville to Boston of this proportion was five cents and seven hundred and seventy eight one thousandths. Since the Act to Regulate Commerce took effect the several roads have refused to accept this proportion from complainant, giving as the reason therefor that it would violate the fourth section of that Act, since the rates from Albany, Troy, Mechanicsville, and North Adams, which are further east and nearer Boston than Schenectady, on the Fitchburg line, are greater than such proportion would be.

The principal shipments from complainant's elevator have been over the Delaware & Hudson Road to Mechanicsville, and thence over the Fitchburg lines to Boston. He makes no shipments by way of Albany over the New York Central and Boston & Albany Roads. The Fitchburg Road now controls the Troy & Boston line and the Boston, Hoosac Tunnel & Western Road. Since the change above stated, the complainant has made no shipments over these lines, on account of the rates.

Upon this statement of facts it is seen that what the complainant asks from the Commission is an order that shall require the several defendant roads to receive freights at his elevator at Schenectady for transportation to Boston and Boston points at rates less than are now charged by the same roads for the transportation of like freights to Boston and Boston points, from stations on the same lines nearer to the points of destination, and the transportation of which freights would, so far as we can now see, be under substantially similar circumstances and conditions. Such an order, if issued, would require the roads to depart from the general rule laid down in the fourth section of the Act to Regulate Commerce. While that Act authorizes the Commission to permit exceptions under some circumstances and conditions indicated by the law, it does not empower the Commission to require exceptions.

This is the only question which is so presented by the complaint that the Commission can pass upon it. It may be truthfully said that the several defendants might avoid any conflict with the fourth section of the Act by reducing their charges to Boston and Boston points from the stations east of Schenectady; but this complaint does not ask the Commission to compel such reduction, nor has any evidence been given or offered which would

EXTRA 8.

enable us to determine what would be proper and just rates from any such stations. It is therefore impossible to fix them in this case, even if the Commission had power to make rates generally, which it has not. Its power in respect to rates is to determine whether those which the roads impose are for any reason in conflict with the statute.

The rates with which complainant finds fault it is not claimed are in conflict with the statute, unless the conflict is found in the fact that they exceed what the roads accept on the through business as their proportion of the rates fixed at distant points. If that is in any sense contrary to the Law, the illegality would not be corrected by compelling the roads to accept upon shipments from Schenectady rates less than are charged from the stations further east. We cannot correct one alleged violation of law by compelling another.

If complainant thinks the rates from Schenectady and intermediate points to Boston and Boston points are excessive, he can raise that question directly and distinctly, and the Commission can then enter upon a full investigation of the facts bearing upon it. But the question is not made here.

It is proper to state that the question whether a proportion of through rates less than the local rates over the same line can lawfully be accepted, is involved in a pending case, and is awaiting further evidence and argument.

The complaint must be dismissed.

In this opinion all concur.

CHICAGO & ALTON R. R. CO.

PENNSYLVANIA CO.*

CHICAGO & ALTON R. R. CO.

PENNSYLVANIA R. R. CO.

CHICAGO, ROCK ISLAND & PACIFIC
R. R. CO.

NEW YORK CENTRAL & HUDSON
RIVER R. R. CO.

1. In the absence of statutory authority one railroad company can sell tickets and check baggage over the road of another company only by agreement; and the Act to Regulate Commerce does not in terms require one railroad company to sell through tickets over the road of another company.
2. Railroad companies may, under their right to control the official conduct of their own agents, forbid their agents to receive commissions from other companies for the sale of tickets over such other companies' roads, and may direct them not to sell tickets over roads of companies which refuse to recognize this corporate authority but which insist on subsidizing such agents. One person or corporation has no right to interfere

with the employees of another, and the Act does not disturb this principle.

3. The practice of one company's paying the agents of another company a commission for selling tickets over the former's road is not reasonable or proper.
4. Hence, *held*, that the defendant companies, in prohibiting their agents from receiving commissions and in refusing to sell through tickets over the roads of complainants while the latter insist on paying commissions to defendant's agents, have not contravened the provisions of the third section of the Act, which require that railroad companies shall "afford all reasonable, proper and equal facilities" to connecting lines, etc.

(*Morrison, C., dissents.*)

(Decided July 14, 1887.)

REPORT OF THE COMMISSION.

Schoonmaker, Commissioner:

The complaints in these cases are founded upon the third section of the Act to Regulate Commerce, and charge violations of that section by the defendant companies in refusing certain facilities for receiving, forwarding, and delivering passengers to complainants' lines, consisting of through or coupon tickets, which, being afforded to other and competing companies, give, the complainants allege, undue and unreasonable preference to those companies. The questions involved in these three cases are so similar that they can properly be considered and disposed of together.

The material facts found by the Commission are as follows:

The Pennsylvania Companies, defendants herein, own or control connecting lines of railroad from New York and Philadelphia to Chicago and St. Louis. The New York Central Company, defendant, owns or controls connecting lines from New York to Chicago. Through passenger tickets are sold by the defendants over the routes they control to the terminal points reached by their respective lines. At Chicago the roads of the complainants have their eastern termini in proximity to the termini of the defendants' lines, and from there extend westerly to Kansas City and other points. Several other roads, competitors of complainants, also lead from Chicago to Kansas City and other western points, and have substantially similar means of connection with the defendants' lines for the transfer of passengers and baggage.

By mutual arrangement between the various companies whose roads form continuous lines from New York, Philadelphia, and other places on the routes of defendants' roads in New York and Pennsylvania to Kansas City, through or coupon passenger tickets have been sold by the defendant companies at their stations in New York and Pennsylvania, over their own respective lines, to Chicago, and thence to Kansas City, over the roads of the complainants or other such connecting roads as passengers might prefer. For passengers from the West to the East through tickets of a like character have been sold by the complainants and

other companies from Kansas City to points on the roads of the defendants desired to be reached by travelers, in New York, Pennsylvania, or other States. Through tickets of this character with corresponding checking of baggage are a manifest accommodation to travelers and afford material facilities in making long journeys. In the sale of these tickets the company selling them was understood to act as the agent of the other roads over which the traveler might pass on his journey, and each company was deemed responsible to the traveler for its own acts in conveying the holder of the ticket.

For several years prior to the 5th of April, 1887, when the Act to Regulate Commerce took effect, substantially all the railroad companies of the country, including the complainants and defendants, paid commissions varying in amount from two dollars to five dollars a ticket, to the ticket agents of other companies by whom the through tickets were sold. These commissions sometimes aggregated as much as the salaries paid the ticket agents by the companies that employed them. The commissions paid by complainants and some other companies since the first of April last have been fixed by agreement at one dollar a ticket from Chicago to Kansas City.

The defendant companies and some others for about two years have made earnest efforts to abate the practice of paying commissions. The testimony shows that the commissions paid on through tickets have usually amounted to from 20 to 25 per cent of the receipts from such sales, and that the official reports of the companies have concealed this expense and only showed the net receipts from passenger tickets after deducting the commissions.

About a month before the Act to Regulate Commerce became operative the defendant companies took steps to procure agreements with their connecting companies to abolish the commission business altogether.

With this end in view they sent printed circulars, on or about the 15th of March last, to their connecting companies, expressing their willingness to continue to act as agents in the sale of through tickets and stating the nature of the agreement required. The circular of the Pennsylvania Company stated as follows:

"In view of the severe penalties for infractions of the Law neither of these companies can consent to act as agents for your company (if you should desire it to do so) in the issuance and sale of through tickets except upon the following conditions:

"*First*, your authority to so act.

"*Second*, your agreement that the proposed joint tariffs will be satisfactory.

"*Third*, your agreement not to issue or cause to be issued any new forms of through tickets over any of our lines without our formal consent thereto.

"*Fourth*, your promise not to pay, either directly or indirectly, a commission or any consideration whatsoever to agents or employees of these companies, or to any other person or persons, on account of the purchase or sale of tickets issued by either of these companies at its regular ticket offices or at other places in the territory adjacent thereto.

"*Fifth*, your agreement to confine your own

issue of tickets and orders for tickets or transportation exclusively to offices immediately on the line of railroad controlled by your own company, thereby permitting us to ticket all passengers over your line or lines, at lawful rates, from all points where either of these companies has a line of railroad and you have none.

If it be your desire, these companies will cheerfully continue to act as agents for your company on and after April 1, 1887, upon similar promises and conditions to those above cited."

The circular of the Pennsylvania Railroad Company was identical in this respect with that of the New York Central Company herein after set forth.

The complainant, the Chicago & Alton Railroad Company, received these circulars signed by the general passenger agents of the Pennsylvania Company, and the Pennsylvania Railroad Company, respectively, and refused to enter into the agreement proposed, claiming the right to continue to pay commissions to the agents of the Pennsylvania Companies, upon their sales of through tickets.

The circular sent by the New York Central Company and the Pennsylvania Railroad Company contained the following statement:

"In view of the severe penalties to be inflicted in cases of violations of the Law, this company cannot consent to act as agent for any other company in the issuance of through tickets, unless notified that it is authorized to so act that the proposed joint tariff will be satisfactory for the time, and that the companies whose authority is thus obtained will refrain from the payment of a commission, drawback, rebate, or any form of consideration to the agents or employees of this company, or to any other person or persons on account of the purchase or sale of this company's issue of tickets in the territory adjacent to our lines."

The complainant, the Chicago, Rock Island & Pacific Railroad Company, received a copy of the circular of the New York Central Company, containing this statement, and refused to consent thereto, claiming the right to continue to pay commissions.

A large preponderance of the companies to which these circulars were addressed, assented to the propositions they contained, and signed agreements to make them effective.

From 70 to 80 per cent of the companies having connections with the Pennsylvania systems agreed to discontinue commissions. Of 284 companies to which the circulars of the New York Central Company were addressed, 215 assented, and only nineteen refused. A large number of other companies in the territory east of the Mississippi and Illinois Rivers and the eastern shore of Lake Michigan, and twenty-nine southern companies, 110 in all, entered into similar agreements. Sixteen companies in the territory named, and three southern companies refused. It also appeared by the complainants' testimony that of 236 roads with which they do business, including all of the New England Roads, all except twelve agree to allow commissions. On account of the refusal of the complainant companies to discontinue the payment of commissions to the agents of the defendant companies, and to

agree to refrain from that practice, the defendants, after the 4th of April last, refused to sell through tickets over the complainants' roads from Chicago and St. Louis to Kansas City, and still refuse, solely for those reasons. They express their willingness to sell through tickets over the complainants' roads whenever they will agree to discontinue commissions upon the defendants' issue of tickets. The defendants continue to sell through tickets over the connecting roads of companies that have assented to the agreements. The testimony does not show that the defendants have knowingly sold through tickets since the 4th of April, over the roads of companies that have refused to enter into the agreements.

On these facts the complainants aver that the defendants refuse to afford to them reasonable, proper, and equal facilities for receiving, forwarding, and delivering passengers, and give undue preference to competing roads, in contravention of the provisions of the Act to Regulate Commerce.

The defendants deny that they have violated the provisions of the Act, and claim that they have the exclusive right to control their own agents, to fix the amount of their compensation and to pay it themselves; that the payment of commissions by other companies is demoralizing to their agents, and often leads to discriminations to passengers for roads paying large commissions, by division of the commission between the agent and the passenger, that commissions consume a considerable percentage of the revenue from the sale of through tickets; that without commissions all connecting roads stand on a basis of equality, and passengers select their own routes uninfluenced by agents having an interest in the form of commissions in persuading them to choose some particular route.

The thirteenth section of the Act to Regulate Commerce provides that for anything done or omitted to be done by any common carrier subject to the provisions of the Act, in contravention of the provisions thereof, application may be made to the Commission by petition, which shall briefly state the facts, and the further proceedings to be taken by the Commission are then specified. This indicates the jurisdiction of the Commission in respect to complaints by persons or corporations for the causes described. The offenses of which the Commission has cognizance are anything done or omitted to be done in contravention of the provisions of the Act.

In the cases under consideration it is necessary that it should reasonably appear that the acts of the defendants of which complaint is made are in contravention of the provisions of the Act. This involves the question whether the Act makes it the duty of the defendants without any agreement or arrangement for the purpose to sell through tickets over the roads of the complainants, and also whether the complainants can insist on paying commissions to the agents of the defendants notwithstanding the opposition of the defendants thereto.

Railroad corporations in the States are creations of the State Governments, and their powers and duties are defined by their charters or by general laws. In the Territories, which

are subject to the exclusive jurisdiction of Congress, railroads may be chartered by the Federal Government or by its authority. The Act to Regulate Commerce does not make it the duty of state railroads to organize and operate through lines of transportation consisting of separate roads owned by different companies. The organization of such lines is left under the Act to the voluntary action of railroad companies, as it existed previously. But when railroad companies associate to constitute through lines for interstate traffic they become agencies of commerce as the courts have adjudged, and in the conduct of the business so assumed, voluntarily subject themselves to the control of Congress under the power contained in the Constitution, "To regulate commerce with foreign Nations and among the several States and with the Indian Tribes." Congressional regulation is necessarily exercised by laws enacted for the purpose, and the extent of the regulation intended is measured by the terms of the law. The law in this instance does not in terms require one railroad company to sell through tickets over the road of another company. It is substantially a reproduction of the corresponding provision of the English Railway and Canal Traffic Act of 1854, under which the English companies claim they were not authorized to sell through tickets over other roads.

In the absence of statutory authority one railroad company can only sell tickets and check baggage over the road of another company by agreement. The English Statute of 1873 amending the Act of 1854 was enacted to give this authority and to make its performance a duty.

That statute so far as material is as follows: "The said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding, and delivering by every railway company and canal company, and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares." As no such provision exists in our statute the decisions of the English Commission and courts relating to through booking, founded on a statute declaring in terms the duty of "through rates, tolls, and fares," under which through booking is mandatory, are not applicable.

By agreement between companies, however, through tickets very properly are sold and used over connecting roads as a convenience of passenger traffic and an inducement for patronage. Such tickets very evidently are a great convenience to travelers, and perhaps to connecting roads, but they are a part of the voluntary arrangements for business purposes like joint tariffs, interchange of cars, and common use of depots. It being, therefore, under our statute, matter of mutual agreement whether coupon or through tickets shall be sold by a railroad company over roads of other companies, it follows that the form of such tickets and the manner of their sale are also matters of agreement by the companies interested. If companies can agree upon their tariffs, the form of their tickets, and how they

should be sold, they have the right to do so, and by such agreement become interstate carriers; but if they cannot agree the Act does not undertake to coerce them to do business together upon terms that may be justly objectionable or injurious.

It is true as urged by complainants that the third section of the Act requires that "Every common carrier subject to the provisions of the Act shall, according to their respective powers, afford all reasonable proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines."

Through tickets are not indispensable for these purposes; but assuming for the sake of the argument that they may be deemed "facilities" for the receiving, forwarding, and delivering of passengers to connecting lines, carriers are only required to afford reasonable, proper and equal facilities. They are not required to afford special, unreasonable, improper, or unequal facilities.

This presents the question whether the payment of commissions is in itself, or as incidental to the enjoyment of a facility, reasonable and proper within the purview of the Statute. The facility of through tickets is equally offered to all and may be enjoyed without commissions. If the company selling the tickets should charge a commission, it would doubtless be regarded as an imposition, and therefore unreasonable and improper. These commissions are gratuities to induce special efforts for the company paying them. If the statute does not give one company authority to subsidize the agents of another company, and if the practice is injurious in its effects, it certainly cannot be reasonable and proper.

The statute does not divest a railroad company of the exclusive right to control its own internal affairs, to employ its own agents, to regulate its own duties, and to pay them such compensation as it may deem proper. The right of ownership of railroad property, with the power to control over employees and management of the property, is as absolutely under the Act as before is passage. The regulation of commerce between the States, which is all that the Act contemplates, does not involve community of property, or joint control of subordinates among the several companies that honor through tickets. The corporate powers of every company, for all administrative and governing purposes within its prescribed sphere, remain unimpaired. With the legitimate exercise of these powers another company has no concern, and no right to intermeddle.

For the proper government of their own subordinates the defendant companies have forbidden their agents to receive commissions from other companies, and directed them not to sell tickets over roads of companies that refuse to recognize this corporate authority, but insist on subsidizing the agents. In these directions the defendants have not transcended their reasonable rights. One person or corporation

has no right to interfere with the employees of another, and the statute does not disturb this old and sound principle.

The defendants might rest upon their right to control the official conduct of their own agents. But they go further and show by evidence the practical effects of commissions, and that their natural and usual tendencies are to a variety of abuses. A witness of experience and large opportunities for observation testified as follows:

"It is in the articles of the organization of the Pennsylvania Company, and I believe in the organization of the Pennsylvania Railroad, that any officer, no matter who, from president down, shall not be permitted to receive any compensation from any other corporation without a resolution of the board of directors to that effect; and all the salaries and compensation so received are required to be covered into the treasury of the Pennsylvania Company and accounted for. This is done simply for the reason that we do not believe any railroad company can properly conduct its affairs when it permits its agents and employees to receive compensation for doing the same service for other companies. We know we had in our examination of this matter found that some of our ticket agents were receiving a greater amount of commissions from foreign railroad companies than we were paying them salaries, and instead of being our employees they were the employees of the other railroad companies, and so far as our company was concerned we lost control of them entirely."

He further testified that the commissions were paid for two purposes: one was for the purpose of inducing the agent to sell tickets over lines which paid the commission, by paying him a sum of money for so doing, and so large a sum as would enable him to pay a portion of it to the party whose traffic he wished to obtain.

Another witness testified that he had personal knowledge of a great many cases too numerous to be cited where ticket agents had divided the commission with the passenger, thereby constituting a different fare for the same ticket for the same company; that connecting lines give agents of initial companies orders to divide these commissions, contrary, in a great many cases, to the orders of the company by which the agents were employed; that these commissions had been for base purposes and to demoralize the agents.

A practice capable of producing and having a tendency to produce results thus described, cannot be reasonable or proper, and a railroad company is fully justified in the use of all lawful precautions to protect itself and its agents against such invasions of its corporate authority and of its business morality. According to the testimony the defendants are supported in their position on this question by a very large majority of connecting roads showing a decided preponderance of opinion against the practice.

The complainants insist that the payment of commissions is only additional compensation for services rendered by the agents, and that they have the right to pay them.

An officer of one of the complainants in answer to the question, What object is to be ac-

complished by paying an agent commissions by different companies if he has already a full salary from the company which employs him? testified: "I should say to induce him to sell their tickets in the first place, and the next place to explain the routes which lead from one city to another, and that he may be able to make himself advantageous to the passenger who is in New York City who is not posted on the routes west of Chicago."

The claim of the complainants was stated by their counsel as follows: "We simply claim that we have the right to pay anybody for services rendered, and that we have the right to determine whether it shall be by salary or commissions."

The scope of the complainants' position is clearly presented by these statements. It is the distinct assertion of a right of one corporation to employ and pay, for its own interests, an official servant of another corporation to which his service is primarily and exclusively due. A theory of this character ought not to be and is not recognized in business affairs, or in official life. A divided service between many masters cannot be satisfactory to any, and as a rule is injurious to the person so employed.

It follows from these views that the defendant companies, in prohibiting their agents from receiving commissions and in refusing to sell through tickets over the roads of complainants, while they insist on paying commissions to defendants' agents, have not contravened the provisions of the Act. The defendants reasonably and fairly offered to afford all reasonable, proper, and equal facilities for the receiving and delivering of passengers to and from their several lines and those connecting therewith, and did not discriminate in any respect between such connecting lines. In requiring the cessation of commissions to their agents, when entering into business arrangements with connecting roads, the defendants only demanded what was reasonable and proper; and the complainants, by their refusal to refrain from paying commissions on tickets issued by defendants, voluntarily excluded themselves from the reasonable, proper, and equal facilities offered to them in common with all other connecting lines.

The complaints in these several proceedings must therefore be dismissed.

All concur except **Morrison, Commissioner**, who delivered the following dissenting opinion:

The same question is made in these several cases which, for convenience, may be considered as presented in the case of the Chicago & Alton Railroad Company against the Pennsylvania Company.

At Chicago these companies, complainant and defendant, occupy the same depot with the Chicago, Burlington & Quincy Railroad Company, a competitor of the Chicago & Alton Road for Chicago and Kansas City business.

Before the "Act to Regulate Commerce" was passed, the Pennsylvania Company was accustomed to sell through tickets over its line, and the lines of both the Chicago & Alton and Chicago, Burlington & Quincy Railroad Companies. Up to that time it had been the custom of railroad companies, including the per-

ties to this suit, and the said Chicago, Burlington & Quincy Company, to offer and to pay commissions for the sale of tickets over their lines. After the enactment of the said Law, the defendant, assuming the payment of such commissions to be in conflict therewith, refused to continue the sale of tickets over such of its connecting lines (including the complainant's), as might continue to pay or offer to pay commissions. These conditions, upon which the defendant would continue the sale of complainant's tickets, appear above in the circular letter of March 15, 1887, clauses 4 and 5, and to which defendant made its request for prompt reply, "to prevent inconvenience to the traveling public."

The Chicago & Alton Company refused compliance with these conditions and continued to offer commissions to the agents of other companies, including the agents of the defendant. The defendant continued in its refusal to sell through tickets over complainant's line. The Chicago, Burlington & Quincy Company, while continuing to offer commissions to the agents of other companies than the defendant, assented to the conditions of the defendant, and the defendant continued the sale of through tickets over the line of the Chicago, Burlington & Quincy Company.

These facts are undisputed and they present the simple question, whether a common carrier, subject to the provisions of said Act, may withhold from a railroad company and those who wish to use it, the same equal facilities for the "interchange of traffic," and "forwarding and delivery of passengers and property," afforded to a competing line and those who use it, until the prescribed line shall promise not to offer or pay commissions to the agents of the company exacting such promise.

The provision in the third section of the Interstate Law, fixing the duties of companies operating connecting lines, says:

"Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivery of passengers and property to and from their several lines and those connecting therewith."

By this provision, the operation of through lines with through ticketing and checking of baggage would seem to be, not a matter of agency or agreement dependent on the voluntary action of, or contract between railroad companies, but a public duty imposed by law. So the English Statute on the same subject is construed, and our statute is substantially the English Statute of 1854, as amended in 1878, cited in the report of the Commission above. With the English statutes the English interpretation of their meaning becomes important by a familiar rule of construction. And this view is supported by the 7th section of the Act to Regulate Commerce, the obvious meaning of which is that connecting lines are to be treated as continuous or through lines for the purposes of commerce "among the several States."

The answer of the defendant avers that "It is ready, and has been since the 6th of April, 1887, to instruct its agents to sell tickets over complainant's railway, and to afford the com-

plainant equal facilities with other railway companies in this respect, provided the complainant will cease, as other companies have ceased (including the Chicago, Burlington & Quincy Railroad Company), to offer and to pay commissions, bribes or gratuities to respondent's agents for the sale of tickets." The defendant here virtually admits its refusal to sell tickets over complainant's line to be a refusal of equal facilities, and has admitted it by conceding it to others. It should not, therefore, be allowed to deny the same equal facilities to complainant.

But, waiving the question whether, under the above clause of section 3 of said Act, it is the duty of carriers subject to the provisions of said Act, to furnish to the traveler who demands and is ready to pay for it a through ticket as a "reasonable facility," yet it can hardly be questioned that if the carriers of the country choose to do so as to one connecting line, it must do so as to others. A common carrier may not make discriminations whereby it will afford A a facility if he will take the Chicago, Burlington & Quincy Road, and deny it to B because he will take the Chicago & Alton Road. And this is precisely what the defendant insists it may lawfully do.

The defendant rests the refusal to afford the same equal facilities to the complainant and to those who travel over complainant's line which defendant affords to the Chicago, Burlington & Quincy Company and those who travel over its line, on the refusal of complainant to discontinue payment or the offer of payment of commissions to the agents of other lines, including defendant's, which defendant condemns as an objectionable and demoralizing practice, and which it characterizes as bribes disguised in the form of commissions. It already appears that the defendant, with other common carriers, has long participated in this practice, which is yet very general. In the said Act, pooling, rebates, drawbacks, and all unjust discriminations are declared to be illegal. The paying or offering to pay commissions on the sale of tickets is not. In the ten or more years of the interstate congressional contests these commissions were not mentioned in any bill presented or report made to the House or Senate. But, independent of the legality, or any question of domestic policy as to payment of commissions between the companies whose roads make connecting lines, the public, or so much of the public as may desire to travel over complainant's line, is entitled to that reasonable and equal facility afforded to those who seek the competing line. It is no answer to the public desirous of using railways as a continuous line that there are differences as to the rights of companies among themselves. And so the law is declared in the case of *Hammons v. G. W. R. & Can. Traf. Cases*, 181.

In any view of the case it seems to me that the defendant must sell through tickets to those who want them over the Chicago & Alton Road, as it does over the Chicago, Burlington & Quincy. And I dissent from the views of my associates with greater diffidence, for the reason that this question is presented both as a question of law and of railroad ethics or morals. I would not willingly delay any re-

form in railroad administration, nor hinder the defendant in any well meant effort to reform itself, which is the measure of its present effort, for it only exacts from companies with connecting lines that they shall discontinue the offer of commissions to its own, while they offer them to the agents of all other companies. The payment of commissions may be subject to such abuses as to demand discontinuance; but until declared illegal, they should not be made to excuse common carriers from the performance of obligations to the public, to enforce which obligations was the object of the law creating this Commission.

PROVIDENCE COAL CO.

PROVIDENCE & WORCESTER R. CO.*

1. Defendant railway company published a tariff containing the following: "For the purpose of facilitating quick dispatch of the coal cars of this company, a discount of 10 per cent will be made from the following rates, to any person, firm or company, who shall receive consignments of coal, in any one year, amounting to 30,000 tons or upwards, at any one station on the line of this road. Quick dispatch to be construed as immediate unloading of coal on its arrival at destination." Defendant claimed that this discount was offered to secure, and was conditioned upon, quick dispatch in unloading its coal cars, and that it was a reasonable regulation for the proper conduct of its business.

Held,

(a) That, by the wording of the offer, "quick dispatch" was not made a condition of the offer, and, therefore, it cannot be supported on that ground.

(b) That even if "quick dispatch" were made a condition of the discount, such offer would have neither justice nor reason to support it, as its limitation to consignees receiving a specified number of tons would be an unjust discrimination.

(c) That the offer of discount cannot be supported on the consideration of quantity, on the analogy of the distinction usually made in ordinary business transactions, between wholesale and retail dealers.

2. Defendant railway company has two lines of nearly equal length, one starting from Providence and the other from East Providence, which unite at Valley Falls, whence the main line runs into Massachusetts. The rate charged by defendant on coal shipped at Providence is the same as on coal shipped at East Providence as far as Valley Falls and the next station, but beyond that point the rate on coal from Providence is ten cents per gross ton more than on coal from East Providence.

Held,

*See ante, 216.

(a) That this is an unjust discrimination; that if it is fair and reasonable for the defendant to make the charge to Valley Falls from the two termini the same, there can be no justification for making different rates to stations beyond, based on the fact that the coal comes from one terminus rather than from the other.

(b) That the evidence fails to support the contention of defendant that the extra rate upon coal received at Providence is only a fair equivalent for the additional cost of handling it there.

(c) That under all the circumstances it is not admissible for defendant to impose upon its patrons at Providence, whose investments were made before the East Providence line was constructed, an additional charge because of the inconvenience attending the transaction of its business at that station and for which they are in no way responsible.

3. The defendant railway company had for some time paid the cost of hauling coal shipped by complainant, from complainant's wharf to defendant's freight station in Providence, without any contract obligation to that effect, but now refuses so to do. *Held*, that defendant can not be compelled to continue paying for such hauling; that what defendant did for a time as a favor or by way of encouragement, it might discontinue at pleasure, and that there is nothing in the nature of a binding usage about it.

(Decided July 23, 1887.)

REPORT AND OPINION OF THE COMMISSION.

Cooley, Chairman:

The complainant in this case is a copartnership composed of Henry C. Clark and another, doing business as dealers in coal at Providence, Rhode Island.

The petition by which this proceeding was commenced avers that complainant has its coal yards and wharves and place of business upon what is known as the Dorrance Street Wharf estate upon the westerly side of the Providence River, and lying between said River and Dyer Street, which estate is owned by Henry C. Clark, and in the purchase and improvement of which he has expended large sums of money for the purpose of said business.

That the main line of defendant's road extends from Providence to Worcester, Massachusetts, but it has also a branch road extending from its tide water pier and wharf estate in East Providence, Rhode Island, and connecting with its main line at Valley Falls, and also a branch road extending from its main line at or near its freight depot in Providence across the bridges and through and upon Dyer Street to and connecting with complainant's wharf estate, and with other wharf estates upon the westerly side of the said river, and another branch road extending from the main line at or near its said freight depot across the bridges and through and upon South Water Street in Providence, and connecting with the

wharf estates there, upon the easterly side of the river.

That said Henry C. Clark, when the Dyer Street line of said Railroad was first laid, acting in co-operation with defendant, expended large sums of money in laying rails upon his wharf estate and in making switch tracks connecting the same with said street line, and has also made further expenditures since in maintaining the same, to accommodate and facilitate the transportation of coal and other merchandise to and from said wharf estate over the roads of defendant.

That complainant has thus the facilities for selling coal for shipment over said roads, and for delivery at the various stations thereon, if transportation can be obtained therefor at the same rates of freight that coal is transported at for other parties; but defendant in contravention of complainant's rights and of the provisions of the Act to Regulate Commerce, has issued a tariff of freight rates for coal over its road which practically excludes complainant and many others from selling and delivering coal over and upon the line of its roads, in that, besides making unjust discrimination in favor of shipments consigned to its East Providence wharf by receiving such shipments free of wharfage there, it also gives undue and unreasonable preferences and advantages in making a discount or rebate of 10 per cent to any person, firm or corporation who shall receive consignments of coal in any one year amounting to 80,000 tons or upwards at any one station on the line of the road; it being, as complainant avers, well understood and known that there is but one person on the whole line of the road who, under the unjust discrimination made by the defendant in his favor, has ever received, or in future, under the unjust discrimination made by the published tariff, can receive 80,000 tons of coal in any one year at any one station upon the road, namely: a dealer at Worcester in whose favor, as complainant avers, large and unjust discriminations and undue advantages in rates of freight, drawbacks, allowances and other privileges have for many years past been made by defendant, to the great injury and loss of trade over the road, not only by complainant but other dealers, and at times almost to their entire exclusion therefrom.

That the tariff of published rates is also in contravention of said Act, in that although the distance from the East Providence wharf of defendant to Valley Falls, and to all stations on the line of its road above Valley Falls, is greater than the distance from Providence to the same stations, yet the rates of freight to all of said stations which are above Lonsdale are greater from Providence than from East Providence.

Moreover, all persons, including complainant, shipping coal over said street lines are obliged to pay further sums for street hauling, so-called; that is, for hauling for the distance between their wharves and the freight stations of defendant in Providence, which street hauling was formerly, and as complainant claims should now be, furnished by defendant.

The petition then avers the making of applications to the defendant to modify and cor-

rect its tariffs and the failure of complainant's efforts in that direction; and it prays that defendant may be required to cease and desist from its unlawful, unjust and unreasonable discriminations, preferences and advantages aforesaid, and to make due and proper reparation to complainant for damages sustained.

The answer admits the facts stated in the petition regarding the business of complainant, and proceeds to say that as to the branch railroad on Dyer Street and South Water Street in Providence, defendant owns and has for many years maintained railroad tracks on said streets for the benefit of complainant and other owners and dealers thereon, but that it owns no right of way on either of said streets; that said tracks were laid by permission of the City Council of Providence which controls the mode of maintaining and using the same, and claims the right to cause the tracks to be removed upon reasonable notice without compensation, and that defendant is unable to use steam as a motive power on said tracks, and cars can only be moved thereon by horse power, the tracks constituting what is known as a street or horse railroad. Defendant admits the establishment of a freight tariff as charged, but denies that any unjust discrimination is thereby established or provided for, and further denies that only one person can receive the benefit of the discount offered to a consignee receiving 80,000 tons of coal within a year at any one station, and says it has reason to believe that within the present year not less than three persons will be entitled to such benefit.

Defendant further denies that the tariff makes any unjust discrimination in rates as between the coal taken from Providence and that taken from East Providence to points above Lonsdale, and says that its road was built almost wholly for carrying coal, and defendant was compelled by the City of Providence to build a branch to East Providence by threats to compel the defendant to remove its street tracks and so prevent it from receiving coal at tide water, and that the lower price for carrying coal over said branch railroad is rightful and just, and in no way involves discrimination in favor of one consignee and against another; that owing to the want of proper facilities at its station in Providence, which it is unable to enlarge without the permission of the city—which refuses to grant the same—coal cannot be received at and carried from that station at the same price as from East Providence, and that the difference in the rates given in said tariff is not sufficient to cover the additional expense and risk incurred by defendant in taking coal in Providence instead of taking it at East Providence.

And defendant avers that all its charges are just and reasonable, and that the 80,000 ton provision is so, because it says that the benefit thereof is reciprocal, inasmuch as the consignee entitled to a rebate on the said provision must have supplied all the best facilities for the speedy handling of coal, and thereby enabled defendant to save expense of handling, hauling and delivering his coal, equal to the amount of the rebate, and further that complainant by selling coal to the consignees may

entitle itself to such rebate and therefore is not in any sense injured or discriminated against by said provision.

The case was heard on evidence taken in the main orally at the hearing, and we find the facts to be that Mr. Henry C. Clark, the senior member of the complaining firm, many years ago established a coal yard and wharf in the City of Providence and on Providence River, to be used in connection with the transportation of coal over the road of defendant; that the cost of real estate and improvements for that purpose has been a quarter of a million of dollars; that the complaining firm is now in the possession and occupancy of all of the said real estate and improvements for the purpose of its said business; that the said coal yards and wharf are a considerable distance from the freight station of defendant, and could only be reached by cars over rails laid by defendant along the streets with the co-operation of said Henry C. Clark, and by the consent of the said city authorities; that the city authorities have allowed cars to be drawn through the streets only by horse power, and that for many years defendant paid the expense of the handling of cars from complainant's yard and wharf to defendant's freight station in Providence but never contracted to do so; that the facilities of defendant for transacting its freight business in Providence have long been unsatisfactory and limited, and that defendant, to obtain better facilities, has now constructed a branch road connecting with its main line at Valley Falls six miles from the Providence Station and extending from Valley Falls seven miles to a terminus in East Providence on Providence River across from a little below the wharf of complainant; that defendant since the construction of said branch road had been desirous as far as possible to do its coal business over such branch road, and that it now refuses any longer to be at the expense of handling coal from complainant's wharf through the streets to its Providence Station. Defendant has been in the practice of offering a discount of 10 per cent on the freight paid by consignees receiving some specified quantity at any one station within a year, beginning with a quantity of 5,000 tons, which was increased in 1886 to 20,000 tons, at which quantity only one dealer, whose place of business was Worcester, earned and received the discount. The offer in the tariff taking effect April 4, 1887, was changed as to quantity and reads as follows:

"For the purpose of facilitating quick dispatch of the coal cars of this Company, a discount of 10 per cent will be made from the following rates, to any person, firm or corporation, who shall receive consignments of coal, in any one year, amounting to 30,000 tons or upwards, at any one station on the line of this road.

"Quick dispatch to be construed an immediate unloading of coal on its arrival at destination."

There was no reasonable probability when this tariff was put out that 30,000 tons would be received by any one consignee at more than three places on defendant's road; and it was doubtful if the quantity would be received by any other station than at Worcester, and it

would probably be received by only one dealer there.

In the tariff of rates so put out the charge per gross ton of coal from Providence and East Providence respectively to Valley Falls was made sixty cents; to Lonsdale the first station above it was sixty-five cents; but to the stations further on a difference was made in favor of the coal shipped from East Providence, which difference to all towns beyond the Rhode Island Line was made ten cents per gross ton. The rate for Worcester by the East Providence Line was fixed at \$1 a ton. Complainant endeavored without avail to secure a change in this tariff which should place Providence and East Providence on the same footing, and also to have the offer of discount withdrawn; that offer being thought to give the dealer at Worcester, who had the benefit of the offer in 1886, an advantage which would preclude complainant doing a profitable business. The margin for profit in wholesale dealings in coal is now very small, and may be stated at from ten to fifteen cents per ton.

From the facts as here found the first question of importance that arises concerns the offer by defendant of a 10 per cent discount to any person, firm or corporation who within any one year shall receive consignments of coal aggregating 30,000 tons at any one station. The complainant insists that this is unreasonable discrimination, while defendant, on the other hand, justifies the offer as a reasonable measure of policy in its business.

We have seen above that the published tariff undertakes to state the ground or consideration on which the offer is made. It is "for the purpose of making quick dispatch of the coal cars" of defendant; and the public is told that "quick dispatch" is to be construed an immediate unloading of coal on its arrival at destination. The defendant gave evidence that this immediate unloading of cars was important, but this is so obvious that the evidence was scarcely necessary. It was entirely admissible, therefore, that the defendant should make some regulation or adopt some decisive measures to insure the quick dispatch which seems to have been in mind in making the offer.

When, however, we look at the terms of the offer, we perceive immediately that although the purpose may be to facilitate quick dispatch, the offer is neither expressly nor by any necessary implication made conditional on the quick dispatch being facilitated. It seems to be expected that the parties who accept the offer will be prompt in unloading the coal; but they are put under no obligation to do so by the terms of the offer, and their legal duty in that regard will therefore be no greater than that of any other consignee receiving coal over the road. No promise of quick dispatch is exacted; no performance is made imperative. The authorities of the road, in making the offer, appear to have expected and assumed that any customer of the road, to the extent indicated, would, as a matter of course, and in his own interest, make quick dispatch, and that the attaching to the offer of any condition to that effect would be altogether unnecessary. They therefore attach none. Such being the case, it follows that any customer of the road who should become consignee to the extent

specified would thereby perform the only condition on which the offer is based, so that whether the expectation of quick dispatch was or was not realized, he would be entitled to claim the rebate. No failure in immediate unloading would be an answer to a claim for the discount, when the discount had been offered upon another and distinct condition which had been fully performed.

The answer of the defendant, no more than the published tariff, shows an understanding on the part of the railroad officials that the offer of discount is conditional on quick dispatch. By that pleading we are told that "The consignee entitled to a rebate, under said provision, must have supplied all the best facilities for speedy handling of coal," but it is not pretended or intimated that the offer requires this, or that anything more than the interest of the consignee, and the requirements of convenience in his business are relied upon to secure this result. Whether the result is secured or not the promise is left to stand on the single condition of quantity; and when the quantity is reached, the promised discount is, by the terms of the offer, due. And this very remarkable consequence might possibly follow if several persons should endeavor to earn the discount, namely: that while a consignee who had received the necessary quantity, but had been blamably negligent in unloading, might then demand and receive the rebate, another who had endeavored to reach the quantity, but had fallen somewhat short, but who all the year had been prompt and punctilious in making quick dispatch, could have no benefit whatever in complying with the only consideration on which the rebate is professedly supported, and for which it purports to be offered.

It is very manifest from this statement, and from the illustration of what might naturally happen, that the pretended consideration is purely imaginary, and that the promise of a discount, so far as regards the consideration on which it purports to be based, is deceptive and misleading. The published tariff is calculated and intended to lead the public to suppose that the offer is based upon a consideration of quick dispatch. But in fact the quick dispatch has no necessary connection with the offer; it is put forth as something confidently expected because of the offer, but it is not required or insisted upon. The defendant has therefore failed, both in its published tariff and in its answer, to show any ground on which its offer can be supported; the mere expectation of a quick dispatch while at the same time such dispatch is not required, being no ground whatever.

If we look into the evidence with a view to satisfy ourselves whether any such offer of discount could reasonably and lawfully have been made on an express condition of quick dispatch, we shall have no difficulty in perceiving that any such conditional offer would have had neither justice nor reason in support of it. The evidence in the case shows beyond question what indeed common observation would teach us without other proof: that a party receiving a much smaller quantity than 80,000 tons, can comply with a condition of quick dispatch as promptly, fully and completely as can any larger dealer. If therefore a discount

were to be offered in order to insure quick dispatch, a discrimination which should so limit the offer that a part of those who could and might desire to accept it would be excluded from its benefits, would for that very reason be unjust and indefensible. The discount in this case must consequently be held supportable neither on the published offer, nor on the statement in the answer, nor, so far as the consideration is concerned, on the evidence; and unless some other support can be found for it, it must be adjudged illegal.

On the argument an effort was made to uphold the discrimination on a consideration of quantity merely; the consignee who should receive more than 80,000 tons in a year at any one station, being likened to a purchaser of goods at wholesale, and the consignee who received a lesser amount being compared to a purchaser at retail. It was said that a distinction in price is universally made as between these two classes of customers, and that distinction would be as reasonable in the case of purchasers of railroad service as in that of purchasers of cloths or lumber.

One difficulty with this argument is that it is an afterthought. The defendant has publicly selected the ground on which it will base the discrimination proposed, and has published it in a paper required of it by law for the purposes of general information. It would be entirely admissible for defendant to change its ground in making a new offer; but the offer now under consideration must stand or fall, on the ground selected for it.

But if this defendant should attempt to make a new offer based upon quantity merely, the analogy between the case and that of wholesale and retail purchasers of merchandise would not be found to be very close. The wholesale dealer is allowed concessions in prices because his transactions in proportion to the amount purchased are fewer in number, they take less of the time and attention of the seller, and it costs him very much less to make them. It is perfectly reasonable that these facts should be taken into account in making bargains. But there is no certainty, and scarcely any probability that the dealer who receives 80,000 tons of coal at some one station within a year will make his business cost less to the railroad company in proportion to quantity than the dealer who receives 25,000 tons only, or 20,000, or half that quantity. Indeed, the selection of 80,000 tons as the test of what should be considered wholesale business would obviously be purely arbitrary, as also would be the naming of any other considerable quantity, say 5,000, or 15,000, or 50,000. The selection of any one of these quantities could be defended on a distinction between wholesale and retail dealings as logically, if not as plausibly, as that of any other; and the evidence in this case shows that defendant in years past has based its offer of discount on a receipt of consignments much below the 80,000 tons now required. The quantity named last year was 20,000 tons; so that on the argument now advanced what was wholesale last year is retail this.

A distinction in rates as between car loads and smaller quantities is readily understood and appreciated; but no such distinction is made in this offer, and a customer of the road

who should receive all his coal by car load or even by train load would be excluded if he fell short in quantity. And some possible results of the offer might be utterly inconsistent with considerations acted upon in wholesale trade. If a consignee, for example, earns the rebate by receiving 30,000 tons at a station to which the freight is a dollar a ton, he pays but \$27,000 for the transportation; but his rival at the same place who reaches to 29,000 tons only, must pay for a less service presumptively accomplished at less cost, and which is of less value to him, \$2,000 more. Such a result could not possibly be defended. The one consignee would be a wholesale dealer as much as the other, and common sense would pronounce unhesitatingly that if the larger charge for carrying the smaller quantity was reasonable, the discount to the other dealer must be without any just or reasonable support.

But when a question of rebates or discounts is under consideration, it might be misleading to consider them in the light of the principles which merchants act upon in the case of wholesale and retail transactions. There is a very manifest difficulty in applying those principles to the conveniences which common carriers furnish to the public, a difficulty which springs from the nature of the duty which such carriers owe to the public. That duty is one of entire partiality of service. The merchant is under no corresponding duty, and may make his rules to suit his own interest, and discriminate as he pleases. There is no occasion to enlarge upon this now.

A discrimination, such as the offer and its acceptance by one or more dealers would create, must have a necessary tendency to destroy the business of small dealers. Under the evidence in the case it appears almost certain that this destruction must result, the margin for profit on wholesale dealings in coal being very small. The discrimination is therefore necessarily unjust within the meaning of the Law. It cannot be supported by the circumstance that the offer is open to all; for although made to all, it is not possible that all should accept. Moreover, in testing such a discrimination we must consider the principle by which it must be supported; and the principle which would support a 30,000 ton limitation would support one of 50,000 or 100,000 equally well; the quantity named would be arbitrary in any case. It might easily be so high as practicably to be open to the largest dealer only. A rail road company, if allowed to do so, might in this way hand over the whole trade on its road in some necessary article of commerce to a single dealer; for it might at will make the discount equal to or greater than the ordinary profit in the trade; and competition by those who could not get the discount would obviously be then out of the question. So extreme a case would not, however, be needful to show the inadmissibility of such a discount as is here offered; the injustice would be equally manifest if several dealers instead of one were able to accept the offer. A railroad company has no right, by any discrimination not grounded in reason, to put any single dealer, whether a large dealer or a small dealer, to any such destructive disadvantage.

In what is said above we do not mean to be

understood as intimating that defendant is not saved something in cost and in labor by having the coal carried by it received in large quantities by single consignees. On the contrary, we readily agree that its service for large dealers is somewhat less in proportion to quantity of freight transported than is the like service performed for small dealers. We also agree that defendant may therefore seem to have an interest in restricting its dealings so far as possible to large dealers. But this is an interest that can only be consulted and acted upon in strict subordination to the rules of law; and one of the most important of those rules is that in any discrimination between dealers justice, if not a paramount consideration, shall at least be kept in view. The carrier cannot regard its own interests exclusively—if it could, it might at pleasure, by methods easily available, drive all small dealers off its line, and center the whole trade in a few hands. The state of things that would result might be altogether for its interest and convenience, since it would then have fewer customers to deal with and fewer transactions for the same aggregate trade; but the wrong would be flagrant. The case suggested is more extreme than the one before us, but the wrong is sufficiently palpable here. And without further comment on this branch of the case it will be sufficient to repeat that when the defendant makes an offer of discount or rebate based on the 30,000 ton limit, the limitation is unreasonable and unlawful, because necessarily resulting in unjust discrimination. There is nothing in the showing in this case to justify the fixing of a limitation as the ground of rebate at any specified quantity; and therefore if the discount is paid to one dealer, the payment will be evidence of the right of all other dealers to a like and proportionate discount.

A further question of importance concerns the difference in defendant's rates on coal shipped to stations on its main line from Providence and East Providence respectively. The facts important to an understanding of this question are that defendant's road was first constructed from Providence through Valley Falls to Worcester, and that complainant, at very great expense to its members, provided itself with land and all necessary requirements for carrying on extensive dealings in coal near the terminus of defendant's road in Providence, and by co-operation with it secured tracks into its yards and to its dock. But defendant's accommodations at Providence were limited and could not be enlarged unless at great expense; the city authorities it is said were disposed to interpose obstacles to such use of the city streets for railroad service as was essential, and defendant found it necessary to construct a new line from Valley Falls to East Providence, where ample accommodations were secured, and where its business could be more conveniently and cheaply conducted. The distance from Providence to Valley Falls is six miles and from East Providence seven. Coal trains are made up at Valley Falls of loaded cars brought from Providence and East Providence without distinction. By the published tariff the rate upon coal from Providence and from East Providence respectively to Valley

Falls is the same; sixty cents per gross ton; and it is also made the same to Lonsdale which is the first station above. But to all stations above Lonsdale a higher charge is made from Providence than from East Providence, the difference after the state line is crossed being in every case ten cents per gross ton. This difference is very important to complainant, and necessarily very prejudicial.

It is very evident that if it is fair and reasonable for defendant to make the charge on coal to Valley Falls from the two termini the same, there can be no justification for making different rates to the station beyond, based on the fact that the coal comes from one terminus rather than from the other. The fact that a part of the coal taken from Valley Falls to Worcester was first received by defendant at Providence and another part at East Providence does not in any degree affect the cost or the value of its service in transporting it from Valley Falls on; and a discrimination in rates from Valley Falls based upon the fact that the coal had come from the one terminus instead of the other would have no reason and no justice to support it. The defendant might as well discriminate on the ground of the coal having come from different mines or different dealers. The discrimination made by the defendant's published tariff is therefore presumptively at least without justification.

It is claimed by defendant, however, that the additional cost of doing its business at Providence over the cost at East Providence is fully sufficient to support the difference made in rates, and that the fact of defendant making no difference at Valley Falls and Lonsdale cannot preclude its making them at other points. Passing over this last point for the present as not being one necessarily requiring a decision at this time, we are of opinion that defendant does not justify the making of the additional charge at any station.

The Providence line was first built, and complainant, at very large expense and in co-operation with the defendant, has put itself in position to transact its business there. Defendant because of inconvenience which it will escape has constructed a new line and established a new station where the inconveniences will be less. Its policy now is to force the whole business as much as possible over the new line. We have no doubt its own convenience will thereby be consulted, and the cost of its business somewhat reduced; but there is no evidence before us which would justify us in finding that the additional charge upon the coal received at Providence is only a fair equivalent for the additional cost. On the contrary, we think the increased rate is imposed more from policy than out of regard to additional cost.

But we think also that under all the circumstances it is not admissible for defendant to impose upon its patrons at Providence, whose investments for business with it were made before the East Providence line was constructed, an additional charge because of the inconveniences attending the transaction of its business at that station, and for which they are in no way responsible. These inconveniences are incident to a situation which it is unfortunate the defendant is unable to relieve; but they

cannot justify differences in rates which will force or tend to force the Providence dealers out of business.

As regards the Providence business we think the obligation of defendant is not different now from what it would have been had it constructed for its own convenience a branch road into some other part of the same city. If, for example, it had established a new freight station in Providence, in order that it might have more ample yards, and thus secure greater facilities for its business, it would not have been admissible that upon its shipments to points which were practicably the same distance from each station and accessible from each, a difference in rates should be charged when the service was worth no more to its customers and when the reasons for having the two stations concerned its own convenience exclusively. But the establishment of a second station in this case, although in another municipality, and requiring several miles of new line to reach it, was also in the nature of a local convenience in its own business, and should be so considered in the making of rates to points reached from both stations.

Complainant insists that defendant should pay the cost of hauling the coal from the wharf to defendant's freight station in Providence. But we do not think this can be required. It seems that defendant did this formerly, but without any contract obligation to that effect; and probably only by way of encouraging complainant in building up a considerable trade. But what it did for a time as a favor or by way of encouragement, it might discontinue at pleasure. There could be nothing in the nature of a binding usage about it.

Our general conclusion is that complainant is entitled to the relief indicated on the first two grounds of complaint above considered, but not on the third. Order will be entered accordingly.

In this opinion all concur.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly assigned for hearing on the day of _____, 1887, and a hearing having been had upon the pleadings, proofs and arguments of counsel, and the report and opinion of the Commission having been made and filed—wherein the Commission has found as facts that the defendant corporation offers a discount or rebate of 10 per cent from its published rates for the transportation of coal, to all persons who shall receive consignments of coal in any one year amounting to 30,000 tons or upward, at any one station on the line of defendant's road; and also that the charge for the transportation of coal from Providence to stations on defendant's line above Lonsdale is greater than for the transportation of coal from East Providence to such stations respectively; and the Commission having adjudged that the giving or offering to give such discount or rebate is, under the circumstances of this case, in contravention of the provisions of sections 2 and 8 of the Act to Regulate Commerce, unless a like discount or rebate is made to all persons; and that the making of such greater charge for the transportation of coal from Providence is also, under the circumstances of this case, in contravention of the

provisions of said sections of said Act, in so far as it applies to interstate commerce.

Now, It is ordered and adjudged that so much of the prayer of the petition as prays that the complainant be required to cease and desist from the acts above recited be, and the same hereby is, granted; and that the defendant corporation be, and it hereby is, required to cease and desist from said unlawful acts of discrimination, and, within ten days from the date hereof, to modify and correct its published schedules of rates and charges accordingly; and it is further ordered that a notice embodying this order be forthwith sent to the defendant corporation, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of the fifteenth section of the Act to Regulate Commerce.

Louis LARRISON

v.

CHICAGO & GRAND TRUNK R. CO.

MICHIGAN CENTRAL R. R. CO.

v.

CHICAGO & GRAND TRUNK R. CO.

1. The proviso in section 22 of the Interstate Commerce Act "That nothing in this Act shall apply to * * * the issuance of **milage** * * * **passenger tickets**," applies only to the act of issuing or giving out such tickets; the terms, conditions and circumstances upon which the sale of such tickets is made are subject to and must be in accordance with the Act in its general provision.
2. A sale of **milage tickets** to **commercial travelers** at a certain rate, and refusal to sell to other passengers except at a higher rate, is an **unjust discrimination**, within the meaning of the Act.
3. A **release of liability** by commercial travelers to the railroad company does **not** constitute a **good and sufficient consideration** for such **discrimination**; nor does the fact that they may influence business in favor of the road, etc.
4. **Common carriers** may continue the issuance of **milage passenger tickets**, the charges for which must be reasonable and just and free from unjust discrimination or unreasonable preference.
5. Persons belonging to the class known as **commercial travelers** are **not privileged** to ride over railroads at **lower rates** than other persons, and to make a difference in this respect is **unjust discrimination**; this is true whether tickets issued are **milage tickets** or in some other form.
6. **Neglect** on the part of a railroad company to **publish rates** for **milage tickets**, is a violation of the Act.

(Decided July 25, 1887.)

ENTER 8.

REPORT AND OPINION OF THE COMMISSION.

Morrison, Commissioner.

In one of these cases the complainant, Louis Larrison, alleges unjust discrimination and neglect to publish fares, rates and charges for milage tickets; in the other, unjust discrimination is alleged. The two cases were, with consent of the parties, heard together, and, after investigation, the facts are found to be as follows:

The defendant, being the same in both cases, is and was, on the 21st of May, 1887, a common carrier of passengers on its railroad from Port Huron, in the State of Michigan, into and through the State of Indiana to the City of Chicago, in the State of Illinois, and was then offering to sell and selling, for \$20, to the class of persons known as commercial travelers, milage tickets, entitling the holder to transportation to the extent of 1,000 miles over its road between said States.

The complainant, Larrison, having occasion to travel on defendant's road between said States, applied on the 21st of May, 1887, at the proper office of the defendant in the City of Detroit, to purchase one of said "thousand mile tickets," offering in payment therefor the sum of \$20. The defendant refused to sell this complainant such ticket for less than \$25, alleging as a reason therefor, as was the fact, that complainant, Larrison, did not belong to the class of persons known as commercial travelers, to which alone defendant sold said tickets for the price of \$20.

The schedule of defendant, kept in its office in said City of Detroit, purporting to show the rates, fares and charges it had established and which were in force May 21, 1887, did not show the rates, fares and charges which it had established and were in force for carrying passengers who purchased milage tickets which it then kept and was offering for sale; but since this complaint was made defendant has caused its schedules of rates, fares and charges to be so amended as to show the rates at which it sells milage tickets.

The other complainant, the Michigan Central Railroad Company, owns and operates a railroad extending from the City of Detroit, in the State of Michigan, into and through the State of Indiana, to Chicago, in the State of Illinois, and is a common carrier of passengers between said States; and, while the defendant was offering to sell and selling to commercial travelers thousand mile tickets for \$20 and refusing to sell for less than \$25 like tickets to persons not commercial travelers, this complainant was selling such thousand mile tickets for \$25 to the public generally, without discrimination in favor of any person or class of persons. And as such common carrier of passengers between said States, this complainant and the defendant are competitors.

The answer of defendant admits the facts as found above, but avers that nothing alleged against the defendant company is in conflict with the Act to Regulate Commerce, because at the date of the passage of said Act the railway companies of the country generally, including the defendant and the complainant companies, were and for many years prior thereto had been doing the things now complained of;

and further because, as defendant alleges, "The provisions of the Interstate Commerce Law do not apply to such mileage tickets, nor, in any respect, affect the sale thereof."

The sale of mileage tickets, at lower rates to one person than to another, by railroad companies generally, might well have been lawful before, and be unlawful after the passage of said Law. Nor is the fact that discriminations in the sale of tickets were so made, conclusive testimony that they had the sanction of law. Most of the provisions of the Interstate Act but re-enact the common law and supply some new, while saving all the old, remedies. For unlawful discriminations or other wrongs done by common carriers now subject to the recent Act, the courts, before the Act, afforded the only remedy. In view of remedies so to be obtained and necessarily with much cost, great inconvenience and some vexatious delays, it could be, and no doubt is true, that discriminations against travelers, to the extent now complained of, might then have been illegal and yet go unchallenged.

It is not important whether, in any view of this case, it might be necessary to pass upon the state of the law before the passage of the Act, which is not material, as the case is presented.

It was made apparent in the argument that the defendant, in averring "the provisions of the Interstate Commerce Law do not apply to such mileage tickets, nor in any respect, affect the sale thereof," intended to and did question the jurisdiction of this Commission, resting the averment on the twenty-second section of the Act.

That section is in the nature of a proviso, saving out or excepting some things not intended to be embraced in the provisions of the Act, and qualifying or restraining its generality as to others.

The language of so much of the section as the defendant relies upon to include mileage tickets among the things taken out of the Act, is "that nothing in this Act shall apply to the issuance of mileage, excursion, or commutation passenger tickets," and includes excursion and commutation with mileage tickets.

The most usual form of mileage tickets is the one thousand mile ticket; but the custom has been to issue them in other and various forms, and they may be issued for any given number of miles. There is no uniform usage fixing the form of excursion or commutation tickets, or prescribing the extent to which they may be issued. The extent to which traveling may be done on these three forms of tickets is without limit. They can be used in and extended to the entire passenger traffic, or nearly one third of the railroad business of the country. The first three sections of the Act require all passengers to be carried for reasonable rates of fare, without undue preference or unjust discrimination. The construction contended for by the defendant would take out of these sections all that relates to passengers, because all may ride on tickets to which, defendant insists, the Act does not apply. In effect this would be saying that, so far as the Act to Regulate Commerce provides, charges for carrying passengers need not be reasonable and just, nor without unreasonable preference, nor

free from unjust discrimination. Certainly nothing so contradictory as such interpretation leads to was intended by Congress. The body or enacting part of the statute is generally considered as more clearly expressing what is intended than the saving clause. The language of so much of the twenty-second section as relates to mileage tickets is perfectly satisfied by confining its operation to the issuance, or the act of issuing, or giving out such tickets. It is to this issuing or giving out that the Act to Regulate Commerce does not apply or prevent, while the terms, conditions and circumstances, upon which the sale is made, are subject to, and must be in accordance with the Act in its general provision. Thus understood, the several sections of the Law are consistent with each other and in harmony with its general purposes, while the other construction renders useless many of its provisions affecting the carrying of all passengers.

Copies of the two forms of mileage tickets sold are given as part of defendant's answer, in which answer it is claimed that the form of ticket which defendant now sells to such commercial travelers constitutes a special contract between defendant and the holders of such tickets, by which defendant, in the transportation of such commercial travelers, is relieved from some part of the liability under and subject to which it transports all other passengers on its line of road; which limitation of liability, defendant submits and claims, constitutes a good and sufficient reason for the discrimination it makes in favor of commercial travelers.

It might be questioned to what extent such an agreement is binding on the parties and relieves the company from common-law liabilities. Any traveler with any baggage might make such an agreement. Putting aside any question of the validity of such a contract, no reason is assigned nor is any believed to exist, why only commercial travelers should be permitted to enter into such an agreement. The copies of mileage tickets show that none others were permitted to enter into it. The alleged release of liability so made does not constitute a good and sufficient consideration for the discrimination made in favor of commercial travelers, but is another evidence of discrimination against the general public.

It is further claimed that commercial travelers, as salesmen, represent wholesale merchants and manufacturers, for whom they sell goods, thereby creating a large freight traffic for the roads over which they ride. And further they constitute a distinct class of the traveling public, generally riding short distances at a time and traveling very much more than other people.

The principle of cheaper rates at wholesale, practiced by merchants who, in their sales, but consult their own interest, is subject to much modification when applied to railroads, which owe a duty to the public which requires them to treat their customers alike. Besides, it is not quite apparent how one person can travel "very much more" than another on a thousand mile ticket.

Riding short distances between, and stopping off at stations is an accommodation which makes the ticket more, not less, valuable.

To increase the quantity of railroad business in the manner alleged, traveling salesmen must stimulate consumption and add to the demand for the necessities and comforts of life. Commercial travelers are usually men of such energy and superior intelligence that they introduce into some communities articles useful and desirable earlier than such articles might otherwise reach them. Yet the general intelligence of the people is equal to providing themselves with such luxuries and comforts as their means will justify. And the representatives of merchants are not likely to sell, nor railroads to carry, more goods than customers can pay for.

Common carriers may continue the issuance of mileage passenger tickets, the charges for which must be reasonable and just and free from unjust discrimination or unreasonable preference.

Persons belonging to the class known as commercial travelers are not privileged to ride over railroads at lower rates than are paid by other persons. Whatever reasonable rates commercial travelers are made to pay, other travelers may be made to pay. To charge one more than the other is unjust discrimination. And this is true whether the tickets issued are mileage tickets or in some other form.

The refusal of the defendant, The Chicago & Grand Trunk Railway Company, to sell the complainant, Larrison, a thousand mile ticket for \$20, the price at which said Company was selling such tickets to commercial travelers, and the neglect to publish rates at which defendant was offering to sell mileage tickets, were alike in conflict with the Act to Regulate Commerce.

In this opinion all concur.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly assigned for hearing on the 15th day of June, 1887, and hearing having been had upon the pleadings, proofs and arguments of counsel, and the report and opinion of the Commission having been made and filed, wherein the Commission has found as facts that the defendant corporation is a common carrier of passengers upon its railroad from Port Huron in the State of Michigan, through the State of Indiana, to the City of Chicago in the State of Illinois; that the complainant corporation owns and operates a railroad extending from the City of Detroit in the State of Michigan, into and through the State of Indiana, to Chicago in the State of Illinois, and as such common carrier of passengers between said States is a competitor with complainant; that, while the defendant was selling and offering to sell, to the class of persons known as commercial travelers, mileage tickets entitling the holder to transportation to the extent of 1,000 miles over its road between said States for \$20, and refusing to sell for less than \$25 like tickets to persons not commercial travelers, this complainant was selling such thousand mile tickets for \$25 to the public generally, without discrimination in favor of any person or class of persons.

And the Commission having adjudged that to refuse to sell such mileage tickets to the

public generally at as low a rate as to persons belonging to the class of commercial travelers, and that to charge one person more than another were acts of unjust discrimination within the meaning of the provisions of sections 2 and 3 of the Act to Regulate Commerce, and were in contravention of the provisions of said sections of said Act.

Now, It is ordered that so much of the prayer of the petition as prays that the defendant be required to cease and desist from the acts above recited be, and the same is hereby, granted; and that the defendant be, and it hereby is, required to cease and desist from the said unlawful acts of discrimination.

It is further ordered that a notice embodying this order be forthwith sent to the defendant corporation, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of the fifteenth section of the Act to Regulate Commerce.

TRADERS & TRAVELERS UNION

v.

PHILADELPHIA & READING R. R. CO
and Lehigh Valley R. R. Co.*

On a petition by the Traders & Travelers Union, alleging that the defendant railroads had, prior to the time when the Interstate Commerce Act went into effect, entered into an arrangement with petitioner to allow 150 pounds of **extra free baggage** to passengers presenting the "**baggage indemnity certificate**" issued by petitioner, and that the defendants now refuse to make such allowance of extra free baggage,—*Held*,

(a) That there is **nothing** in the facts disclosed by the evidence which involves any question of unjust discrimination or extortion, or any other matter over which the Commission has jurisdiction.

(b) That the **power to enforce contracts** has not been **confided to the Commission**, nor has it any general power or authority to manage the business of carriers, but only a limited power, expressly defined by the Act, to interfere to prevent wrong and oppression in specified cases.

(c) That the petition must be **dismissed**.

(Decided July 26, 1887.)

REPORT AND OPINION OF THE COMMISSION.

Bragg, Commissioner:

The petition in this proceeding was filed on the 21st day of May, 1887. It avers that the petitioner was incorporated under the general laws of the State of New York in the year 1884. That the object and purpose of the corporation is to provide for the loss or injury to baggage by creating a contingent fund for that purpose, known as the Traders & Travelers Indemnity Fund, and by means of registration to prevent the loss of baggage, or in case of

*See ante, 18, 62, 315.

its loss to provide means for tracing it more quickly and with less difficulty than exists under the system commonly in use among the railroads. It avers that the petitioner contracted with the International Baggage Register Company for the purpose of providing for a certain protection against loss of baggage covered by said indemnity fund, and that this registry system is of great value to the railroads of the United States.

It avers that the railroads have been asked to grant an additional allowance of 150 pounds of free baggage for passengers covering their baggage with a registry and indemnity certificate issued by the Traders & Travelers Union, which releases the railroads from all liability for loss or injury to such baggage; that the benefits to railroads from such registration are the release from all responsibility for loss or injury to baggage covered by the indemnity insurance, as secured for the railroads through a contract made by the railroads with the petitioner and the increase of their business; that such an arrangement was made in January, 1886, between the Lehigh Valley Railroad Company and the Philadelphia & Reading Railroad Company; that in consequence of these arrangements, many travelers have covered their baggage with indemnity certificates of the petitioner, in order to secure the additional allowance of free baggage; that the issue of these indemnity certificates is not, and has not been, confined to any one or more classes of travelers, but is, and has been, open to all who desire to avail themselves of their advantages; that on March 26, 1887, the Philadelphia & Reading Railroad Company notified petitioner that it would refuse to honor any indemnity certificates issued after April 1, 1887; but that all certificates issued prior to receipt of the notice would be honored until they expired; that the issuance of such notice was caused by the Philadelphia & Reading Railroad Company's interpretation of the Act entitled The Act to Regulate Commerce; that the Philadelphia & Reading Railroad Company intended to honor the certificates issued prior to April 1, 1887, and instructed its baggage men so to do; that the Lehigh Valley Railroad Company has discontinued its arrangement with the petitioner and has instructed its baggage men not to honor indemnity certificates issued prior to April 1, 1887; that the Lehigh Valley Railroad Company discontinued this arrangement in consequence of the belief that its continuance is prohibited by the Act entitled the Act to Regulate Commerce; that on April 11, 1887, the petitioner requested the Interstate Commerce Commission to interpret the Law on this subject; that on or about April 30, 1887, the Lehigh Valley Railroad Company filed a petition against the Philadelphia & Reading Railroad Company for the purpose of securing an interpretation of the law on this point; that on May 11, 1887, petitioner was notified by the Philadelphia & Reading Railroad Company that it would refuse to recognize the indemnity certificates issued prior to April 1, 1887; that this action taken by the Philadelphia & Reading Railroad Company was to induce the Lehigh Valley Railroad Company to withdraw its complaint against the Philadelphia & Reading Railroad Company so

as to prevent an interpretation of the Law by the Interstate Commerce Commission.

That the Philadelphia & Reading Railroad Company requested the Lehigh Valley Railroad Company to withdraw this complaint; that such withdrawal would still leave the question in suspense; and that such withdrawal will prove injurious to the interests of the petitioner and others; that there are now in existence a number of baggage indemnity certificates that will expire at various dates between now and March 24, 1888, and that the result of the refusal to recognize such certificates on the part of the Philadelphia & Reading Railroad Company and of the Lehigh Valley Railroad Company will cause serious injury to holders of such certificates and to the interests of your petitioner.

On June 10, 1887, each of the defendants filed its answer to the complaint.

In its answer the Philadelphia & Reading Railroad Company admits the incorporation of the petitioner and the objects of that incorporation as stated in the petition; and that the petitioner has created a contingent fund known as the Traders & Travelers Baggage Indemnity Fund; and that on or about November, 1885, petitioner entered into a contract with the National Baggage Registry & Manufacturing Company, mentioned in its petition, to act as its agent; and also that the railroads of the United States had been requested by the petitioner to cooperate with it and to grant an additional free allowance of 150 pounds of baggage to each passenger who participated in the indemnity fund, provided for loss or injury to baggage, and who should file with the petitioner power of attorney granting a release to all railroads and transportation lines, contracting with petitioner for free baggage to the extent of 150 pounds over the ordinary allowance on the presentation of the baggage indemnity certificate of the Traders & Travelers Union.

It further admits that the consideration for such action on the part of the railroads was the continuance of the registration and release of the responsibility for the loss or injury to such baggage through the contract thus made. It does not admit that the registry system, mentioned in the petitioner's complaint, is one that is of great value to the railroads of the United States, and that it enables them to identify the passenger with his baggage, and in various ways prevents irregularities, and increases the efficiency and revenue of their baggage department. It does not admit that in consequence of the alleged arrangement between petitioner and defendants many travelers in various parts of the country have availed themselves of its advantages and have covered their baggage with the indemnity certificates of the petitioner, in order to secure the additional free allowance of 150 pounds of baggage. It does not admit that the advantages claimed by the petitioner have not been confined or restricted to any one class of travelers, or to the members of any one or more organizations, or that they have been open to all who desired to avail themselves of the same. It does not admit that on April 11, 1887, petitioner addressed a communication to the Interstate Commerce Commission requesting an

interpretation of the Law, and that the Commission replied that no decision could be given without an actual case in controversy.

It admits that the arrangement claimed in the petition was made by the petitioner with the Lehigh Valley Railroad Company, by its leased lines in January, 1886, and it admits that the Lehigh Valley Railroad Company issued a circular dated April 1, 1887, in which its agents were instructed to allow but 150 pounds of free baggage under any conditions. It does not admit that the Lehigh Valley Railroad Company claims that its discontinuance of that arrangement is caused entirely by the belief that its continuance is prohibited by the Act entitled an Act to Regulate Commerce. It admits that the arrangement claimed to have been made in the petition by and between the petitioner and the Philadelphia & Reading Railroad Company and its leased lines, as stated in Circular 40, dated January 18, 1886, was made by or with the Philadelphia & Reading Railroad Company, but avers that it was made by the receivers of that Company, and further avers that it was never consummated by any contract or agreement in writing between the parties thereto, but also avers that its continuance for any definite period of time was never agreed upon.

It denies that the Philadelphia & Reading Railroad Company, on the 26th day of March, 1887, notified petitioner that it would refuse to honor any indemnity certificate issued after April 1, 1887, but that all certificates issued prior to the receipt of such notice should be honored until they expired, but states that this notice was issued by the Receiver of the Philadelphia & Reading Railroad Company, and that it believes that this was due to the belief of such receivers that the honoring of indemnity certificates was contrary to the provisions of the Act of Congress referred to, known as the Interstate Commerce Law. It admits the filing of a petition to the Interstate Commerce Commission by the Lehigh Valley Railroad Company, as charged in the complaint. It admits that the Philadelphia & Reading Railroad Company requested the Lehigh Valley Railroad Company to withdraw its petition from before the Interstate Commerce Commission, but says that it was not notified as to what the object of the petition was, and denies that in making such request of the Lehigh Valley Railroad Company to withdraw said petition from before the Interstate Commerce Commission, it intended to prevent an interpretation of the Law upon the point raised by that complaint.

It admits that the withdrawal of the petition of the Lehigh Valley Railroad Company will still leave in suspense the question to be determined. It does not admit that such withdrawal of the petition of the Lehigh Valley Railroad Company from before the Interstate Commerce Commission would prove injurious to the interests of the petitioner, or injurious to the interests of the general public concerned in the question, and it does not admit that there are now in existence a number of baggage indemnity certificates that will not expire until various dates between now and March 24, 1888, and that the result of a refusal to recognize these certificates on the part of the Philadel-

phia & Reading Railroad Company and the Lehigh Valley Railroad Company, will be the cause of serious injury to the interests of those holding such certificates as well as to the interests of the petitioner, and may render petitioner liable to action and litigation by the holders of such certificates claiming breach of performance of the conditions thereof.

The answer of the Lehigh Valley Railroad Company admits the incorporation of the petitioner as alleged in the petition, the objects of its incorporation, the creation of the contingent fund known as the Traders & Travelers Baggage Indemnity Fund, and the contract between the petitioner and the National Registry & Manufacturing Company to act as its agents, made about November, 1885, as alleged in the petition.

It further admits, as alleged in the petition, that the railroads of the United States have been requested by the petitioner to co-operate with it, and to induce the registration and indemnification of baggage and granting an additional free allowance of 150 pounds of baggage to each passenger as alleged in the petition.

It further admits that the consideration for such action on the part of the railroads is the registration and release of responsibility for the loss or injury to such baggage through the contract made with the petitioner. It neither admits nor denies the averments of the petition in relation to the great value of the registry system to the railroads of the United States; or that many travelers in various parts of the country have availed themselves of its advantages and covered their baggage with the indemnity certificates of the petitioner, in order to secure the additional free allowance of 150 pounds of baggage; or that such advantages as are afforded by it have not been confined or restricted to any one or more classes of travelers, or to members of any one or more organizations, but are and have been open to all who desired to avail themselves of the same. It admits that on January 18, 1886, it issued Circular No. 14 of that date, which among other things recognized the certificates of the petitioner for free baggage to the extent of 300 pounds, but says that the arrangement with petitioner in consequence of which the circular was issued, was a verbal one between certain officers or agents of that Company, and was not for any specific duration or term, and denies that the alleged printed contract marked "D," attached to the petition, was executed by the defendant.

It admits that on March 26, 1887, the Philadelphia & Reading Railroad Company notified petitioner that it would refuse to honor any indemnity certificates issued after April 1, 1887, but would honor all certificates issued prior to the receipt of such notice until they expired, but does not admit that this action was taken on the part of the Philadelphia & Reading Railroad Company on account alone of its interpretation of the statute entitled "An Act to Regulate Commerce."

It admits that the Lehigh Valley Railroad Company issued the circular mentioned in the petition, instructing its agents to allow any passenger but 150 pounds of free baggage under any conditions, and says that it discontin-

ued that arrangement with petitioner because it was advised that such arrangement should be discontinued in view of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce."

It admits the filing of the petition of April 11, 1887, to the Interstate Commerce Commission by the petitioner as averred in the complaint, the filing of the petition of the Lehigh Valley Railroad Company to the Interstate Commerce Commission; and avers that after the filing of the petition the Philadelphia & Reading Railroad Company withdrew the privileges of holders of the indemnity certificates of the petitioner; that no answer was filed to said petition, and that it was withdrawn by E. B. Byington, the General Passenger Agent, by whom it was filed.

It does not admit that such withdrawal of the petition would leave the question to be determined still in suspense, or that it will prove injurious to the interests of the petitioner in this complaint, and injurious to the interests of the general public concerned, or that there are in existence a number of baggage indemnity certificates of petitioner that will expire at various dates between now and March 24, 1888, or that the result of the refusal of the defendant to recognize the certificates will cause serious injury to those holding such certificates, as well as to the interests of the petitioner, and may render petitioner liable to action and litigation by holders of such certificates, claiming breach of performance of the conditions thereof. It asserts that the case stated by the petitioner does not come within the provisions of the Act of Congress entitled "An Act to Regulate Commerce," nor within the jurisdiction of the Commission thereby established; and prays that as to it said petition may be dismissed.

From admissions in the pleadings and from proofs before us, we find the facts material to the determination of this complaint to be, in substance, as follows:

In the year 1884 the Traders & Travelers Union (co-operative) of New York was incorporated under the Laws of the State of New York. One object of its incorporation, as specified in its charter, is to provide for injury to or loss of baggage; and for that purpose it has created a contingent fund, known as the Traders & Travelers Baggage Indemnity Fund. On or about November, 1885, it entered into a contract with the National Registry & Manufacturing Company to act as its agents, and for the purpose of providing protection against loss of baggage covered by the said baggage indemnity fund. This registry system is of value to railroads in enabling them to identify the passenger with his baggage, and in various ways to prevent irregularities, and to trace the baggage in case of loss; and it also holds the railroad company harmless for the loss of the baggage by means of the indemnity fund mentioned. Many of the railroads of the United States, prior to the passage of the Interstate Commerce Law, entered into this arrangement with the Traders & Travelers Union. Among these were the Philadelphia & Reading Railroad Company, and Lehigh Valley Railroad Company, each of which entered into such an

arrangement in January, 1886. The terms of the arrangement provide that it is open to all who desire to avail themselves of it, and is not confined merely to classes of travelers, or to commercial men, or to members of any one or more organizations. By this arrangement, and in consideration of it, the railroad companies which very generally allowed, prior to that time, baggage free of charge to the amount of 150 pounds to each passenger, increased this allowance to 800 pounds of free baggage to each passenger availing himself of this arrangement.

After the enactment of the Interstate Commerce Law the Philadelphia & Reading Railroad Company, and the Lehigh Valley Railroad Company, each discontinued this arrangement, on the ground that it was in conflict with the provisions of the Law. Since the first of April, 1887, none of the railroad companies of the country have any arrangement with the Traders & Travelers Union for the allowance of 800 pounds of free baggage, as provided in these certificates, but have abandoned that arrangement, and now allow only 150 pounds of baggage free to each passenger. The certificates mentioned provide for the transportation of baggage over the railroads, upon the terms and conditions above indicated. A charge was made of \$3.20 per annum to each customer of the Traders & Travelers Union. Two dollars of that amount went to the indemnity fund, and the item of 20 cents was for the rental of the plates used in the registration of the baggage. The Traders & Travelers Union, under that system, gave insurance on property to the estimated value of \$200 on each trunk; and in case of loss the passenger would have to prove his loss, the same as with any other insurance company, and could recover the amount actually lost not exceeding \$200 on each trunk. This insurance covers loss by fire, collision, theft and, in fact, loss of every character, and releases the railroad company from all liability absolutely. The trunk thus registered has a plate riveted to it, and there is another trunk plate with a like number which certifies that this trunk belongs to the passenger. Checks or cards are given for these trunks, and a report of the trunks thus registered and checked is made by the baggage master.

In all these facts, which we have carefully considered, there is nothing that involves any question of unjust discrimination or extortion, or any other matter over which we have any jurisdiction. If petitioner has contracts or business arrangements with defendants or others, by which large numbers of its certificates are outstanding in the hands of holders, and if in any of the matters related in this evidence it has been injured and wronged by the defendants, there are courts provided by law having jurisdiction to hear and determine controversies of that character. The power to enforce contracts is not one which has been confided to us. Nor have we any general power or authority to manage the business of carriers, but only a limited power, expressly defined by the Statute, to interfere to prevent wrong and oppression in specified cases. Every ground of our jurisdiction, as defined by the Statute, relates directly or indi-

rectly to the transportation of persons and freight by carriers at fair and reasonable rates, and with absolute impartiality as to facilities and accommodations.

In this proceeding, as in all others, we shall refrain from expressing opinions upon matters that are outside of our jurisdiction, and from entering into any discussion of them. As the evidence shows a case that is not within our jurisdiction, and upon which we can give no relief, *the petition is dismissed.*

In this opinion all concur.

M. A. FULTON

v.

CHICAGO, ST. PAUL, MINNEAPOLIS
& OMAHA R. R. CO.

1. The Interstate Commerce Act contemplates that when a complaint is made against a carrier on the ground of exorbitant rates, the carrier may change its rates before a hearing is had, so as to remedy the matter complained of, if it shall see proper so to do.
2. Hence, petition dismissed without prejudice, where it appeared from a reply filed by the complainant to the defendant's answer, that the rates originally complained of had been reduced, and no complaint was made against such reduced rates.

(Decided July 20, 1887.)

REPORT AND OPINION OF THE COMMISSION.

Bragg, Commissioner:

The complaint in this proceeding was filed on the 26th day of April, 1887. It avers, in substance, that during February and March, 1887, the defendant carried a very large amount of freight from Chicago to St. Paul and Minneapolis at less than half the rates it charged at the time of the filing of this complaint. It further charges that in 1886 the rate complainant paid on first class freight from Chicago to Hudson was forty cents per 100 pounds, and that at the time the complaint was filed it was seventy-five cents per 100 pounds. It also avers that in 1886 the net traffic earnings of the defendant, at its then rates, were sufficient during that year to pay interest on its bonds, dividends on preferred stock, and to leave remaining in its treasury a surplus. The complaint relates to the rates between Chicago and Hudson, a distance of 882 miles; but it also charges in general that the rates at intermediate stations between these points are exorbitant. No damages are claimed.

To this complaint, on the 16th day of May, 1887, the defendant filed an answer which states, in substance, that the complaint shows on its face that the complainant has sustained no injury or damage. It further states that the rates fixed for carrying freights from Chicago to Hudson and other points between Chicago and Hudson, by defendant over its line, are just and unreasonable. A sworn copy of the tariff rates of the defendant in force on and after April 5, 1887, between Chicago and

Hudson and intermediate points, is made a part of the answer, as is also a sworn copy of the tariff rates in force on six trunk lines in the territory north and west of Chicago for distances substantially similar to that between Chicago and Hudson; also a sworn comparative statement of the tariff rates of defendant between Chicago and Hudson, and all intermediate points before and after April 5, 1887. It further avers that the railroads between Chicago and Hudson are owned by two companies, namely: the Chicago and Northwestern Railway Company, owning and operating the line from Chicago to Elroy, a distance of 212 miles, while that portion of the line between Elroy and Hudson, a distance of 170 miles, is owned and operated by the defendant; and that the tariff complained of is the joint tariff made by the said two companies.

To this answer of the defendant, the complainant on July 11, 1887, filed a sworn reply in which he states, in substance, that in June, 1887, the defendant reduced its rates, of which he had complained, from 5 per cent to 100 per cent, thereby confessing that his complaint was well founded.

Neither party has offered any evidence. The burden of proof is on the petitioner to sustain the charges set forth in his petition by evidence which shows with reasonable certainty that they are, in substance, true; and this he has not done. It further appears from the sworn reply of the petitioner to the answer of the defendant that while he admits that the rates against which he complained have been reduced by the defendant from 5 per cent to 100 per cent since his complaint was filed, yet he does not make any complaint against these reduced rates. The law contemplates that when complaint is made a carrier may change its rates before a hearing is had, so as to remedy the matter complained of, if it shall see proper so to do.

As there is no evidence before us that the rates of the defendant now in force are unreasonable, and, in fact, no complaint against them, *the petition is dismissed without prejudice.*

In this opinion all concur.

F. D. HARDING

v.

CHICAGO, ST. PAUL, MINNEAPOLIS
& OMAHA R. R. CO.

1. On a petition charging the exaction of unreasonable rates, the burden of proof is on the petitioner to sustain the charges by evidence which shows with reasonable certainty that they are in substance true.
2. Hence, petition charging that the rates on twine for harvesters, from Chicago to Hudson, was unreasonable, dismissed without prejudice, where the answer denied that the rate was unreasonable, and showed that it had been reduced, and neither party offered any evidence.

(Decided July 20, 1887.)

REPORT AND OPINION OF COMMISSION.

Bragg, Commissioner.

The complaint in this proceeding was filed on the 18th day of May, 1887, and charges, in substance, that during the months of June, July and August, in the year 1886, the defendant charged complainant on twine from Chicago to Hudson for the "McCormick Harvesters," fifteen cents per hundred pounds; and that in May, 1887, the defendant charged freight at twenty-nine cents per hundred pounds on the same kind of shipments and between the same points. The complaint avers that the last named rate is unreasonable and unjust, but no damages are claimed.

To this complaint the defendant filed an answer on the 8th of June, 1887, in which, in substance, it admits that during the months of June, July, and August in the year 1886 it charged fifteen cents per hundred pounds on twine from Chicago to Hudson, but avers that it was forced to do so by its competitors who charged that rate from Chicago to St. Paul, and that this rate was compulsory upon the defendant, and was the result of a war of rates, and was a rate that was unreasonably low. It further states that from November 1, 1886, to April 5, 1887, after this war of rates had ended, the defendant charged twenty-six cents per hundred pounds on such shipments from Chicago to Hudson; that from April 5, 1887, to May 16, 1887, the defendant charged twenty-nine cents per hundred pounds on such shipments from Chicago to Hudson, and that on the 16th of May, 1887, and since that time, the defendant has charged, and is now charging, twenty-five cents per hundred pounds on such shipments from Chicago to Hudson. The defendant avers that each of these charges, namely: twenty-six cents per hundred pounds, twenty-nine cents per hundred pounds and twenty-five cents per hundred pounds, were, and are, each of them, just and reasonable charges for the service rendered.

Neither party has offered any evidence. The burden of proof is on the petitioner to sustain the charges averred in his petition by evidence which shows with reasonable certainty that they are in substance true—and as he has not done this his *petition is dismissed without prejudice*.

In this opinion all concur.

George RICE

v.

LOUISVILLE & NASHVILLE R. R. CO.

THE following petition is one of those recently filed by George Rice, of Marietta, Ohio, based upon alleged discriminations in favor of the Standard Oil Company, in the transportation of oil. See *ante*, 354.

The other petitions are based on the same general grounds.

PETITION.

To the Honorable, The Interstate Commerce Commission of the United States of America.

Your complainant, George Rice, who is a resident and citizen of the City of Marietta,

and State of Ohio, files his petition against the Louisville & Nashville Railroad Company, which is a corporation organized and existing in and under the laws of the State of Kentucky and is a citizen of that State, and is a common carrier, engaged in the transportation, for hire, of passengers and property by a continuous carriage or shipment wholly by means of lines of railroad owned, leased and operated by said carrier from the City of Cincinnati in the State of Ohio, to the Cities of Louisville, Lexington, Frankfort, Bloomfield and Bardstown in the State of Kentucky; Nashville, Guthrie and Memphis in the State of Tennessee; Mobile, Montgomery and Selma in the State of Alabama; New Orleans in the State of Louisiana; Evansville in the State of Indiana, and thence across the State of Illinois to St. Louis, in the State of Missouri; and from said Cincinnati and said Louisville to all points on said carriers' said lines of railroad between said Cincinnati and said Louisville and the other aforementioned towns and cities.

Your complainant further states that one of the important duties of said Louisville & Nashville Railroad Company is the transportation of refined illuminating petroleum oil (mostly produced and manufactured in the States of Pennsylvania and Ohio), from Cincinnati, Ohio and Louisville, Kentucky, to the aforementioned cities and other points on the said carriers' said lines of railroad in the said several States, and other States into and through which said carriers' railroad lines pass.

That such oil is an article of extensive commerce and of prime necessity to the people reached by said carriers' railroad lines, and that in the transportation of such oil by said carrier two prevailing methods are employed: one by means of box cars, carrying the oil in barrel packages, and the other by iron tank cars, generally holding 100 barrels and upwards, built and used for that express purpose.

And said complainant further says that he is engaged at Marietta, Ohio, and in that vicinity, in the business of producing, manufacturing and dealing in, such petroleum oils, and shipping the same to various markets in the Southern and Western States of this country; and that he has large capital invested in such business, and extensive facilities therefor, and, but for the acts of said carrier hereinafter complained of, would produce and sell many thousands more barrels of such oil than now; that many of his principal markets for his said manufacture are in the territory reached and traversed by said carriers' system of railways; that it is absolutely essential to the continued existence and success of his said business that he should have rates and facilities, both reasonable in themselves, and equally as favorable as those accorded his competitors for the transportation of said products to such markets, many of which can only be reached by said carriers' roads, and none of which can be reached as conveniently or cheaply by any other means if said complainant is accorded reasonable and just rates by said carrier.

Complainant further states that, the Standard Oil Company, a corporation organized and existing in, under the laws of, the State of Kentucky, is a very extensive dealer in, and shipper of, such petroleum oils, and is his chief

and almost sole competitor for the sale thereof in the aforesaid markets.

And said complainant further states that said carrier has been guilty of violations of the provisions of the Act of Congress of the United States of America, entitled "An Act to Regulate Commerce," approved February 4, 1887, and which took effect April 5, 1887, in the following particulars, to wit:

First Charge: By making charges for services to be rendered by said carrier in the transportation of such as aforesaid from Cincinnati, Ohio, and said Louisville, Kentucky, to points on the said carrier's said railroad lines in the said States other than Ohio and Kentucky, which were in themselves unjust and unreasonably high.

Under this charge the complainant makes the following specifications, each and all of which are rates per 100 lbs. charged by said Railroad Company on May 9, 1887, and as complainant is informed and believes, and so alleges, ever since that day, for services to be rendered by said Company in the transportation, in barrel packages, in car load shipments, of such oils from said Louisville, Kentucky, to the respective destinations named, each and all of which destinations are points reached by the lines of railroad owned, leased and operated by said Railroad Company, and each and all of which rates complainant alleges to be unreasonable and unjust.

1. Mobile, Ala.	-	30	cents
2. New Orleans, La.	-	30	"
3. Montgomery, Ala.	-	45 7-10	"
4. Selma, Ala.	-	45 7-10	"
5. Birmingham, Ala.	-	45 7-10	"
6. Nashville, Tenn.	-	18 3-4	"
7. Memphis, Tenn.	-	15	"
8. Clarksville, Tenn.	-	16 8-10	"

All other points reached by said lines of railroad, located in States other than Kentucky, the rates of which appear in the statement of rates required by said Act of Congress and on file with said Commission, and each and all of which rates complainant alleges to be unreasonable and unjust. Complainant under said charges also makes the following specifications, each and all of which are the rates per 100 lbs. charged by said Railroad Company for the transportation of such oils, in barrel packages, in car load shipments, from Cincinnati, Ohio, to the respective destinations named, each and all of which are points reached by the lines of the railroad owned, leased and operated by defendants, and are in States other than the State of Ohio, which rates appear on the tariff sheets of defendant furnished by it to complainant May 9, 1887, as showing its rates then in force, and which rates complainant is informed and believes, and alleges, have ever since been in force, each and all of which rates complainant alleges to be unreasonably high and unjust:

10. Nashville, Tenn.	-	25	cents.
11. Decatur, Ala.	-	50	"
12. Birmingham, Ala.	-	59	"
13. Calera, Ala.	-	59	"
14. Montgomery, Ala.	-	59	"
15. Selma, Ala.	-	59	"
16. Pensacola, Fla.	-	45	"
17. Mobile, Ala.	-	39	"
18. New Orleans, La.	-	39	"

Second Charge: Complainant, for a second charge against defendant, alleges that defendant has, ever since April 5, 1887, charged complainant for services to be rendered by the defendant in the transportation of such oils for complainant from said Cincinnati, Ohio, to points in States other than Ohio reached by the lines of railroad owned, operated and leased by defendant, and from Louisville, Kentucky, to points in States other than Kentucky reached by said lines of railroad, a greater compensation than it charged said Standard Oil Company of Kentucky for like and contemporaneous services rendered and to be rendered by defendant for said company in the transportation of such oils for said company, said company being sometimes consignee thereof, and sometimes consignor thereof, and sometimes both consignee and consignor thereof, from said Cincinnati, Ohio, to said points in States other than Ohio, and from said Louisville, Kentucky, to said points in States other than Kentucky, all of said transportation, both for complainant and said Standard Oil Company, being under substantially similar circumstances and conditions.

Under the above charge complainant makes the following specifications:

1. The following is a statement of the rate per 100 lbs. charged by defendant on May 9, 1887, and ever since, to complainant and to said Standard Oil Company, of Kentucky, for the transportation of such oils from Louisville, Kentucky, to the respective destinations named.

Destination.	To Geo. Rice.	To Standard Oil Co.
Montgomery, Ala.	45 7-8 cts.	30 cts.
Selma, Ala.	45 7-10 "	30 "
Birmingham, Ala.	45 7-10 "	30 "
Nashville, Tenn.	18 3-4 "	15 "
Memphis, Tenn.	15 "	15 1-2 "

2. The following is a statement of the rate per 100 lbs. charged by defendant on May 9, 1887, and ever since, to complainant and said Standard Oil Company, of Kentucky, respectively, for the transportation of such oils from Cincinnati, Ohio, to the respective destinations named:

Destination.	To Geo. Rice.	To Standard Oil Co.
Decatur, Ala.	50 cts.	46 cts.
Birmingham, Ala.	59 "	47 "
Calera, Ala.	59 "	47 "
Montgomery, Ala.	59 "	47 "
Selma, Ala.	59 "	47 "
Pensacola, Fla.	45 "	40 "
Mobile, Ala.	39 "	34 "
New Orleans, La.	39 "	34 "

3. Defendant has, in all its charges to complainant, for services rendered and to be rendered by it in the transportation of oils for him over its said lines of railroad, charged him for the entire actual weight of such oils, while defendant has, in many instances too numerous to mention without unduly encumbering the record, since April 5, 1887, charged said Standard Oil Company, for services rendered it or to be rendered by it for said Standard Oil Company, in transportation of oils over its said lines of railroad, for much less than the actual weight of such oils.

4. The freight rate charged by defendant to complainant ever since April 5, 1887, for the transportation of such oils in barrel packages,

REPORT AND OPINION OF COMMISSION.

Bragg, Commissioner:

The complaint in this proceeding was filed on the 18th day of May, 1887, and charges, in substance, that during the months of June, July and August, in the year 1886, the defendant charged complainant on twine from Chicago to Hudson for the "McCormick Harvesters," fifteen cents per hundred pounds; and that in May, 1887, the defendant charged freight at twenty-nine cents per hundred pounds on the same kind of shipments and between the same points. The complaint avers that the last named rate is unreasonable and unjust, but no damages are claimed.

To this complaint the defendant filed an answer on the 8th of June, 1887, in which, in substance, it admits that during the months of June, July, and August in the year 1886 it charged fifteen cents per hundred pounds on twine from Chicago to Hudson, but avers that it was forced to do so by its competitors who charged that rate from Chicago to St. Paul, and that this rate was compulsory upon the defendant, and was the result of a war of rates, and was a rate that was unreasonably low. It further states that from November 1, 1886, to April 5, 1887, after this war of rates had ended, the defendant charged twenty-six cents per hundred pounds on such shipments from Chicago to Hudson; that from April 5, 1887, to May 16, 1887, the defendant charged twenty-nine cents per hundred pounds on such shipments from Chicago to Hudson, and that on the 16th of May, 1887, and since that time, the defendant has charged, and is now charging, twenty-five cents per hundred pounds on such shipments from Chicago to Hudson. The defendant avers that each of these charges, namely: twenty-six cents per hundred pounds, twenty-nine cents per hundred pounds and twenty-five cents per hundred pounds, were, and are, each of them, just and reasonable charges for the service rendered.

Neither party has offered any evidence. The burden of proof is on the petitioner to sustain the charges averred in his petition by evidence which shows with reasonable certainty that they are in substance true—and as he has not done this his *petition is dismissed without prejudice*.

In this opinion all concur.

George RICE

LOUISVILLE & NASHVILLE R. R. CO.

THE following petition is one of those recently filed by George Rice, of Marietta, Ohio, based upon alleged discriminations in favor of the Standard Oil Company, in the transportation of oil. See *ante*, 354.

The other petitions are based on the same general grounds.

PETITION.

To the Honorable, The Interstate Commerce Commission of the United States of America.

Your complainant, George Rice, who is a resident and citizen of the City of Marietta,

and State of Ohio, files his petition against the Louisville & Nashville Railroad Company, which is a corporation organized and existing in and under the laws of the State of Kentucky and is a citizen of that State, and is a common carrier, engaged in the transportation, for hire, of passengers and property by a continuous carriage or shipment wholly by means of lines of railroad owned, leased and operated by said carrier from the City of Cincinnati in the State of Ohio, to the Cities of Louisville, Lexington, Frankfort, Bloomfield and Bardstown in the State of Kentucky; Nashville, Guthrie and Memphis in the State of Tennessee; Mobile, Montgomery and Selma in the State of Alabama; New Orleans in the State of Louisiana; Evansville in the State of Indiana, and thence across the State of Illinois to St. Louis, in the State of Missouri; and from said Cincinnati and said Louisville to all points on said carriers' said lines of railroad between said Cincinnati and said Louisville and the other aforementioned towns and cities.

Your complainant further states that one of the important duties of said Louisville & Nashville Railroad Company is the transportation of refined illuminating petroleum oil (mostly produced and manufactured in the States of Pennsylvania and Ohio), from Cincinnati, Ohio and Louisville, Kentucky, to the aforementioned cities and other points on the said carriers' said lines of railroad in the said several States, and other States into and through which said carriers' railroad lines pass.

That such oil is an article of extensive commerce and of prime necessity to the people reached by said carriers' railroad lines, and that in the transportation of such oil by said carrier two prevailing methods are employed: one by means of box cars, carrying the oil in barrel packages, and the other by iron tank cars, generally holding 100 barrels and upwards, built and used for that express purpose.

And said complainant further says that he is engaged at Marietta, Ohio, and in that vicinity, in the business of producing, manufacturing and dealing in, such petroleum oils, and shipping the same to various markets in the Southern and Western States of this country; and that he has large capital invested in such business, and extensive facilities therefor, and, but for the acts of said carrier hereinafter complained of, would produce and sell many thousands more barrels of such oil than now; that many of his principal markets for his said manufacture are in the territory reached and traversed by said carriers' system of railways; that it is absolutely essential to the continued existence and success of his said business that he should have rates and facilities, both reasonable in themselves, and equally as favorable as those accorded his competitors for the transportation of said products to such markets, many of which can only be reached by said carriers' roads, and none of which can be reached as conveniently or cheaply by any other means if said complainant is accorded reasonable and just rates by said carrier.

Complainant further states that, the Standard Oil Company, a corporation organized and existing in, under the laws of, the State of Kentucky, is a very extensive dealer in, and shipper of, such petroleum oils, and is his chief

and almost sole competitor for the sale thereof in the aforesaid markets.

And said complainant further states that said carrier has been guilty of violations of the provisions of the Act of Congress of the United States of America, entitled "An Act to Regulate Commerce," approved February 4, 1887, and which took effect April 5, 1887, in the following particulars, to wit:

First Charge: By making charges for services to be rendered by said carrier in the transportation of such as aforesaid from Cincinnati, Ohio, and said Louisville, Kentucky, to points on the said carrier's said railroad lines in the said States other than Ohio and Kentucky, which were in themselves unjust and unreasonably high.

Under this charge the complainant makes the following specifications, each and all of which are rates per 100 lbs. charged by said Railroad Company on May 9, 1887, and as complainant is informed and believes, and so alleges, ever since that day, for services to be rendered by said Company in the transportation, in barrel packages, in car load shipments, of such oils from said Louisville, Kentucky, to the respective destinations named, each and all of which destinations are points reached by the lines of railroad owned, leased and operated by said Railroad Company, and each and all of which rates complainant alleges to be unreasonable and unjust.

1. Mobile, Ala. -	30	cents
2. New Orleans, La. -	30	"
3. Montgomery, Ala. -	45 7-10	"
4. Selma, Ala. -	45 7-10	"
5. Birmingham, Ala. -	45 7-10	"
6. Nashville, Tenn. -	18 3-4	"
7. Memphis, Tenn. -	15	"
8. Clarksville, Tenn. -	16 3-10	"

All other points reached by said lines of railroad, located in States other than Kentucky, the rates of which appear in the statement of rates required by said Act of Congress and on file with said Commission, and each and all of which rates complainant alleges to be unreasonable and unjust. Complainant under said charges also makes the following specifications, each and all of which are the rates per 100 lbs. charged by said Railroad Company for the transportation of such oils, in barrel packages, in car load shipments, from Cincinnati, Ohio, to the respective destinations named, each and all of which are points reached by the lines of the railroad owned, leased and operated by defendants, and are in States other than the State of Ohio, which rates appear on the tariff sheets of defendant furnished by it to complainant May 9, 1887, as showing its rates then in force, and which rates complainant is informed and believes, and alleges, have ever since been in force, each and all of which rates complainant alleges to be unreasonably high and unjust:

10. Nashville, Tenn. -	25	cents.
11. Decatur, Ala. -	50	"
12. Birmingham, Ala. -	59	"
13. Calera, Ala. -	59	"
14. Montgomery, Ala. -	59	"
15. Selma, Ala. -	59	"
16. Pensacola, Fla. -	45	"
17. Mobile, Ala. -	39	"
18. New Orleans, La. -	39	"

Second Charge: Complainant, for a second charge against defendant, alleges that defendant has, ever since April 5, 1887, charged complainant for services to be rendered by the defendant in the transportation of such oils for complainant from said Cincinnati, Ohio, to points in States other than Ohio reached by the lines of railroad owned, operated and leased by defendant, and from Louisville, Kentucky, to points in States other than Kentucky reached by said lines of railroad, a greater compensation than it charged said Standard Oil Company of Kentucky for like and contemporaneous services rendered and to be rendered by defendant for said company in the transportation of such oils for said company, said company being sometimes consignee thereof, and sometimes consignor thereof, and sometimes both consignee and consignor thereof, from said Cincinnati, Ohio, to said points in States other than Ohio, and from said Louisville, Kentucky, to said points in States other than Kentucky, all of said transportation, both for complainant and said Standard Oil Company, being under substantially similar circumstances and conditions.

Under the above charge complainant makes the following specifications:

1. The following is a statement of the rate per 100 lbs. charged by defendant on May 9, 1887, and ever since, to complainant and to said Standard Oil Company, of Kentucky, for the transportation of such oils from Louisville, Kentucky, to the respective destinations named.

Destination.	To Geo. Rice.	To Standard Oil Co.
Montgomery, Ala.	45 7-8 cts.	30 cts.
Selma, Ala.	45 7-10 "	30 "
Birmingham, Ala.	45 7-10 "	30 "
Nashville, Tenn.	18 3-4 "	15 "
Memphis, Tenn.	15 "	15 1-2 "

2. The following is a statement of the rate per 100 lbs. charged by defendant on May 9, 1887, and ever since, to complainant and said Standard Oil Company, of Kentucky, respectively, for the transportation of such oils from Cincinnati, Ohio, to the respective destinations named:

Destination.	To Geo. Rice.	To Standard Oil Co.
Decatur, Ala.	50 cts.	46 cts.
Birmingham, Ala.	59 "	47 "
Calera, Ala.	59 "	47 "
Montgomery, Ala.	59 "	47 "
Selma, Ala.	59 "	47 "
Pensacola, Fla.	45 "	40 "
Mobile, Ala.	39 "	34 "
New Orleans, La.	39 "	34 "

3. Defendant has, in all its charges to complainant, for services rendered and to be rendered by it in the transportation of oils for him over its said lines of railroad, charged him for the entire actual weight of such oils, while defendant has, in many instances too numerous to mention without unduly encumbering the record, since April 5, 1887, charged said Standard Oil Company, for services rendered it or to be rendered by it for said Standard Oil Company, in transportation of oils over its said lines of railroad, for much less than the actual weight of such oils.

4. The freight rate charged by defendant to complainant ever since April 5, 1887, for the transportation of such oils in barrel packages,

carload shipments, owner's risk, from Louisville, Kentucky, to Huntsville, Alabama, is 87 cents per hundred pounds including the weight of barrels which is the rate for such transportation appearing in the tariff sheet of defendant in force ever since April 5, 1887, yet, about May 1, 1887, a carload of oil containing 66 barrels of oil weighing, including barrels, 24,750 lbs. was delivered by said Standard Oil Company, to defendant at Louisville, Kentucky, to be transported to Huntsville, Alabama; said oils were consigned to Halsey Bros. at Huntsville, Alabama, who were the agents at said place, of said Standard Oil Company, and competitors in business at said point, with complainant; said oils were transported from Louisville, Kentucky, to Huntsville, Alabama, and the charge made by defendant for such transportation was \$68.07 or 27½ cents per 100 lbs.

Third Charge: Complainant for a third charge against defendant says that the defendant, in its rates charged by it for services rendered and to be rendered by it for the transportation of said oils for complainant and said Standard Oil Company, from Cincinnati, Ohio, to points reached by defendant's said lines of railroad in States other than Kentucky, has, since April 5, 1887, uniformly made and given undue and unreasonable preferences and advantages to said Standard Oil Company, of Kentucky, and to certain localities on its lines of railroad, and had subjected complainant, and certain localities on its lines of railroad, to undue and unreasonable prejudices and disadvantages.

Under the above charge complainant makes the following specifications:

1. Complainant here repeats under this charge specification No. 1, under the second charge of his complaint; and alleges that the differences in the circumstances surrounding the shipments of said George Rice, and said Standard Oil Company, and that any differences to defendant in the cost and expense and convenience of transportation of said oils of said George Rice and said company respectively, and any differences between the circumstances under which said Rice and said company respectively ship their oils justifying any differences in rate, if there be any, are small and insignificant in comparison with the differences in the rates so charged them respectively.

Complainant here repeats under this charge specification No. 2, under the second charge of his complaint; and alleges that the differences in rates therein appearing are not measured by any differences in the circumstances surrounding the shipments of said George Rice and said Standard Oil Company, and that any differences to defendant in the cost and expense and convenience, of transporting such oils for said Rice and said company respectively, and any differences between the circumstances under which said Rice and said company respectively shipped their oils justifying any difference in rate, if there be any, are small and insignificant in comparison with the differences in the rates charged them respectively.

Complainant is informed and believes and therefore states that—

3. Defendant owns a number of tank cars

as hereinbefore described, and furnishes the same to said Standard Oil Company for its use in transporting oil shipped by said Company from Cincinnati, Ohio, to points reached by defendant's said lines of railroad in States other than Ohio, and from Louisville, Kentucky, to points reached by defendant's said lines of railroad in States other than Kentucky, but refuses to furnish the same to said George Rice for his use in transporting oil from said Cincinnati, Ohio, and Louisville, Kentucky, to such points in States other than Ohio and Kentucky.

4. Defendant in its freight rates for the transportation of such oils from Cincinnati, Ohio, to points reached by defendant's said lines of railroad in States other than Ohio, and from Louisville, Kentucky, to points reached by defendant's said lines of railroad in States other than Kentucky, almost uniformly since April 5, 1887, has charged a higher rate per 100 lbs. for oil transported by it in barrel packages, in car load shipments, owner's risk, than it charged per 100 lbs. for such oils transported by it at the same time between the same points, contained in tank cars, owner's risk; while at no time has there been any difference between the cost, expense and convenience of transporting said oils by said two methods, or any circumstances justifying a difference of rate between said two methods of transportation, which even approximated the differences in defendant's freight rates for transportation by said two methods, any differences between the cost, expense and convenience to defendant of transportation by said two methods or any circumstances justifying a difference in rate between said two methods being slight and insignificant compared with the differences in rate between said two methods actually made by defendant. Complainant ships his oils over defendant's lines of railroad exclusively in barrel packages, while said Standard Oil Company ships its oil over defendant's lines of railroad almost exclusively in tank cars.

5. Defendant's freight rates per 100 lbs. for the transportation of such oils from Louisville, Kentucky, to the following destinations are the same whether the oil is carried in barrel packages or in tank cars.

Mobile, Ala.	Jackson, Miss.
New Orleans, La.	Jackson, Tenn.
Meridian, Miss.	Vicksburg, Miss.

while defendant's freight rates per 100 lbs. for the transportation of such oils from Louisville, Kentucky, to nearly all, if not all, the other points reached by defendant's lines of railroad in States other than Kentucky, are much higher for oils carried in barrel packages than for oils carried in tank cars.

6. Defendant's freight rates per 100 lbs. for the transportation of such oils from Cincinnati, Ohio, to Nashville, Tenn., and Mobile, Ala., are the same whether the oil is carried in barrel packages or in tank cars, while the defendant's freight rates per 100 lbs. for the transportation of such oils from Cincinnati, Ohio, to nearly all, if not all, the other points reached by defendant's lines of railroad in States other than Ohio, are much higher when the oils are carried in barrel packages than when the oils are carried in tank cars.

7. Defendant has since April 5, 1887.

charged for the transportation of oils from Cincinnati, Ohio, and from Louisville, Kentucky, to Birmingham, Alabama, Calera, Alabama, Montgomery, Alabama, and Selma, Alabama, the same freight rates in all case to each of said localities, although by defendant's line of road said Calera is 83 miles farther from said Cincinnati and said Louisville than said Birmingham, and said Montgomery is 63 miles farther from said Cincinnati and said Louisville than said Calera, and said Selma is 50 miles farther from said Cincinnati and said Louisville than said Montgomery; and oils transported by defendant from Cincinnati, Ohio, or Louisville, Kentucky, to said Selma are necessarily carried by it through said Birmingham, said Calera and said Montgomery; and the distance from said Cincinnati to said Selma over defendant's line of road is 650 miles, and the distance from said Louisville to said Selma over defendant's line of road is 540 miles.

Fourth Charge: Complainant for a fourth charge against defendant says that defendant has since April 5, 1887, charged and received for the transportation by it of such oils from Cincinnati, Ohio, and Louisville, Kentucky, to points reached by defendant's said lines of railroad in States other than Ohio and Kentucky, a greater compensation in the aggregate, for a shorter than for a longer distance the same line in the same distance, the shorter being included within the longer distance, such oils being a light kind of property in all cases, and such transportation being under substantially the same circumstances and conditions.

Under the above charge complainant makes the following specification: the rate charged by defendant for the transportation of such oils in barrel packages, in car load shipments, from Cincinnati, Ohio, to and from Louisville, Kentucky, to destination named below, with the distances of each destination from the place of shipment over defendant's said line of railroad are as follows:

From Cincinnati, Ohio:		
Destination.	Distance.	Rate per 100 lbs.
New Orleans, La.	921 miles,	89 cents.
Birmingham, Ala.	504 "	59 "

Mobile, Ala.	780 miles	32 cents
From Louisville, Kentucky:		
Destination.	Distance.	Rate per 100 lbs.
New Orleans, La.	811 miles.	35 cents.
Birmingham, Ala.	394 "	52 "
Mobile, Ala.	780 "	35 "

Said complainant further alleges that the aforesaid discriminations against him in rates, and the aforesaid unreasonably high and unjust rates charged him, have had, and as he believes, were designed to have, the effect to give the Standard Oil Company, an almost complete monopoly of the traffic in such oils at the points reached by said defendant's lines of railroad and to exclude said complainant's products from nearly all of said points; and that such discriminations and charges, as complainant is informed and believes, and therefore states, have been made by said defendant at the dictation of said Standard Oil Company; and he states that by reason of the premises he has been largely injured in his business and has lost large profits that he otherwise would have realized; that his facilities in all other respects than for said transportations during all the time since April 5, 1887, have been ample for the transaction of a large and profitable business in the sale of said oils in said markets, and that but for the premises, he would have prosecuted such business to the limits of his facilities with great profit to himself.

Your said complainant therefore prays that your honorable Commission will proceed to inquire into the matters hereinbefore complained of and ascertain, and find, the facts with respect to the alleged violation of said Act of Congress, and the extent to which said complainant has been injured and is entitled to reparation, and report the same, with your conclusions and recommendations according to law; and further that your honorable Commission will notify said defendant to cease and desist from such violations and make such reparation, and will take such further action as is lawful and proper in the premises.

George Rice, complainant,
By Wm. B. Loomis and
A. D. Follet, his counsel.

UNITED STATES SUPREME COURT.

OUACHITA & MISSISSIPPI RIVER
PACKET CO., William T. Scovell *et al.*,
Appts.,

v.

CATHERINE M. AIKEN, Admr. of
JOSEPH A. AIKEN, Deceased, John H.
Menge *et al.*, Copartners, as Joseph A. Aiken
& Co., AND CITY OF NEW ORLEANS.

(From Lawyers' ed. U. S. Reports, Bk. 80.)

1. In the absence of interference by Congress, a State may establish, manage and carry on works and improvements of a local character, though they necessarily more or less affect interstate commerce.
2. Wharfage is subject to local state laws, Congress having passed no Act

to regulate it; and by those laws its reasonableness must be determined.

3. Charges for wharfage, graduated by tonnage of vessels using a wharf, are not open to the objection that they are duties on tonnage within the meaning of the Constitution.
4. Where wharfage charges are reasonable, it in no way concerns those who pay them, what application is made of the proceeds. Their appropriation to maintain, extend, light and police the wharves is unobjectionable, although a profit may be realized by lessees from the city which owns them.

(Argued Jan. 5, 1887. Decided April 25, 1887.)

APPEAL from the Circuit Court of the United States for the Eastern District of Loui-

INTER 8.

siana. Reported below, 4 Woods, 208. *Affirmed.*

The history and facts of the case appear in the opinion of the court.

Messrs. John H. Kennard and William W. Howe, for appellants.

Messrs. William S. Benedict, George Denégre and Thomas L. Bayne, for appellees.

Mr. Justice Bradley delivered the opinion of the court:

The bill in this case was filed in the Circuit Court of the United States by the appellants, for themselves and all others in like interest who should come in and contribute to the expenses of the suit, against Catherine M. Aiken, administratrix of Joseph A. Aiken, and others, residents of New Orleans, doing business under the firm name of Joseph A. Aiken & Co., and against the City of New Orleans. The complainants are owners of steamboats plying between New Orleans and other ports and places on the Mississippi River and its branches in other States than Louisiana; and the burden of their complaint is that the rates of wharfage which they are compelled to pay for their vessels at New Orleans are unreasonable and excessive, are really duties of tonnage, and imposed in violation of the Constitution of the United States. The defendants, Joseph A. Aiken & Co., at the time of filing the bill, were lessees of the public wharves belonging to the City of New Orleans, under a lease from the City made in May, 1881, for the term of five years; and, as such lessees, charged and collected the wharfage complained of. The object of the bill, as shown by its prayer, was to obtain an injunction to prevent the defendants from exacting the excessive charges referred to, the complainants expressing a willingness to pay all reasonable wharfage.

The bill alleges that on the 17th of January, 1875, the council of the City of New Orleans adopted an ordinance, "fixing and regulating charges for wharfage, levee, and other facilities afforded by the City of New Orleans to commerce," by which ordinance, among other matters and things, it was ordained that the wharfage dues on all steamboats shall be fixed as follows: "Not over five days, ten cents per ton, and each day thereafter, five dollars per day; boats arriving and departing more than once a week, five cents per ton each trip; boats lying up for repairs during the summer months to occupy such wharves as may not be required for shipping, for thirty days or under, one dollar per day." The entire ordinance was filed with the bill as an exhibit, showing the rates of wharfage to be charged for vessels of every kind.

The bill then states that on the 17th of May, 1881, the council of the City adopted an ordinance directing the administrator of commerce to advertise for sealed proposals for the sale of the revenues of the wharves and levees for the term of five years, upon certain conditions specified, among which were the following; viz.: to keep the wharves and levees in good repair; to construct such new wharves as might be necessary, not exceeding the expenditure, in any one year, of \$25,000; to light the wharves with electric lights; and to pay the City annually the sum of \$40,000, of which \$30,000

should be devoted to the maintenance of a harbor police for the protection of commerce, and the remaining \$10,000 should be devoted exclusively to the payment of salaries of wharfingers, signal officers, and other employees on the levees. The sale was to be adjudicated to the persons who should agree to charge the lowest rates of wharfage. Joseph A. Aiken put in a proposal to take the lease on the conditions specified, at the rates of wharfage named in the Ordinance of 1875, with certain reductions which he agreed to make from time to time; and this proposal was accepted by the council.

The power to construct and maintain levees and wharves, and to prescribe and collect rates of levee dues and wharfage, had been conferred upon the city council by its charter (Act of March 16, 1870, No. 7, § 12); and by the Act of March 18, 1871, it was authorized to lease the wharves, upon adjudication, for any term not to exceed ten years at a time. Laws of 1871, No. 48, § 7.

The point raised by the complainants is that the rates of wharfage proposed by the lessees were necessarily enhanced by the condition requiring them to erect new wharves, to maintain electric lights, and to pay the City \$40,000 per annum for the maintenance of a harbor police, and the payment of salaries to wharfingers, etc. They argue, therefore, that the rates agreed to be charged were intended, not merely as compensation for the use of wharves already constructed, but as a tax to raise money for the use of the City, to enable it to do those things the expense of which should be defrayed from its general resources; it being contended that wharfage cannot be charged for the purpose of raising money to build wharves, but only for the use of them when built. The complainants contend that the charges are unreasonable and excessive as wharfage, and therefore unauthorized as such, and, in effect, a direct duty, or burden, upon commerce. They offered a good deal of evidence to show that the rates of wharfage charged are onerous and excessive, and that, without the conditions referred to, the lessees could have offered to take much lower rates; or, at all events, that much lower rates would have been a reasonable and sufficient compensation. On the other hand, the defendants offered evidence to show that the rates were reasonable, and that, with the same or even higher rates, the City itself, before leasing out its wharves, lost every year a large amount of money in their administration. The court below declared "that the exactions of wharfage are substantially expended for the benefit of those using the wharves, and that the proof does not satisfy us that the rates are exorbitant or excessive." *Ouachita Packet Co. v. Aiken*, 4 Woods, 208, 213. We do not think it necessary to scrutinize the evidence very closely. With the circuit court, we see nothing in the purposes for which the lessees were required to expend or pay money, at all foreign to the general object of keeping up and maintaining proper wharves, and providing for the security and convenience of those using them. The case is clearly within the principle of the former decisions of this court, which affirm the right of a State, in the absence of regulation by Congress, to establish, manage and carry on

works and improvements of a local character, though necessarily more or less affecting interstate and foreign commerce. We may particularly refer to the recent cases of *Trans. Co. v. Parkersburg*, 107 U. S. 691 [27:584]; *Morgan v. Louisiana*, 118 U. S. 455 [ante, 237]; and *Huse v. Glover*, 119 U. S. 543 [ante, 487], in which most of the former decisions involving the same principle are cited and referred to. The first of these was a case of wharfage; the second, one of quarantine; and the third, that of a lock in Illinois River constructed by the State of Illinois in aid of navigation. The same principle was applied and enforced in the cases of *Cooley v. Board of Wardens*, 53 U. S. 12 How. 299 [13:996], on the subject of pilotage; in *Mobile Co. v. Kimball*, 102 U. S. 691 [26:238], where a state law provided for the improvement of the river and harbor of Mobile; in the various cases of bridges over navigable rivers which have come before this court, and which are reviewed and approved in *Escanaba Co. v. Chicago*, 107 U. S. 678 [27:442]; and in *Turner v. Maryland*, Id. 38 [27:370], which related to the inspection of tobacco. The same principle was reaffirmed, with the limitations to which its application is subject, in the recent case of *Robbins v. Shelby Co. Taring Dist.* 120 U. S. 489, 493 [ante, 694]. In all such cases of local concern, though incidentally affecting commerce, we have held that the Courts of the United States cannot, as such, interfere with the regulations made by the State, nor sit in judgment on the charges imposed for the use of improvements or facilities afforded, or for the services rendered under state authority. It is for Congress alone, under its power to regulate commerce with foreign Nations and among the several States, to correct any abuses that may arise, or to assume to itself the regulation of the subject. If, in any case of this character, the Courts of the United States can interfere in advance of Congressional legislation, it is (as was said in *Morgan v. Louisiana*, *qua supra*), where there is a manifest purpose, "by roundabout means, to invade the dominion of federal authority."

Wharfage, the matter now under consideration, is governed by the local state laws; no Act of Congress has been passed to regulate it. By the state laws it is generally required to be reasonable; and by those laws its reasonableness must be judged. If it does not violate them, as before said, the United States Courts cannot interfere to prevent its exaction. Of course, neither the State, nor any municipal corporation acting under its authority, can lay duties of tonnage; for that is expressly forbidden by the Constitution; but charges for wharfage may be graduated by the tonnage of vessels using a wharf; and that this is not a duty of tonnage, within the meaning of the Constitution, has been distinctly held in several cases; among others, in those of *Packet Co. v. Keokuk*, 95 U. S. 80 [24:377]; *Packet Co. v. St. Louis*, 100 U. S. 423 [25:688]; *Packet Co. v. Catlettsburg*, 105 U. S. 559 [26:1169]; and *Trans. Co. v. Parkersburg*, 107 U. S. 691 [*supra*].

The charges in the present case are professedly for wharfage, and we see nothing in the ordinance fixing the rates inconsistent with the idea that they are such. The City, by its charter, had the power to fix the rates of wharfage, and it established those now complained

of. We do not see the slightest pretext for calling the manything else than wharfage. The manner in which the receipts are to be appropriated does not change the character of the charges made. In the case of *Huse v. Glover*, 119 U. S. 543, 549 [Bk. 30, L. ed. 487, 490], it was said: "By the terms tax, impost, duty, mentioned in the ordinance [the Ordinance of 1787], is meant a charge for the use of the government, not compensation for improvements. The fact that if any surplus remains from the tolls, over what is used to keep the locks in repair, and for their collection, it is to be paid into the state treasury as a part of the revenue of the State, does not change the character of the toll or impost. In prescribing the rates it would be impossible to state in advance what the tolls would amount to in the aggregate. That would depend upon the extent of business done; that is, the number of vessels and amount of freight which may pass through the locks. Some disposition of the surplus is necessary until its use shall be required, and it may as well be placed in the state treasury, and probably better, than anywhere else." And in the case of *Transportation Co. v. Parkersburg*, we said: "It is also obvious that since a wharf is property, and wharfage is a charge or rent for its temporary use, the question whether the owner derives more or less revenue from it, or whether more or less than the cost of building and maintaining it, or what disposition he makes of such revenue, can in no way concern those who make use of the wharf and are required to pay the regular charges therefor; provided, always, that the charges are reasonable and not exorbitant."

In the present case, however, as already indicated, the appropriation actually made of the receipts, namely: to the objects of keeping the wharves in repair, of gradually extending them as additions may be needed, and of maintaining a police for their protection, and lights for their better enjoyment, is entirely germane to the purpose of wharfage facilities. It is what any prudent proprietor would do; it is what the City itself would do if it managed the wharves on its own account. But even if it were otherwise, if a profit should happen to be realized by the City, or the lessees, beyond the amount of expenditures made, this would not make the charges any the less wharfage. And being wharfage, and nothing else, if the charges are unreasonable, remedy must be sought by invoking the laws of the State, which cannot be done in this suit, inasmuch as the jurisdiction of the court is rested on the supposed unconstitutionality of the charges for wharfage, and not on the citizenship of the parties. If the state laws furnish no remedy (in other words, if the charges are sanctioned by them), then, as before stated, it is for Congress, and not the United States Courts, to regulate the matter, and provide a proper remedy. Such an interposition may become necessary; for although the imposition of unreasonable wharfage by a city or a State is always the dictate of a suicidal policy, the temptation of immediate advantage under stringent pressure will often lead to its adoption.

What measures Congress might adopt for the purpose of preventing abuses in this and like matters, it is not for us to determine. It is possible that a law declaring that wharfage shall

be reasonable, and not oppressive, would answer the purpose. It would then be in the power of the federal courts to inquire and determine as to the reasonableness of the charges actually imposed. That no such inquiry, except in the administration of the state law, can be instituted, as the law now stands, is shown in some of the cases to which we have referred. In *Transportation Co. v. Parkersburg*, 107 U.S. 691, 699 [27:584, 587], we said: "It is an undoubted rule of universal application, that wharfage for the use of all public wharves must be reasonable. But then the question arises, By what law is this rule established, and by what law can it be enforced? By what law is it to be decided whether the charges imposed are, or are not, exorbitant? There can be but one answer to these questions: Clearly it must be by the local municipal law, at least until some superior or paramount law has been prescribed. * * * The Courts of the United States do not enforce the common law in municipal matters in the State because it is federal law, but because it is the law of the State."

As the only question determinable in this suit is whether the charges of wharfage complained of were, or were not, contrary to the Constitution or any law of the United States, and as it is clear that they were not, *the decree of the Circuit Court must be affirmed.*

GLOUCESTER FERRY COMPANY, *Piff.*
in Err.,
v.

COMMONWEALTH OF PENNSYLVANIA.

(From Lawyers' ed. U. S. Reports, Bk. 20.)

1. **Commerce among the States** consists of intercourse and traffic between their citizens and includes the transportation

of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities.

2. **The power to regulate interstate and foreign commerce vested in Congress** is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted; to determine when it shall be free from, and when subject to, duties or other exactions.
3. With reference to the subjects of commerce which are local and limited in their nature or sphere of operation the **States may prescribe regulations** until Congress intervenes and assumes control.
4. When the subjects of commerce are national in character and require uniformity of regulation affecting alike all of the States, the **power of Congress is exclusive.**
5. The commerce with foreign nations and between the States, which consists in the transportation of persons and property between them, is a subject of national character and requires uniformity of regulation. **Congress alone can deal with such transportation**, and its non-action is a declaration that it shall remain free from burdens imposed by state legislation.
6. **Freedom of transportation** implies exemption from charges other than such as are imposed by way of compensation for the use of the property employed, or for facilities afforded for its use, or as ordinary taxes upon the value of the property within the jurisdiction of the State.
7. **Receiving and landing passengers and freight** is incident to their trans-

NOTE.—Constitutional law—interstate commerce; regulation of—power of Congress—how far exclusive.

The power to regulate interstate commerce vested in Congress is the power to prescribe the rules by which it shall be conducted, to determine when it shall be free from, and when subject to, duties or other exactions.

When the subjects of commerce are national in character and require uniformity of regulation, the power of Congress is exclusive. In addition to the above case of *Gloucester Ferry Co. v. Pa.*, see *Welton v. Mo.* 91 U.S. (bk. 23, 847, 849); *Glman v. Philadelphia*, 70 U.S. (3 Wall.), 713, (bk. 18, 96); *Henderson v. Mayor*, 92 U.S. 259, (bk. 23, 548); *Mobile Co. v. Kimball*, 102 U.S. 691, (bk. 26, 241); *Brown v. Houston*, 114 U.S. 622, *post*.

In general, when exercised by Congress, the power is exclusive of all state interference. *Gibbons v. Ogden*, 22 U.S. (9 Wh.), 1; *Sinnot v. Davenport*, 66 U.S. (22 How.) 227, bk. 16, 243; *Hall v. De Cuir*, 93 U.S. 485, bk. 24, L. ed. 547.

Inaction by Congress amounts to a declaration that all commerce within its exclusive control shall remain free and untrammelled. In addition to the above case of *Gloucester Ferry Co. v. Pa.* see *Welton v. Mo.* 91 U.S. 876, bk. 23, 847; *Escanaba Co. v. Chicago*, 107 U.S. 879, bk. 27, 442; *Henderson v. Mayor*, 92 U.S. 259, bk. 23, 543; *Brown v. Houston*, *supra*.

The power vested in Congress covers navigation. *Gibbons v. Ogden*, 22 U.S. (9 Wh.), 1; *Passenger Cases*, 48 U.S. (7 How.) 282.

"Commerce is a term of the largest import. * * * The power to regulate it embraces all the instruments by which such commerce may be conducted." *Welton v. Mo. supra*.

It includes control of the telegraph as an agency of commerce. *Pensacola Tel. Co. v. West*, U. Tel. Co. 96 U.S. 1, bk. 24, 708.

Transportation is essential to commerce, and every obstacle to it or burden laid upon it by legislative authority is regulation. *H. & St. J. R. Co. v. Husen*, 95 U.S. 486, bk. 24, 527, and authorities cited.

Legislation may in a great variety of ways affect commerce and persons engaged in it, without constituting a regulation of it within the meaning of the Constitution." *Hall v. De Cuir*, 93 U.S. 485, *supra*; *Sherlock v. Ailing*, 93 U.S. 169, bk. 23, 820; *State Tax on R. Gross Receipts*, 82 U.S. (15 Wall.) 284, bk. 21, 164; *Munn v. Illinois*, 94 U.S. 113, bk. 24, 77.

The power of Congress does not extend to contracts not designed to create impediments to commerce. A contract by an elevator company to handle all grain brought by a railroad company at a certain price is not repugnant to the power of Congress. *Dubuque etc. R. Co. v. Richmond*, 96 U.S. (19 Wall.) 584, bk. 22, 178.

The paramount authority to regulate bridges, and other structures that affect the navigation of the navigable waters of the United States, is in Congress. *Newport & Cin. Bridge Co. v. U. S.* 105 U.S. 470, bk. 26, 1142, and authorities cited.

But in the absence of legislation by Congress, the States may authorize and regulate bridges and other obstructions to navigation within their limits. *Cardwell v. Bridge Co.* 113 U.S. 205, bk. 23, and authorities cited.

Congress may improve harbors and rivers. *S. Car. v. Ga.* 93 U.S. 4, bk. 23, 782.

The States may also improve the navigable waters within their limits, subject to the control of Congress. *Mobile Co. v. Kimball*, 102 U.S. 691, bk. 26, 238.

portation. All restraints by exactions in the form of taxes upon such transportation or upon acts necessary to its completion, are invasions of the exclusive power of Congress.

8. The only state interference with the landing and receiving of passengers and freight which is permissible is confined to such measures as will prevent confusion among the vessels and collision between them, insure their safety and convenience, and facilitate the discharge or receipt of their passengers and freight.
9. A ferry is a means—and a necessary means—of commercial intercourse between States bordering on dividing waters; and it must therefore be conducted without the imposition by the States of taxes or other burdens upon the commerce between them.
10. The capital stock of the Gloucester Ferry Company, a New Jersey corporation engaged in the transportation of persons and property between Gloucester in that State, and Philadelphia, in Pennsylvania, is not subject to taxation by the State of Pennsylvania.
11. No State can impose a tax on that portion of interstate commerce which is involved in the transportation of persons and property, whatever be the instrumentality by which it is carried on.

(Argued Mar. 12, 1885. Decided Apr. 13, 1885.)

IN ERROR to the Supreme Court of the State of Pennsylvania.

The history and facts appear in the

Statement of the case by Mr. Justice Field:

In March, 1865, the Gloucester Ferry Company, the plaintiff in error here, was incorporated by the Legislature of New Jersey to es-

tablish a steamboat ferry from the Town of Gloucester, in that State, to the City of Philadelphia in Pennsylvania, with a capital stock of \$50,000, divided into shares of \$50 each. During that year it established, and has ever since maintained, a ferry between those places across the river Delaware, leasing or owning steam ferry boats for that purpose. At each place it has a slip or dock on which passengers and freight are received and landed; the one in Gloucester it owns, the one in Philadelphia it leases. Its entire business consists in ferrying passengers and freight across the river between those places. It has never transacted any other business. It does not own, and never has owned, any property, real or personal, in the City of Philadelphia other than the lease of the slip or dock mentioned. All its other property consists of certain real estate in the County of Camden, New Jersey, needed for its business, and steamboats engaged in ferriage. These boats are registered at the Port of Camden, New Jersey. It has never owned any boats registered at a port of Pennsylvania; and its boats are never allowed to remain in that State, except so long as may be necessary to discharge and receive passengers and freight.

In July, 1880, the auditor-general and the treasurer of the State of Pennsylvania stated an account against the Company of taxes on its capital stock, based upon its appraised value, for the years 1865 to 1879, both inclusive, finding the amount of \$2,593.96 to be due the Commonwealth. From this finding an appeal was taken to the Court of Common Pleas of Philadelphia, and was there heard upon a case stated, in which it was stipulated that if the court were of opinion that the Company was liable for the tax, judgment against it in favor of the Commonwealth should be entered for the above amount; but if the court were of opinion that the Company was not liable, judgment should be entered in its favor.

A Statute of Pennsylvania, passed June 7, 1879, "to provide revenue by taxation," in its

The States may regulate subjects of commerce which are local and limited in their nature or sphere of operation until Congress intervenes. In addition to the above case of Gloucester Ferry Co. v. Pa. see Welton v. Mo. supra; Brown v. Houston, supra; Cooley v. Port Wardens, 53 U. S. (12 How.) 299, bk. 13, Pound v. Turok, 95 U. S. 459, bk. 24, 525; Gilman v. Philadelphia, 70 U. S. (3 Wall.) 713, bk. 18, 92; Wilson v. Blackbird Creek M. Co. 27 U. S. (3 Pet.) 245; Escanaba Co. v. Chicago, supra; Miller v. Mayor etc. 100 U. S. 385, bk. 27, 971; Cardwell v. Am. Bridge Co. supra.

The power of Congress to regulate navigation does not interfere with the power of the States to protect and regulate the fisheries within their limits. McCready v. Va. 94 U. S. 391, bk. 24, 248; Smith v. Md. 98 U. S. (18 How.) 71, bk. 15, 269; Green v. The Helen, 1 Fed. Rep. 916.

The power of Congress does not interfere with the police powers of the States. H. & St. J. R. Co. v. Husen, supra; Webber v. Va. 103 U. S. 844, bk. 26, 565.

A statute which prevents the introduction of all Texas, Mexican, and Indian cattle into the State during eight months in the year, and which makes no distinction between those which are diseased and such as are not, is void, not being a proper exercise of the police power. H. & St. J. R. Co. v. Husen, supra.

The States cannot so exercise the police power as to work a practical assumption of the power vested in Congress. H. & St. J. R. Co. v. Husen, supra.

The internal commerce of a State is not within the

power of Congress. The Daniel Ball v. U. S. 77 U. S. (10 Wall.) 557, bk. 19, L. ed. 999; U. S. v. De Witt, 78 U. S. (9 Wall.) 41, bk. 19, L. ed. 593; Veazie v. Moore, 55 U. S. (14 How.) 583.

Taxation of a chattel used in interstate commerce is not necessarily a regulation of such commerce within the meaning of the Constitution. Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, bk. 27, 419; Transp. Co. v. Wheeling, 99 U. S. 273, bk. 25, 412.

A license tax on persons dealing in merchandise not the growth, produce, or manufacture of the State, conflicts with the power of Congress. Tiernan v. Rinker, 102 U. S. 123, bk. 26, 103; Cook v. Pa. 97 U. S. 568, bk. 24, 1015; Guy v. Baltimore, 100 U. S. 434, bk. 25, 743, and authorities cited and reviewed.

"No State can, consistently with the Federal Constitution, impose upon the products of other States brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto of the products of other States, more onerous public burdens or taxes than it imposes upon the like products of its own territory." Guy v. Baltimore, supra. See also Moran v. New Orleans, 112 U. S. 69, bk. 28, 663, and authorities cited.

Reasonable charges for the use of property or for additional facilities, whether imposed as a tax or otherwise, do not interfere with the power of Congress. See the above case of Gloucester Ferry Co. v. Pa. and the authorities cited in the opinion of the court.

See, generally, Gibbons v. Ogden, 22 U. S. (9 Wh.) 1, note; Brown v. Md. 26 U. S. (12 Wh.) 519, note.

fourth section enacted as follows: "That every company or association whatever, now or hereafter incorporated by or under any law of this Commonwealth, or now or hereafter incorporated by any other State or Territory of the United States or foreign government, and doing business in this Commonwealth or having capital employed in this Commonwealth in the name of any other company or corporation, association or associations, person or persons, or in any other manner, except foreign insurance companies, banks and savings institutions, shall be subject to and pay into the treasury of the Commonwealth annually a tax to be computed as follows, namely: If the dividend or dividends made or declared by such company or association as aforesaid, during any year ending with the first Monday of November, amount to 6 or more than 6 per centum upon the par value of its capital stock, then the tax to be at the rate of one half mill upon the capital stock for each one per centum of dividend so made or declared; if no dividend be made or declared, or if the dividend or dividends made or declared do not amount to 6 per centum upon the par value of said capital stock, then the tax to be at the rate of three mills upon each dollar of a valuation of the said capital stock," made in accordance with the provisions of another section of the Act.

It was under the authority of this Act that the taxes in question were stated against the Company by the auditor-general and the state treasurer.

The court of common pleas held that the taxes could not be lawfully levied, for there was no other business carried on by the Company in Pennsylvania except the landing and receiving of passengers and freight, which is a part of the commerce of the country and protected by the Constitution from the imposition of burdens by state legislation. It therefore gave judgment in favor of the Company. The case being carried on a writ of error to the Supreme Court of the State, the judgment was reversed and judgment ordered in favor of the Commonwealth for the amount mentioned. To review this latter judgment the case is brought here.

Messrs. John G. Johnson, Morton P. Henry, Geo. M. Dallas, M. E. Olmstead and Samuel Dickson, for plaintiff in error:

The business in which the plaintiff in error was engaged was interstate transportation of freight and passengers, and was therefore within the protection of the Constitution of the United States.

Guy v. Baltimore, 100 U. S. 494 (bk. 25, L. ed. 743).

A foreign corporation has the same right as an individual to conduct everywhere the business of interstate transportation.

Paul v. Virginia, 8 Wall. 168 (75 U. S. bk. 19, L. ed. 857); *Pensacola Tel. Co. v. W. U. Tel. Co.* 96 U. S. 12 (bk. 24, L. ed. 711); *Doyle v. Ins. Co.* 94 U. S. 544 (bk. 24, L. ed. 152); *Tel. Co. v. Texas*, 105 U. S. 460 (bk. 26, L. ed. 1067).

It is not competent for the State to tax directly either the transportation or the goods of persons in transit.

State Freight Tax, 15 Wall. 262 (82 U. S. bk. 21, L. ed. 146); *State Tax on Railway Gross Receipts*, 15 Wall. 284 (82 U. S. bk. 21, L. ed. 164); *Passenger Cases*, 7 How. 263 (48 U. S. bk. 12, L. ed. 702); *Crandall v. Nevada*, 6 Wall. 35 (73 U. S. bk. 18, L. ed. 745); *Henderson v. Mayor of N. Y.* 92 U. S. 259 (bk. 23, L. ed. 543); *Guy v. Baltimore*, *supra*; *R. R. Co. v. Husen*, 95 U. S. 465 (bk. 24, L. ed. 527); *Cook v. Pennsylvania*, 97 U. S. 566 (bk. 24, L. ed. 1015); *Sweatt v. R. R. Co.* 3 Cliff. 389; *Tel. Co. v. Texas*, *supra*; *Wellton v. Missouri*, 91 U. S. 275 (bk. 23, L. ed. 347); *Car Co. v. Nolan*, 22 Fed. Rep. 279; *Woodruff v. Parham*, 8 Wall. 188 (75 U. S. bk. 19, L. ed. 386); *Cannon v. New Orleans*, 20 Wall. 577 (87 U. S. bk. 22, L. ed. 417).

Commercial intercourse is guaranteed by the Constitution of the United States. It cannot be forbidden by any State of the Union. All individuals and corporations are entitled to do everything which is necessary to facilitate this intercourse. They do not derive their rights thus to facilitate it from any of the States, and are therefore not subject to a tax because they exercise it.

Shook v. Mfg. Co. 61 Ind. 520; *Ex parte Robinson*, 2 Biss. 309; *Council Bluffs v. R. R. Co.* 45 Iowa, 388; *Coal Co. v. Carrigan*, 39 N. J. 35; *Hays v. Steamship Co.* 17 How. 597 (58 U. S. bk. 15, L. ed. 254); *Gibbons v. Ogden*, 9 Wheat. 1; *Brown v. Maryland*, 12 Wheat. 419 (25 U. S. bk. 6, L. ed. 678).

Messrs. Robert Snodgrass, Deputy Atty-Gen. of Pennsylvania, and Lewis O. Cassidy, Atty-Gen. of Pennsylvania, for defendant in error:

The right of a State to impose a tax upon the capital stock of a foreign railroad, canal, express, and other corporations, graduated by the extent to which their franchises are exercised within the State, cannot at this day be successfully controverted.

Minot v. R. R. Co. 18 Wall. 206 (85 U. S. bk. 21, L. ed. 888).

"A public ferry is a public highway of a special description, and its termini must be in places where the public have rights, as towns or *villes*, or highways leading to towns or *villes*."

Charles River Bridge v. Warren Bridge, 11 Pet. 622 (36 U. S. bk. 9, L. ed. 853).

The business of a ferryage is not "commerce," within the meaning of the Federal Constitution, in the sense that it must be free from state or local authority and control.

A ferry may be an instrument of commerce. It is as much so, and perhaps in the same sense, as a bridge, but in any case it is at most no more than a local aid or instrument, which Congress has never undertaken to regulate or control.

The distinction was forcibly recognized by *Mr. Justice Field*, in *County of Mobile v. Kimball*, 102 U. S. 702 (bk. 26, L. ed. 241).

That the power to establish and regulate ferries as well as other local aids to commerce rests in the State Legislatures and not in Congress, is well settled.

Conway v. Taylor's Ex. 1 Black, 603 (66 U. S. bk. 17, L. ed. 191); *People v. Babcock*, 11 Wend. 586; *Gibbons v. Ogden*, 9 Wheat. 1 (22 U. S. bk. 6, L. ed.); *State v. Frecholders of Hudson*, 3

(87 U. S. bk. 14, L. ed. 1049); *Ferry Co. v. U. S.* 107 U. S. 805 (bk. 27, L. ed. 419).

Ferries are established by the legislative authority of the several States. Without such authority no one, although he may own both banks of a navigable river, has the right to establish the ferry.

Charles River Bridge v. Warren Bridge, 11 Pet. 421 (36 U. S. bk. 9, L. ed. 774), *Mark v. Miller*, 3 Mo. 470, *Trustee v. Tufman*, 18 Ill. 27.

As a geographical fact, as each ferrriage of persons and property is made across the entire stream, this Company is "doing business in this Commonwealth" and is manifestly within the class of corporations intended to be taxed by our laws. But it is not merely within the taxing intention; it is plainly within the taxing power of the State. It is a foreign corporation, not strictly engaged in interstate commerce, and it is sufficient to say that never, since the decision of *Bank of Augusta v. Earle*, 13 Pet. 819 (38 U. S. bk. 10, L. ed. 274), has it been denied that where a State can restrict or control the business of a corporation when transacted within her limits, she can tax such business so far as it is done within her jurisdiction or can exclude the corporation altogether if she so desires.

See also *St. Louis v. Ferry Co.* 11 Wall. 498 (78 U. S. bk. 20, L. ed. 109).

It is moreover to be observed that the tax here sought to be imposed is not a tax upon the specific property of the corporation in which its capital may be invested. It is not an attempt to tax the ferry boats of this Company, nor is it an effort to tax a corporation in proportion to the number of ferry boats it owns. The tax is not imposed either directly or indirectly upon them; it is not measured in amount by their numbers, it is the same whether the Company owns few or many of them, and is unaffected by the frequency of their use. It therefore clashes with none of the following decisions which form part of the judicial argument against its validity:

Cannon v. New Orleans, 20 Wall. 577 (87 U. S. bk. 23, L. ed. 417), *Transportation Co. v. Washington*, 90 U. S. 278 (bk. 26, L. ed. 412); *Morgan v. Parham*, 16 Wall. 471 (83 U. S. bk. 21, L. ed. 303), *Hays v. Steamship Co.* 17 How. 506 (38 U. S. bk. 15, L. ed. 254), *Hoyt v. Commissioners*, 26 N. Y. 237; *Passenger Cases*, 7 How. 283 (48 U. S. bk. 12, L. ed. 702), *Almy v. People*, 24 How. 109 (43 U. S. bk. 16, L. ed. 644), *Crandall v. Nevada*, 6 Wall. 35 (78 U. S. bk. 15, L. ed. 745).

It is rather a tax upon the capital stock of the corporation, "not in separate parcels, as representing distinct properties, but as a homogeneous unit, partaking of the nature of personality," and taxable where its corporate functions are exercised or its business done.

If the business of ferrriage is commerce, as defined by Chief Justice Marshall, we concede that any tax laid upon such business which comes within the ruling of the *Passenger Cases* or the *State Freight Tax Case* or the many other cases involving the same principle, is an interference with commerce, and for that reason, unconstitutional.

Mr. Justice Field delivered the opinion of the court:

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Its decision, stated that the single question presented for consideration was whether the Company did business within the State of Pennsylvania during the period for which the taxes were imposed; and it held that it did do business there because it landed and received passengers and freight at its wharf in Philadelphia, observing that its whole income was derived from the transportation of freight and passengers from its wharf at Gloucester to its wharf at Philadelphia, and from its wharf at Philadelphia to its wharf at Gloucester; that at each of these points its main business—namely: the receipt and landing of freight and passengers—was transacted; that for such business it was dependent as much upon the one place as upon the other; that, as it could hold the wharf at Gloucester, which it owned in fee, only by purchase by virtue of the statutory will of the Legislature of New Jersey, so it could hold by lease the one in Philadelphia only by the implied consent of the Legislature of the Commonwealth; and that therefore it "was dependent equally, not only for its business, but its power to do that business, upon both States, and might therefore be taxed by both." 98 Pa. St. 105, 116.

As to the first reason thus expressed, it may be answered that the business of landing and receiving passengers and freight at the wharf in Philadelphia is a necessary incident to—indeed, is a part of—their transportation across the Delaware River from New Jersey. Without it that transportation would be impossible. Transportation implies the taking up of persons or property at some point and putting them down at another. A tax, therefore, upon such receiving and landing of passengers and freight is a tax upon their transportation, that is, upon the commerce between the two States involved in such transportation.

It matters not that the transportation is made in ferry boats which pass between the States every hour of the day. The means of transportation of persons and freight between the States does not change the character of the business as one of commerce, nor does the time within which the distance between the States may be traversed. Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property and the navigation of public waters for that purpose as well as the purchase, sale and exchange of commodities. The power to regulate that commerce, as well as commerce with foreign Nations, vested in Congress is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted; to determine when it shall be free, and when subject to duties or other exactions. The power also embraces within its control all the instrumentalities by which that commerce may be carried on and the means by which it may be aided and encouraged. The subjects, therefore, upon which the power may be exerted are of infinite variety. While with reference to some of them, which are local and limited in their nature or sphere of operation, the States may prescribe regulations until Congress intervenes and assumes control of them, yet, when they are national in their character and

require uniformity of regulation affecting alike all the States, the power of Congress is exclusive. Necessarily that power alone can prescribe regulations which are to govern the whole country. And it needs no argument to show that the commerce with foreign Nations and between the States, which consists in the transportation of persons and property between them is a subject of national character and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its nonaction is a declaration that it shall remain free from burdens imposed by state legislation. Otherwise there would be no protection against conflicting regulations of different States, each legislating in favor of its own citizens and products and against those of other States. It was from apprehension of such conflicting and discriminating state legislation, and to secure uniformity of regulation, that the power to regulate commerce with foreign Nations and among the States was vested in Congress.

Nor does it make any difference whether such commerce is carried on by individuals or by corporations. *Wells v. Missouri*, 91 U. S. 275 [Bk. 23 L. ed. 347]; *Mobile Co. v. Kimball*, 102 U. S. 691 [Bk. 26, L. ed. 238]. As was said in *Paul v. Virginia*, at the time of the formation of the Constitution a large part of the commerce of the world was carried on by corporations; and the East India Company, the Hudson's Bay Company, the Hamburg Company, the Levant Company, and the Virginia Company were mentioned as among the corporations which, from the extent of their operations, had become celebrated throughout the commercial world. 8 Wall. 168 [75 U. S. bk. 19, L. ed. 357]. The grant of power is general in its terms, making no reference to the agencies by which commerce may be carried on. It includes commerce by whomsoever conducted, whether by individuals or by corporations. At the present day nearly all enterprises of a commercial character requiring for their successful management large expenditures of money are conducted by corporations. The usual means of transportation on the public waters where expedition is desired are vessels propelled by steam; and the ownership of a line of such vessels generally requires an expenditure exceeding the resources of single individuals. Except in rare instances it is only by associated capital, furnished by persons united in corporations, that the requisite means are provided for such expenditures.

As to the second reason given to the decision below—that the Company could not lease its wharf in Philadelphia except by the implied consent of the Legislature of the Commonwealth, and thus is dependent upon the Commonwealth to do its business, and therefore can be taxed there—it may be answered that no foreign or interstate commerce can be carried on with the citizens of a State without the use of a wharf or other place within its limits on which passengers and freight can be landed and received; and the existence of power in a State to impose a tax upon the capital of all corporations engaged in foreign or interstate commerce for the use of such places would be inconsistent with and entirely sub-

versive of the power vested in Congress over such commerce. Nearly all the lines of steamships and of sailing vessels between the United States and England, France, Germany and other countries of Europe, and between the United States and South America, are owned by corporations; and, if by reason of landing or receiving passengers and freight at wharves or other places in a State, they can be taxed by the State on their capital stock on the ground that they are thereby doing business within her limits the taxes which may be imposed may embarrass, impede and even destroy such commerce with the citizens of the State. If such a tax can be levied at all its amount will rest in the discretion of the State. It is idle to say that the interests of the State would prevent oppressive taxation. Those engaged in foreign and interstate commerce are not bound to trust to its moderation in that respect; they require security. And they may rely on the power of Congress to prevent any interference by the State until the act of commerce—the transportation of passengers and freight—is completed. The only interference of the State with the landing and receiving of passengers and freight which is permissible is confined to such measures as will prevent confusion among the vessels, and collision between them, insure the safety and convenience, and facilitate the discharge or receipt of their passengers and freight, which fall under the general head of port regulations, of which we shall presently speak.

It is true that the property of corporations engaged in foreign or interstate commerce, as well as the property of corporations engaged in other business, is subject to state taxation, provided always it be within the jurisdiction of the State. As said by Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 429 (17 U. S. bk. 4, L. ed. 607), "All subjects over which the sovereign power of a State extends are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation. This proposition may also be pronounced self evident."

In *Huys v. Pacific Mail Steamship Co.* 17 How. 596 [58 U. S. bk. 15, L. ed. 254], the defendant, a corporation of New York, owned steam vessels employed in the transportation of passengers and freight between New York and San Francisco and between New York and different ports in Oregon, which were registered in New York. The principal office of the company for transacting its business was also in New York, though for its better management agencies were established in Panama and in San Francisco. It had a naval dock and ship yard at Benicia, in California, for furnishing and repairing its steamers. On their arrival at the Port of San Francisco they remained only long enough to land their passengers, mail and freight, which was usually done in a day, and then proceeded to Benicia, where they remained for repairs and refitting until the commencement of the next voyage, which was generally some ten or twelve days. It was held that the vessels were not subject to taxation in California, as they were only temporarily there while engaged in lawful trade and commerce; that their situs was at their home port, where their owners were liable to be taxed for the capital

invested. The court, in giving its decision, said that the ships are "engaged in the business and commerce of the country, upon the highway of nations, touching at such ports and places as these great interests demand, and which hold out to the owners sufficient inducements by the profits realized or expected to be realized. And so far as respects the ports and harbors within the United States they are entered and cargoes discharged or laden on board independently of any control over them, except as it respects such municipal and sanitary regulations of the local authorities as are not inconsistent with the Constitution and laws of the General Government, to which belongs the regulation of commerce with foreign Nations and between the States. Now it is quite apparent that if the State of California possessed the authority to impose the tax in question, any other State in the Union into the ports of which the vessels entered in the prosecution of their trade and business, might also impose a like tax."

In *Morgan v. Parham*, 16 Wall. 471 [83 U. S. bk. 21, L. ed. 803], it was held that a vessel registered in New York was not subject to taxation in Alabama, though engaged in commerce as one of a regular line of steamers between Mobile in that State and New Orleans in Louisiana. In rendering the decision it was said: "It is the opinion of the court that the State of Alabama had no jurisdiction over this vessel for the purpose of taxation, for the reason that it had not become incorporated into the personal property of that State, but was there temporarily only and that it was engaged in lawful commerce between the States, with its situs at the home port of New York, where it belonged and where its owner was liable to be taxed for its value," referring to the case of *Hays v. Pacific Mail Steamship Co.*, as decisive of the case; and adding: "The jurisdiction of this court over the present case, as in the case of *Hays v. The Pacific Mail Steamship Company*, arises from the facts, first, that the property had not become blended with the business and commerce of Alabama, but remained legally of and as in New York; and secondly, that the vessel was lawfully engaged in the interstate trade over the public waters. It is in law as if the vessel had never before been within the Port of Mobile, but, touching there on a single occasion when engaged in the interstate trade, had been subjected to a tax as personal property of that city. Within the authorities it is an interference with the commerce of the country not permitted to the States."

In *St. Louis v. Ferry Co.* 11 Wall. 423 [78 U. S. bk. 20, L. ed. 192], the company was incorporated by Illinois to run a ferry from a place opposite St. Louis to that city across the Mississippi. It had its principal place of business in St. Louis, in which its chief officers resided, and there the business meetings of its directors were held. Its engineers and subordinate officers resided in Illinois, where its real estate was situated. Its ferry boats when not in use were laid up in Illinois and forbidden to remain at the wharf in St. Louis. It paid a ferry license to St. Louis and a wharfage tax for the use of its wharf there. In addition to these charges the city authorities assessed a tax on the company for the value of the boats as property

within the city, all property within it being taxable under a statute of the State. The court held that the tax was illegally levied, as the boats were not property within the city, and said: "Where there is jurisdiction neither as to person nor property the imposition of a tax would be *ultra vires* and void. If the Legislature of a State should enact that the citizens or property of another State or country should be taxed in the same manner as the persons or property within its own limits and subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action."

In *R. R. Co. v. Pennsylvania*, 15 Wall. 300 [82 U. S. bk. 21, L. ed. 179], sometimes called *Case of State Tax on Foreign-held Bonds*, which was brought here on a writ of error to the Supreme Court of the State, this court said that "The power of taxation, however vast and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property and business." This proposition would seem, as stated by Chief Justice Marshall, to be self-evident, and no force of expression could add to its manifest truth.

In the recent case of *Pennsylvania v. Standard Oil Co.* 101 Pa. 119, the liability of foreign corporations doing business within that State is elaborately considered by its Supreme Court. The corporation was doing business there, and it was contended on the part of the Commonwealth that the tax should be imposed upon all of the capital stock of the company; while on the other side it was urged that only so much of the stock was intended by the statute to be taxed, as was represented by property of the company invested and used in the State. In giving its decision the court said that it had been repeatedly decided and was settled law that a tax upon the capital stock of a company is a tax upon its property and assets (citing to that effect a large number of decisions); that it was undoubtedly competent for the Legislature to lay a franchise or license tax upon foreign corporations for the privilege of doing business within the State, but that the tax in that case was in no sense a license tax; that the State had never granted a license to the Standard Oil Company to do business there, but merely taxed its property—that is, its capital stock—to the extent that it brought such property within its borders in the transaction of its business; that the position of the Commonwealth—that a foreign corporation entering the State to do business brought its entire capital—was ingenious but unsound; that it was a fundamental principal that in order to be taxed the person must have a domicile in the State, and the State must have a situs therein; that persons and property *in transitu* could not be taxed; that the domicile of a corporation was in the State of its origin, and it could not emigrate to another sovereignty; that the domicile of the Standard Oil Company was in Ohio, and when it sent its agents into the State to transact business it no more entered the State in point of fact than any other foreign corporation, firm or individual who sent an agent there to open an office or branch house, nor

brought its capital there constructively, that it would be as reasonable to assume that a business firm in Ohio brought its entire capital there because it sent its agent to establish a branch of its business, as to hold that the Standard Oil Company by employing certain persons in the State to transact a portion of its business thereby brought all its property or capital stock within the jurisdiction of the State; that there was neither reason nor authority for such a proposition; that the company was taxable only to the extent that it brought its property within the State; and that its capital stock, as mentioned in the Act of the Legislature, must be construed to mean so much of the capital stock as was measured by the property actually brought within the State by the company in the transaction of its business. The justice who delivered the opinion of the court added, speaking for himself, that he conceded the power of the Commonwealth to exclude foreign corporations altogether from her borders, or to impose a license tax so heavy as to amount to the same thing; but he denied, great and searching as her taxing power is, that she could tax either persons or property not within her jurisdiction. "A foreign corporation," he said, "has no domicile here and can have none; hence, it cannot be said to draw to itself the constructive possession of its property located elsewhere. There are a large number of foreign insurance companies doing business here under license from the State. Some of them have a very large capital. It is usually invested at the domicile of the company. If the position of the Commonwealth is correct, she can tax the entire property of the Royal Insurance Company, although the same is located almost wholly in England, or the assets of the New York Mutual, located in New York."

Under this decision there is no property held by the Gloucester Ferry Company which can be the subject of taxation in Pennsylvania, except the lease of the wharf in that State. Whether that wharf is taxed to the owner or to the lessee it matters not, for no question here is involved in such taxation. It is admitted that it could be taxed by the State according to its appraised value. The ferry boats of the Company are registered at the Port of Camden in New Jersey, and according to the decisions in *Hays v. Steamship Co.* and in *Morgan v. Parham* [supra], they can be taxed only at their home port. According to the decision in the *Standard Oil Company Case*, and by the general law on the subject the Company has no domicile in Pennsylvania, and its capital stock representing its property is held outside of its limits. It is solely, therefore, for the business of the Company in landing and receiving passengers at the wharf in Philadelphia that the tax is laid; and that business, as already said, is an essential part of the transportation between the States of New Jersey and Pennsylvania, which is itself interstate commerce. While it is conceded that the property in a State belonging to a foreign corporation engaged in foreign or interstate commerce may be taxed equally with like property of a domestic corporation engaged in that business, we are clear that a tax or other burden imposed on the property of either corpora-

tion because it is used to carry on that commerce, or upon the transportation of persons or property, or for the navigation of the public waters over which the transportation is made, is invalid and void as an interference with and an obstruction of the power of Congress in the regulation of such commerce. This proposition is supported by many adjudications. Thus, in *Gibbons v. Ogden*, the earliest and leading case upon the commercial power of Congress, it was held that the Acts of New York giving to Livingston and Fulton the exclusive right, for a certain number of years, to navigate all the waters within its jurisdiction with vessels propelled by steam, were unconstitutional and void. Making the navigation of those waters subject to a license of the grantee of the State—that is, to such a tax or other burden as they might levy—was an obstruction to commerce between the States and in conflict with the laws of Congress respecting the coasting trade. 9 Wheat. 1. Although the sole point in judgment was whether the State could regulate commerce on her waters in the face of such legislation by Congress, yet the argument of the court was that such attempted control of the navigable waters of the State was an encroachment upon the power of Congress independently of that legislation.

In *Steamship Co. v. Port Wardens*, 6 Wall. 81 [73 U. S. bk. 18, L. ed. 749], it was held that a Statute of Louisiana declaring that the master and wardens of the Port of New Orleans should be entitled to demand and receive, in addition to other fees, the sum of \$5 for every vessel arriving at that port, whether called on to perform any service or not, was unconstitutional and void, as imposing a burden upon commerce, both interstate and foreign. The exaction was in effect a tax for entering the port—that is, for the navigation of its waters. The control of the navigable waters of the port, and of all public waters constituting channels of communication between the States and foreign countries, is embraced within the commercial power of Congress, and equally beyond the interference of the States. It was claimed that the tax was for compensation to the master and wardens for the performance of certain duties required of them, and that the law for its collection stood, therefore, on the same constitutional grounds as the laws authorizing the collection of pilotage; but the court answered that no Acts of Congress recognize such laws as that of Louisiana as proper and beneficial regulations, while state laws in respect to pilotage are thus recognized. The court also added that the right to recover pilotage and half pilotage prescribed by State legislation rested not only upon state laws but upon contract, observing that pilotage was compensation for services performed, and half pilotage was compensation for services which a pilot had put himself in readiness to perform by labor, risk and cost, and had offered to perform; while in the case in Louisiana the state law subjected the vessel to the demand of the master and wardens whether called upon to perform any service or not. The case therefore was simply one of a tax imposed upon the vessel for the navigation of the public waters of the State, and as such was a regulation

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tent ground shall be covered by those directions, the exercise of state power is excluded. Congress may establish police regulations, as well as the States confining their operations to the subjects over which it is given control by the Constitution; but as the general police power can better be exercised under the provisions of the local authority, and mischiefs are not likely to spring therefrom so long as the power to arrest collision resides in the National Congress, the regulations which are made by Congress do not often exclude the establishment of others by the State covering very many particulars." *Cooley, Const. Lim.* 782.

The power of the States to regulate matters of internal police includes the establishment of ferries as well as the construction of roads and bridges. In *Gibbons v. Ogden* [9 Wheat. 203], Chief Justice Marshall said that laws respecting ferries, as well as inspection laws, quarantine laws, health laws, regulating the internal commerce of the States, are component parts of an immense mass of legislation, embracing everything within the limits of a State not surrendered to the General Government; but in this language he plainly refers to ferries entirely within the State, and not to ferries transporting passengers and freight between the States and a foreign country; for the power vested in Congress, he says, comprehends every species of commercial intercourse between the United States and foreign countries. No sort of trade, he adds, can be carried on between this country and another to which the power does not extend; and what is true of foreign commerce is also true of commerce between States over the waters separating them. Ferries between one of the States and a foreign country cannot be deemed, therefore, beyond the control of Congress under the commercial power. They are necessarily governed by its legislation on the importation and exportation of merchandise and immigration of foreigners—that is, are subject to its regulation in that respect; and if they are not beyond the control of the commercial power of Congress, neither are ferries over waters separating States. Congress has passed various laws respecting such international and interstate ferries, the validity of which is not open to question. It has provided that vessels used exclusively as ferry boats, carrying passengers, baggage and merchandise, shall not be required to enter and clear, nor shall their masters be required to present manifests, or to pay entrance or clearance fees, or fees for receiving or certifying manifests; "but they shall, upon arrival in the United States, be required to report such baggage and merchandise to the proper officer of the customs, according to law"; R. S. § 2792; that the lights for ferry boats shall be regulated by such rules as the board of supervising inspectors of steam vessels shall prescribe; R. S. § 4233, Rule 7; that any foreign railroad company or corporation whose road enters the United States by means of a ferry or tug boat, may own such boat, and that it shall be subject to no other or different restrictions or regulations in such employment than if owned by a citizen of the United States (R. S. § 4870); that the hull and boilers of every ferry boat propelled by steam shall be inspected, and

provisions of law for the better security of life, which may be applicable to them, shall, by regulations of the supervising inspectors, be required to be complied with before a certificate of inspection be granted; and that they shall not be navigated without a licensed engineer and a licensed pilot. R. S. § 4426.

It is true that from the earliest period in the history of the government the States have authorized and regulated ferries not only over waters entirely within their limits, but over waters separating them; and it may be conceded that in many respects the States can more advantageously manage such interstate ferries than the General Government; and that the privilege of keeping a ferry, with a right to take toll for passengers and freight, is a franchise grantable by the State, to be exercised within such limits and under such regulations as may be required for the safety, comfort and convenience of the public. Still, the fact remains that such a ferry is a means—and a necessary means—of commercial intercourse between the States bordering on their dividing waters; and it must therefore be conducted without the imposition by the States of taxes or other burdens upon the commerce between them. Freedom from such imposition does not of course imply exemption from reasonable charges as compensation for the carriage of persons, in the way of tolls or fares, or from the ordinary taxation to which other property is subjected, any more than like freedom of transportation on land implies such exemption. Reasonable charges for the use of property either on water or land are not an interference with the freedom of transportation between the States secured under the commercial power of Congress. *Packet Co. v. Keokuk*, 95 U. S. 80 [Bk. 24, L. ed. 377]; *Packet Co. v. St. Louis*, 100 U. S. 433 [Bk. 25, L. ed. 688]; *Vicksburg v. Tobin*, Id. 430 [Id. 690]; *Packet Co. v. Catlettburg*, 105 U. S. 559 [Bk. 26, L. ed. 1170]; *Transportation Co. v. Parkersburg*, 107 U. S. 691 [Bk. 27, L. ed. 584].

That freedom implies exemption from charges other than such as are imposed by way of compensation for the use of the property employed, or for facilities afforded for its use, or as ordinary taxes upon the value of the property. How conflicting legislation of the two States on the subject of ferries on waters dividing them is to be met and treated is not a question before us for consideration. Pennsylvania has never attempted to exercise its power of establishing and regulating ferries across the Delaware River. Anyone, so far as her laws are concerned, is free, as we are informed, to establish such ferries as he may choose. No license fee is exacted from ferry keepers. She merely exercises the right to designate the places of landing as she does the places of landing for all vessels engaged in commerce. The question, therefore, respecting the tax in the present case is not complicated by any action of that State concerning ferries. However great her power, no legislation on her part can impose a tax on that portion of interstate commerce which is involved in the transportation of persons and freight, whatever be the instrumentality by which it is carried on.

It follows that upon the case stated the tax imposed upon the Ferry Company was illegal and void. *The judgment of the Supreme Court*

of the State of Pennsylvania must therefore be reversed, and the cause remanded for further proceedings in conformity with this opinion.

THE INTERSTATE COMMERCE COMMISSION.

BOSTON CHAMBER OF COMMERCE

v.

LAKE SHORE & MICHIGAN SOUTHERN R. CO.; New York Central & Hudson River R. R. Co.; and Boston & Albany R. R. Co.*

(Filed July 22, 1887.)

PETITION charging discrimination against Boston in favor of New York, in rates from Chicago.

To the Honorable, The Interstate Commerce Commission:

Respectfully represents your petitioner as follows:

1. That it is a corporation duly established under the laws of the Commonwealth of Massachusetts, and is a mercantile society or association located at Boston, in said Commonwealth, and that its membership consists of merchants engaged in carrying on the flour, grain, provision, produce, and other branches of business in said Boston.

2. That the respondent, the Lake Shore & Michigan Southern Railway Company, is a railway company duly incorporated under the laws of the State of Illinois, Indiana, Ohio, Pennsylvania, and New York; and owning and operating a railroad which runs through the said several States, from its western terminus at Chicago, in the State of Illinois, to its eastern terminus at Buffalo, in the State of New York.

That the respondent, the New York Central & Hudson River Railroad Company, is a railroad company duly incorporated under the laws of the State of New York, and owning and operating a railroad which runs through said State, from its western terminus in Buffalo (where it connects with the said first named respondent, the said Lake Shore & Michigan Southern Railway Company) to Albany, in said State of New York, on the Hudson River, and thence to its southern terminus at the City of New York.

That the respondent, the Boston & Albany Railroad Company, is a railroad corporation duly established under the laws of the State of New York and the Commonwealth of Massachusetts, and owning and operating a railroad which runs through both said States, from its western terminus at Albany (where it connects with the said second named respondent, the said New York Central & Hudson River Railroad Company) to its eastern terminus at Boston, in the Commonwealth of Massachusetts.

That the said several respondent railroads thus form, by connection with each other, a through railroad line from Chicago to Boston; and the said first two named respondents also a through line from Chicago to New York.

3. That from the 5th day of April, 1887, down to the date of this petition, the said several respondent companies have, as common car-

riers, been largely engaged, in connection with each other, in the transportation of flour, grain, provisions, and produce wholly by railroad, as aforesaid, from Chicago to Boston, and from Chicago to New York, through the said several States; the said transportation being made under a common control, management, and arrangement for a continuous carriage from Chicago to Boston, and from Chicago to New York, respectively; and that the said respondent railroads have, therefore, as to said transportation, come within the provisions of the Interstate Commerce Act of February 4, 1887, and within the jurisdiction of your honorable Commission.

Your petitioner further says that those goods intended for carriage to Boston, and those intended for carriage to New York, have been, during said period, carried by the two first named respondents at the same amount of expense to themselves, over precisely the same lines of rail, from Chicago as far as Albany, in the State of New York; that goods intended for the City of New York have thence been carried from Albany by said New York Central Road to New York, a distance of 144 miles; while those intended for Boston have been carried from Albany by the said Boston & Albany Railroad to Boston, a distance of 200 miles; the haul from Albany to Boston being, therefore, about fifty-six miles longer than from Albany to New York; that the whole distance over said line from Chicago to New York City is substantially 984 miles; and from Chicago to Boston substantially 1040 miles; and that the cost to said respondent roads of transporting said goods from Chicago to Boston is not only not greater than for transporting the same goods to New York, but that, on the contrary, if the tariff over the respondent roads from Chicago to Boston and to New York were fixed at the same rate, the *pro rata* share thereof received, under the existing arrangement between the roads, by the Lake Shore Railway and the New York Central Railroad, would (by reason of certain terminal expenses in New York which do not, in the case of local trade, exist in Boston at all, and in the case of export trade only to a much smaller amount) be greater for goods carried to Boston than for goods carried to New York; and your petitioner says that the transportations of said goods made by said roads from Chicago to New York, and those made to Boston, have, during said period, been and were a like and contemporaneous service in the transportation of a like kind of traffic, under circumstances and conditions permitting, as above set forth, a lower traffic rate to Boston than to New York, but otherwise substantially similar.

4. That, notwithstanding the premises, the said respondent railroads, since the 5th day of April, 1887, have, as to the flour, grain, provisions, and produce, so carried to Boston, violated the provisions of the said Interstate Commerce Act in this: that they have charged the ship-

*See ante, 354.

pers, owners or consignees of such goods, for the transportation thereof from Chicago to Boston, unjust and unreasonable, unequal and unjustly discriminating and unduly preferential rates; and in support of this allegation your petitioner avers and sets forth the following facts:

(a) That the said railroads have, for transportation of flour, grain, and provisions, from Chicago to Boston, charged at the rate of thirty cents per 100 pounds, or \$90 per car of 30,000 pounds; whereas, for such transportation from Chicago to New York they have, during the same period, charged only twenty-five cents per 100 pounds, or \$75 per car; being an excess of charge for Boston flour, grain, and provisions over New York flour, grain, and provisions of five cents per 100 pounds, or \$15 per car; thus making an unjust discrimination against Boston owners and consignees and in favor of New York owners and consignees; and making an unduly preferential rate in favor of the locality of New York and to the disadvantage of the locality of Boston; and your petitioner shows that said additional rate against Boston is purely artificial, and without justice or proper reason; that for many years hitherto the same sum of five cents extra per 100 over New York rates has been always charged against Boston traffic, when rates from Chicago to New York were fifty cents as well as when they were fifteen cents per 100; and, although the New York rate has, from time to time, been altered until the present rate of twenty-five cents was attained, nevertheless the Boston rate has invariably been still kept at the same artificial advance of five cents over the New York rate, without other reason or excuse than the inability of Boston merchants, prior to the formation of your honorable Commission, to make any effectual remonstrance or complaint. And your petitioner in like manner shows, that since the said 5th day of April, 1887, the respondent roads, for the transportation of produce (eggs, butter, cheese, etc.) from Chicago to Boston, have charged at the rate of seventy-five cents per 100 pounds; whereas, for such transportation from Chicago to New York they have, during the same period, charged only sixty-five cents per 100 pounds; thus in like manner making an unjust discrimination and an unduly preferential rate in favor of New York and New York owners and consignees, and against Boston and Boston owners and consignees.

And your petitioner further in this connection shows that, although the said roads have, as above set forth, during the said period, charged more for transportation of goods from Chicago to Boston than from Chicago to New York, they have at the same time on the other hand charged precisely the same rates on return or west bound freight from Boston to Chicago as from New York to Chicago, thus showing the oppressive and artificial character of the Boston rates and charges so made by the respondents as aforesaid on east bound freight.

(b). That not only have said railroads during said period from April 5, 1887, to the date of this petition arbitrarily charged in the case of flour, grain and provisions five cents more per 100 for transportation from Chicago to Boston than from Chicago to New York and in

the case of produce ten cents more per 100; but upon the other hand when the flour, grain, provisions and produce so carried to Boston have not, upon their arrival, remained in Boston for local sale and disposition but have thence been transported by continuous shipment, under a through bill of lading from Chicago, to Liverpool or other foreign port, then in such case the respondent railroads have made a special rate for such transportation from Chicago to Boston of twenty-five instead of thirty cents per 100 in the case of flour, grain and provisions and sixty-five instead of seventy-five cents per 100 in the case of produce, thus putting in this special case the Boston and New York rates on an equality, although goods so intended for export from Boston are nominally carried by said roads twenty miles further than goods intended for Boston local consumption and disposition; thereby making an unjust discrimination in their charges for precisely the same service, in favor of Boston export trade and against Boston local trade.

(c). That in like manner when flour, grain, provisions and produce have been originally billed and transported by said railroads from Chicago to Boston as aforesaid at the said regular rate of thirty cents and seventy-five cents per 100 respectively, but have after their arrival in Boston by subsequent act and determination of the consignee or owner, been reshipped to Liverpool or other foreign ports, then, in such case, the said railroads have made a rebate or allowance, upon the said charges, of five cents per 100, in the case of flour, grain and provisions, and of ten cents per 100 in the case of produce, or in other words have in this special case also made the Boston rate the same as the New York rate, thereby in like manner making an unjust discrimination in favor of Boston exporters and against local consumers and dealers.

(d). And that finally when flour, grain, provisions and produce have been so billed and transported as aforesaid to Boston and have thence by subsequent shipment been transported by water to any ports in the State of Maine east of Portland, similar special rates or rebates have been allowed by said railroads on their charges for transportation,—thus making in such special cases the Boston and New York rates the same; but on the other hand, if said goods after their said arrival in Boston have thence been sent to such points east of Portland by rail or have thence been sent either by water or rail to Portland or points on the coast (such as Salem or Lynn) west of Portland, or to any other points in the United States, whether on the coast or in the interior and whether by rail or water; then in such cases no such special rates and rebates have been allowed, thus making unjust discriminations and unduly preferential rates as between localities on the Maine coast east of Portland, and other localities, and between one class of Boston shippers and dealers and all other classes of such shippers and dealers.

And your petitioner further shows that while it has in the foregoing petition, for the sake of avoiding confusion, confined its complaints to the transportation of said goods by said respondent railroads from Chicago to Boston, as aforesaid, it nevertheless desires to represent,

and does hereby represent, to your honorable Commission that the said respondent roads have likewise during said period from the 5th of April, 1887, to the date of this petition been engaged in the like transportation of flour, grain, produce and provisions to New York and Boston respectively, from the following named points west of Buffalo on the said Lake Shore Railway between Chicago and Buffalo; namely: Elkhart, in the State of Indiana, Toledo, Cleveland, Painesville and Ash-tabula all in the State of Ohio, Girard and Erie in the State of Pennsylvania, and Dunkirk in the State of New York. And as to this transportation by said respondent roads of said flour, grain, provisions and produce from said several points above named to Boston and New York respectively, your petitioner makes the same general complaints and allegations against the said respondents, of charging unjust and unreasonable, unjustly discriminating, and unduly preferential rates which it has hereinbefore made concerning the transportation of said goods from Chicago to New York and Boston as aforesaid; that is to say that the said respondents have, under similar circumstances and conditions, charged more per 100 pounds for the transportation of said goods from said several points to Boston than to New York; and that of goods so transported to Boston they have in the case of goods thence by continuous shipment exported to foreign ports or *hereafter* reshipped to such foreign ports, allowed special rates and rebates (making the rates to Boston from said several named points the same as to New York); which rebates and special rates they have not allowed on goods retained in Boston for local consumption or disposition; and have in like manner made the same discrimination as above set forth, between goods transported to Boston and thence shipped by water to ports in Maine east of Portland, and goods which after such transportation to Boston have been thence sent either by rail or water to other points,—all as more specially set forth in the foregoing paragraphs of this petition.

And your petitioner says that it appears by the premises that the said respondent railroads make their charges for transportation from Chicago and points west of Buffalo to Boston as aforesaid, dependent not on the cost to themselves of such transportation or upon other data which may properly determine such charges, but upon an arbitrary rule to add at all times, irrespective of other circumstances, five cents in the case of flour, grain, and provisions, and ten cents in the case of produce per 100 pounds, to the rate charged to New York—no matter what the latter rate may be; and that such charges, so artificially made up and determined, are unjust and unreasonable, unjustly discriminating and unduly preferential; and that whether the said artificial rate so made to Boston shall or shall not be maintained is made by said railroads to depend upon whether after the goods arrive in Boston they are to remain there for local consumption and disposition, or go elsewhere; and if they go elsewhere upon whether they go to foreign markets and to ports in the United States east of Portland or to other ports and localities in the United States.

INTER 8.

And your petitioner says that the foregoing acts of the respondent railroads are contrary to the provisions of the said Interstate Commerce Act; and more especially in contravention of the first, second and third sections thereof.

Wherefore, your petitioner prays that an investigation may be made by your honorable Commission in the matter of the foregoing complaint; that the said railroad companies may be notified and directed to abstain from the foregoing violation of the Statute; to charge no greater rates respectively for the transportation of flour, grain, provisions and produce, from Chicago and points west of Buffalo, to Boston, than from Chicago and said several points respectively to New York; but to charge therefor just and reasonable rates; to charge the same respective rates from Chicago and said points west of Buffalo to Boston for flour, grain, provisions and produce intended and used for Boston local consumption and disposition as for like goods which after their arrival in Boston are thence exported; and to make the same respective rates from Chicago and said several points to Boston for said goods when, after their arrival at Boston, they are shipped or carried either by water or rail from Boston to Portland or any other points in the United States whether on the coast or in the interior, as for like goods so shipped by water to ports east of Portland; and for such other and further relief as justice and equity may require and the powers of your honorable Commission permit.

Boston Chamber of Commerce

By Edward Kemble,

S. P. Hibbard,

A. D. S. Bell,

E. R. McPherson,

D. W. Ranlet (one of the Directors of the Boston Chamber of Commerce),
F. C. Williams,

Committee.

ASSOCIATED WHOLESALE GROCERS OF ST. LOUIS

v.

MISSOURI PACIFIC R. CO.*

1. The fact that **excursion or commutation tickets** are put on sale at a given rate, does not entitle the purchaser of a **mileage ticket** (each class of tickets being issued for distinct purposes and the form of contract in each case being different) to complain of unjust **discrimination** if charged a higher rate.
2. *Held*, that upon the evidence offered,

*See pleadings and opinion refusing to entertain motion to dismiss, *ante*, 321.

NOTE.—*Mileage Tickets:* In connection with the subject of mileage tickets, the following statement and decision of the Massachusetts Railroad Commissioners, rendered on August 9, 1887, in the case of *Wilmington v. Boston & Maine R. R. Co.*, is of interest:

The hearing was given July 23, and the complaint read as follows:

"The undersigned respectfully represents that upon the 27th day of June last he purchased of the Bos-

the Commission cannot find that \$25 per 1,000 miles is an unreasonable rate for mileage tickets.

3. **Commercial travelers** are not entitled to mileage tickets at lower prices than they are sold to the public generally.

(Decided July 26, 1887.)

REPORT AND OPINION OF THE COMMISSION

Walker, Commissioner:

The facts found in this case are as follows: Prior to April 5, 1887, the defendant sold mileage tickets over its road to the general public for \$25 per 1,000 miles and to commercial travelers for \$20 per 1000 miles. Since the Interstate Law became operative it charges \$25 to all alike. It also now sells excursion tickets and commutation tickets at rates which are less per mile than are charged for mileage tickets, and which, in some instances, would amount to no more than \$15 per 1000 miles. These excursion and commutation tickets are open to all purchasers on the same terms.

Upon these facts complainants claim that their commercial travelers are unjustly discriminated against; and also that any sum over \$15 for a 1000 mile ticket to commercial travelers is unjust and unreasonable.

The issuance of these three classes of tickets, called mileage, excursion and commutation tickets, is permitted by section 23 of the Act to Regulate Commerce. They are each issued for distinct purposes and the form of the contract in each case is different.

In establishing the price upon each, different considerations obviously arise. The Commission does not regard the fact that excursion or commutation tickets are put on sale

at a given rate, to be one that entitles the purchaser of a mileage ticket to complain of unjust discrimination if charged a higher rate. The "circumstances and conditions," to use the phraseology of the second section of the Act, are not the same.

Upon the question whether \$25 per 1000 miles is more than a just and reasonable rate for the sale of mileage tickets to commercial travelers, the only evidence offered was that above stated, that excursion and commutation tickets are sold at rates which are the equivalent of a less sum per mile than that rate produces, and that the former rate to commercial travelers was \$20. Upon this evidence alone the Commission cannot find the established price to be unreasonable.

The complainants also desire to have mileage tickets sold to their commercial travelers at a lower price than they are sold to the public generally, and insist that such a discrimination would not be unjust, in view of the peculiar character of their business. They claim that the consideration that commercial travelers are continually upon the road, and their labors result in great benefit to the freight traffic of the carriers, entitles them to the lowest rate of fare offered to or enjoyed by any portion of the traveling public, and that a special rate on mileage tickets should be given them.

In other words the Commission is asked to order and direct that a discrimination be made in favor of commercial travelers in the sale of mileage tickets, as was done by defendant prior to the passage of the law.

The Commission would hardly be willing to make such an order in any case, however urgent the circumstances might appear to be. But in respect to this matter we are agreed that

ton & Maine Railroad Company a mileage ticket, so called, which ticket contained 1,000 coupons, and entitled the undersigned to travel as many miles on said railroad as were represented by coupons attached. That the aforesaid railroad refused to carry out its said contract with the undersigned and with numerous others who have purchased said tickets, and unlawfully and without right demands and has taken from the undersigned and many others, as a condition of riding on the eastern division of said road between Newburyport, a station on said division, and other stations on said division, a number of coupons in excess of the number of miles traveled, in particular between Boston and Newburyport 40 coupons, the distance being 37.8 miles by the official schedule, and between Salem and Newburyport, 23 coupons, the distance being 21 miles, and in numerous other instances, demanding more coupons than the number of miles traveled. The undersigned respectfully represents that these acts of said corporation are in derogation of its said contract, and are an unjust discrimination against the citizens of said Newburyport and travelers to and from said place. Wherefore, he prays that your honorable board may examine into said matter, in accordance with the provisions of the statutes of this Commonwealth."

At the hearing it appeared that the Boston & Maine Railroad Company has issued mileage tickets for 1,000 miles, with various conditions printed thereon. The condition which relates to the matter covered by this complaint was at first in the following form:

"That one coupon shall be detached by conductor for each mile traveled, except that for distances less than three miles, three coupons shall be surrendered, and that all fractions of a mile shall be computed a mile, in calculating distance traveled."

After about 1,000 of these tickets had been issued, the condition was altered to read as follows:

"That one coupon shall be detached by conductor for each mile traveled, in accordance with mileage table dated June 1, 1887, except that for distance

less than three miles, three coupons shall be surrendered, and that all fractions of a mile shall be computed a mile in calculating distance traveled."

It appeared that the mileage table dated June 1, 1887, and in accordance with which coupons have been detached by the Company from mileage tickets in each of the forms above specified, is not a mileage table which in all cases states the actual distances. For instance, the distance to Newburyport over the eastern division is stated at 40 miles, whereas, in fact, it is but 37 miles and a fraction, and the distance to Portland is stated as 115 miles, which is the distance to Portland by the western division, whereas the actual distance by the eastern division is only 108 miles and a fraction. In other words, the Company has tried to equalize mileage to points reached by its eastern and western divisions, by forcing the distances on the shorter line up, so that they will correspond with the distances on the longer line, and this attempt has resulted in several instances in a material increase of mileage as fixed by the mileage table over the actual mileage. The mileage table thus prepared by the road is not correct and true, but is an arbitrary table. It is clear that those who bought the mileage tickets originally issued are entitled to have only such coupons detached therefrom as will cover the distance actually traveled by them. Moreover, under the new form, in which the phrase "in accordance with mileage table dated June 1, 1887," is used, the public has a right to assume that that mileage table is an honest statement of actual distances, and that it is not a table in which the distances are arbitrarily increased. The board, therefore, adjudge that it is the duty of the road, with reference to both classes of tickets heretofore issued, to detach only such coupons as will cover the actual distance traveled, except that three coupons shall be surrendered for distances less than three miles, and that fractions of a mile be considered as a mile, as set forth in the printed conditions. For the Board,

George G. Crocker, *Chairman.*

the entire policy and spirit of the Law are against it, and that when mileage tickets, as distinguished from trip tickets, are issued, they should be sold to all impartially and on the same terms, and we have so decided in the cases of Larrison against the Chicago and Grand Trunk Railway Co. [*ante*, 369], and of Michigan Central Railroad Company against the same [*Id.*].

The petition is therefore dismissed.

In this opinion all concur.

McCLAIN, WADE & Co.

OREGON RAILWAY & NAVIGATION CO.

(Filed July 22, 1887.)

COMPLAINT alleging unjust charges for the transportation of wheat.

Colfax, Washington Territory,
July 8, 1887.

To the Honorable Interstate Commerce Commissioners:

Your petitioners complain of the Oregon Railway & Navigation Company and respectfully represent: that on the 18th day of June, A. D. 1887, your petitioners shipped from the City of Colfax, in the Territory of Washington, to the City of Portland, in the State of Oregon, two car loads of wheat, to wit: 162 sacks of wheat of the weight of 20,000 pounds on one car, and 230 sacks of wheat of the weight of 30,000 pounds on the other car. That the said two car loads of wheat were loaded on said cars at your petitioners' sole expense, and were delivered to said Oregon Railway & Navigation Company for transportation to Portland, Oregon, as aforesaid, on said 30th day of June, A. D. 1887. That the distance from the said City of Colfax, in Washington Territory, to Portland, Oregon, does not exceed 320 miles. That the said Oregon Railway & Navigation Company, against the protest of your petitioners, have charged your petitioners for transporting the said two car loads of wheat the said 320 miles, the full sum of \$175, or at the rate of \$7 for each ton of 2000 pounds.

Your petitioners further aver that it is stated in the annual report of the said Oregon Railway & Navigation Company for 1886, that the total cost of all property of every description owned by said Company, including ocean steamers, river and sound boats, barges and wharves, is \$32,924,433.72; while its net income from railroad earnings alone was, as appears by the same report, \$2,256,539.78, or 6.87 per cent on the whole nominal investment of that Company, without counting its earnings from other sources. That during the same year that Company transported over its railroad lines 123,418,669 tons of freight and merchandise, and that the average price it received for transporting merchandise from Portland, Oregon, to Colfax, Washington Territory, was in excess of \$30 per ton.

Your petitioners further allege that the rates recommended by the railroad commissioners of the State of Oregon, for the transportation of

wheat from points in the State of Oregon, equidistant from said Portland, Oregon, with the City of Colfax, in Washington Territory, and reached by the line of the Oregon Railway & Navigation Company, is \$4 per ton, or \$3 per ton less than the said Company has charged your petitioners.

Your petitioners further allege that the said Oregon Railway & Navigation Company has agreed to make a rate from points in Columbia County, Washington Territory, as far from Portland, Oregon, as is the City of Colfax, for the transportation of wheat and other grains over the line of said railroad to said Portland, Oregon, of \$5 per ton, while still continuing the rate from said Colfax at \$7 per ton, thus charging your petitioners, and all other handlers of grain in Colfax, \$2 per ton more for transporting their wheat the same distance than is charged the wheat raisers and buyers shipping from said points in Columbia County.

And your petitioners further allege that the sum of \$7 per ton for the transportation of wheat as aforesaid from Colfax, Washington Territory, to Portland, Oregon, is unjust and unreasonable; and that a just and reasonable charge for such transportation is \$3.50 per ton, which is approximately the rate fixed for a haul of the same distance by the Illinois State Law.

Wherefore, your petitioners pray that you may direct the said Oregon Railway & Navigation Company to reimburse to your petitioners the sum of \$87.50, the sum paid by your petitioners to the said Oregon Railway & Navigation Company for the transportation of said two car loads of wheat to Portland, Oregon, in excess of a just and reasonable freight charge. And your petitioners further pray that the said Oregon Railway & Navigation Company may be required to establish a rate for the transportation of grain from Colfax, Washington Territory, to Portland, Oregon, not in excess of \$3.50 per ton.

McClaine, Wade & Co., by
Alfred Coolidge,
Member of Firm.

Protest.

To the Oregon Railway & Navigation Company.

That, whereas, we have this day and do now offer to ship by the railway lines of said Oregon Railway & Navigation Company, 162 sacks of wheat, weight 20,000 pounds, and 230 sacks of wheat, weight 30,000 pounds, to the Portland Flouring Mills, Portland, Oregon, as consignees; and, whereas, we desire to advance the freight charged on the said goods from this point—Colfax, Washington Territory—to said Portland, Oregon; and whereas, the said Company demands as freight for the shipment of said wheat the sum of \$7 per ton for each and every ton of said wheat, so to be shipped; and whereas, these consignors firmly believe that \$4 per ton is a reasonable charge for the shipment of the said wheat, and that any charge exceeding \$4 per ton for each and every ton, is excessive and unreasonable; and whereas, there are no other modes of transit from Colfax, Washington Territory, to said Portland, Oregon, whereby grain can be shipped,

you will hereby take notice that we most earnestly protest against the payment to you as freight charges or otherwise of any larger or greater sum than \$4 per ton for each and every ton shipped as aforesaid, and all sums exacted by you as freight on said wheat or otherwise exceeding the said amount of \$4 per ton, we will take the necessary legal steps to recover from you. And we herewith tender you \$4 per ton for each and every ton shipped.

The wheat above referred to being the identical wheat for which you have issued a shipping receipt dated June 30, 1887, to us and which described the said wheat as
162 aks of wheat car No. 243, weight 20,000 lbs.
230 " " " " " 1962, " " " " " 30,000 lbs.

Dated at Colfax, W. T. this 1st day of July, 1887.

McClaine, Wade & Co. by
Alfred Coolidge,
Member of Firm.

Francis H. LEGGETT & Co. of the City of New York

v.
BALTIMORE & OHIO R. R. Co. *et al.**

(Filed July 30, 1887.)

COMPLAINT against the "Trunk Lines" in reference to car load classifications.

To the Honorable, the Board of Interstate Commerce Commissioners:

Your petitioners respectfully complain and allege as follows:

First: That the railroad companies commonly known as the "Trunk Lines," which have their eastern termini in the City of New York, namely: the Baltimore & Ohio, the Pennsylvania, the Delaware, Lackawanna & Western, the New York, Lake Erie & Western and the New York Central & Hudson River Railroads, and their connections, have violated the provisions of the Interstate Commerce Act, as follows:

Second: That the said railroad companies have published, established and issued a classification of property in common use among them.

Said classification declares their intention and purpose to transport property in full car loads with a minimum weight of 20,000 pounds upon the first three classes, and the minimum of 24,000 pounds for the last three classes. That property in a less quantity than said minimum weights is to be charged for in a class higher, and at a higher rate of charges than property in car loads of their respective minimum weights.

Your petitioners complain that the said railroad companies, by reason of affixing charges by the said classification, discriminate in favor of shippers who forward a minimum car load against a smaller shipper; that by so doing they give an undue preference, and that, therefore, the said railroad companies are acting in violation of section 2 of the Interstate Commerce Act, which is, "That if any common carrier * * * shall, directly or indirectly, by any special rate, rebate, drawback or other

device, charge, demand, collect or receive from any person or persons, a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property than it charges any other person or persons for doing for him or them a like and contemporaneous service * * * under substantially similar circumstances and conditions," etc.

And in violation of section 3, namely: "That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Your petitioners therefore pray that your honorable body issue a decree requiring said common carriers to cease and desist from such violation of said Act, and for such other and further relief as in your judgment may be just and proper.

And your petitioners will ever pray, etc., all of which we respectfully submit.

Francis H. Leggett & Co.

GRIFFITH, OWEN & CO.

v.

DELAWARE & HUDSON CANAL CO.

(Filed August 8, 1887.)

COMPLAINT alleging unjust charges for carrying coal and lumber.

To the Honorable, the Interstate Commerce Commission:

The undersigned citizens, residing and doing business in Fair Haven, in the County of Rutland and State of Vermont, respectfully represent: that the said Town of Fair Haven is situated upon a line of railroad running from Albany and Troy, in the State of New York, to Rutland, in the County of Rutland, and State of Vermont. That the said line of railroad is leased and operated by the president and directors of the Delaware & Hudson Canal Company.

That Whitehall, in the County of Washington and State of New York, is the nearest point of water communication; that large quantities of coal, lumber, etc., are shipped there by Lake Champlain and the canal; that Whitehall is nine miles distance from said Fair Haven, and that the only line of railroad running from Whitehall to Fair Haven is the above described road; that the said president and directors of the Delaware & Hudson Canal Company have heretofore and do now charge the sum of \$12 for hauling a car load of coal from said Whitehall to Fair Haven, which said charges are unreasonable and unjust, and contrary to the provisions of the Interstate Commerce Act.

And your petitioners further saying, say that the rate per cars for lumber from said Whitehall to Fair Haven is \$12, which said charge is unreasonable and unjust, and con-

*See ante, 356.

trary to the provisions of the Interstate Commerce Act.

Wherefore, your petitioners pray that you will grant them a hearing in the premises, and will therein grant such relief in the matter as to Your Honors shall seem meet.

Griffith, Owen & Co. Bordy, Babbett & Co.
Humphrey & Macomber. W. A. Smith.
W. W. Pitkin. N. S. Wood.
J. G. Pitkin. Vermont Union Slate Co.
J. Metcalf (Ed. "Era"). W. F. Parker.
Charles Harrison. R. E. Lloyd.

F. B. THURBER *et al.*, Representing the
New York Board of Trade & Transportation,

NEW YORK CENTRAL & HUDSON
RIVER R. R. CO., *et al.**

(Filed August 1, 1887.)

COMPLAINT charging unjust discrimination through car load classifications of freight.

To the Honorable, the Board of Interstate Commerce Commissioners:

The undersigned, representing the New York Board of Trade & Transportation, comprising in its membership upwards of 1,000 firms and individuals, respectfully submit the following complaint against the New York Central & Hudson River Railroad, New York, Lake Erie & Western Railroad, Delaware, Lackawanna & Western Railroad, Pennsylvania Railroad, and Baltimore & Ohio Railroad, for unjustly discriminating against small shippers of some varieties of goods by placing less than car load quantities in a higher class than car loads, by which small shippers are forced to pay from 16 per cent to 60 per cent more for their transportation than large shippers who ship the same goods in car loads.

We claim that this action violates provisions in sections 1 and 3 of the Interstate Commerce Law, and virtually continues, under the guise of classification, the unjust discriminations both against localities and individuals formerly practiced by means of rebates and drawbacks, which the Interstate Commerce Law designs to prevent. This question as affecting the Eastern Trunk Lines embodies important points not heretofore presented to your honorable body by the complaint of the merchants of St. Louis against the Missouri Pacific Road.†

The west bound classification of the Eastern Trunk Lines in force prior to the enactment of the Interstate Commerce Law made but few and unimportant car load differentials (about 107), but the new classification adds about 1,000 articles to this number, some of which are very important, and the differences in rates made between small and large quantities are excessive. This was the more unnecessary and unreasonable on the part of the Eastern Trunk Lines, because more than half of their west bound cars go empty, and the volume of miscellaneous freight transported by them be-

ing large, it enables them to a very great extent, if they so desire, to fill their cars with full loads of assorted freight. The principle is the same as in the coal cases‡ which have been brought to your attention, and which, if carried to its logical end, would concentrate the business of the roads in the hands of but one shipper or a few shippers in every place. If this principle is to be tolerated, it should be made as uniform as possible. At present it is not applied to some of the most important branches of trade, the others thus being discriminated against as well as individuals. The classification of freight touches the principles upon which rates of transportation are based at almost every point, and is worthy of your fullest and most careful consideration. As at present practiced, although there are two parties in interest, shippers and carriers, the latter dictates absolutely to the former, in secret session, no publicity being allowed to their deliberations, and no opportunity being allowed the other party in interest to be heard. We believe a full investigation of this question will show that the present classification of the trunk lines is unjust, against public policy, and against even the interests of the railroads themselves, which, although generally taking the position that their business is an intricate one, beyond the comprehension of the ordinary business man or citizen, and that their methods should not be questioned nor interfered with by law makers, have frequently admitted that regulations imposed upon them by law in the interest of the public were not only right, but unexpectedly beneficial.

We respectfully petition for a hearing upon this complaint against the before mentioned lines at such time as will be convenient to your honorable board, and such relief as may appear, after investigation, to be reasonable and just; and as we understand that your Board will give certain hearings in Vermont and elsewhere during the month of September, it has occurred to us that possibly it would be convenient for you to give a hearing at that time (or other convenient time to you) on this question in New York, which would greatly accommodate both the representatives of the trunk lines concerned and the merchants of this city who would like to appear before you.

With much respect, we remain, Yours Truly,
F. B. Thurber, M. N. Day,
E. A. Doty, H. K. Miller,
W. B. Timms, B. F. Shores,
Committee.

Thomas W. Ayres and Theron E. Fell, doing
business at Castle Rock, Oregon, under the
firm name of AYRES & FELL

UNION PACIFIC R. R. CO. and Oregon
Railway & Navigation Co.

(Filed August 9, 1887.)

COMPLAINT alleging the exaction of unjust charges, etc., for the transportation of wool.

The above named petitioners, said Ayres and

* See *Re Classification of Railroad Freights*, ante, 317.

† See *Associated Wholesale Grocers of St. Louis v. Missouri Pac. R. Co.* ante, 321.

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‡ See *Providence Coal Co. v. Providence & Worcester R. Co.* ante, 363.

Fell, for cause of complaint against the said defendants, said Union Pacific Railroad Company and said Oregon Railway & Navigation Company, respectfully set forth and allege the following facts, to wit:

1. That said Thomas W. Ayres and Theron E. Fell are, and at all times hereinafter mentioned were, partners doing business as such, as wool commission merchants, doing business at Castle Rock and at Arlington, Oregon.

2. That the defendants are the owners or the lessees of, and operate a line of railroad through said Towns of Castle Rock and Arlington, Oregon, from Portland, in said State of Oregon, to Wallula, in Washington Territory, and other points; and especially through all the points hereinafter named to Portland, Oregon, and to Wallula, in Washington Territory.

3. That said Wallula, in Washington Territory, is the eastern terminus of the said Oregon Railway & Navigation Company's branch of the Union Pacific Railroad, and is the western terminus of the Northern Pacific Railroad's Columbia River Branch, being the station at which freight is transferred from one road to the other; and that all the other points hereinafter mentioned are in the State of Oregon, on said Oregon Railway & Navigation Company's line, now leased to the Union Pacific Railroad Company, either on the main line running from Wallula to Portland down the Columbia River, or on the branch line running from Umatilla Junction to Huntington, Oregon.

4. That the wool clip of Eastern Oregon for the season of 1887 amounted to about 10,000,000 pounds and was produced in sections from which shipment can only be made upon and over said Oregon Railway & Navigation Company's line, or said branch of the Union Pacific Railroad. That the natural, proper, and ultimate destination of all said wool is to eastern markets, to reach which it must pass over said railroad to Wallula, thence east over the Northern Pacific Railroad to Duluth or St. Paul, or via Huntington to Omaha.

5. That about seven eighths of the wool of the State of Oregon is raised in Eastern Oregon, and that heretofore, in consequence of great and unjust discriminations in favor of Portland, Oregon, and San Francisco, California, said wool has been shipped over the said Oregon Railway and Navigation Company's line to Portland, thence back over the same line east, or via the Oregon Railway and Navigation Company's line of steamships to San Francisco.

6. That this year (1887), upon the going into effect of the Interstate Commerce Law, the rate east from Portland to Chicago was put at \$3.25 per 100 pounds, on baled wool; but later, under the suspension of section 4 of said Act, a rate of \$1.50 per 100 pounds from Portland to Chicago was named, which rate did not apply to interior points.

7. That on April 25, 1887, the Northern Pacific announced a rate of \$1.60 per 100 pounds on baled wool from Wallula, Washington Territory, to Duluth, Minnesota; or a rate of \$1.75 per 100 pounds upon wool in sacks; shipped in car load lots of 20,000 pounds baled, or 10,000 pounds sacked.

8. That under these circumstances wool buyers from Duluth, Minnesota, Hartford, Con-

necticut, and other eastern points, including Messrs. Cutler & Gilbert, of Duluth, began to buy large quantities of wool through said firm of Ayres & Fell, and their traveling representative, Mr. A. B. Blair, purchasing and contracting for immediate and future delivery at points along the said Oregon Railway & Navigation Company's line in Eastern Oregon, direct eastern shipment via Wallula, and payment of the already exorbitant local charges to that point, being intended.

9. That about June 1, 1887, shippers were suddenly confronted with advanced rates upon wool from all points in Eastern Oregon along said Oregon Railway and Navigation Company's line to Wallula, Washington Territory, and were then for the first time shown and made aware of a new local distance tariff, and also a change in classification.

The rate upon wool was by this new tariff raised as follows:

From Dalles to Wallula, from 88 cents to 94 cents per 100 lbs.

From Arlington to Wallula, from 49 cents to 65 cents per 100 lbs.

From Castle Rock to Wallula, from 36 cents to 68 cents per 100 lbs.

From Echo to Wallula, from 29 cents to 50 cents per 100 lbs.

From Yoakum to Wallula, from 36 cents to 68 cents per 100 lbs.

From Pendleton to Wallula, from 49 cents to 65 cents per 100 lbs.

10. That the former local tariff of April 1, 1887, made a difference on wool in bales and wool in sacks, the first column of the above figures being for wool in bales; the wool in sacks being classed higher, namely ninety-four cents, fifty-six cents, forty-one cents, thirty-four cents, forty-one cents, and fifty-six cents respectively from the points above named; but the new tariff makes no distinction between wool in sacks and wool in bales, which operates as an unjust discrimination against your petitioners' wool presses.

11. That the new tariff bears date May 14, 1887, and purports to go into effect May 25, 1887; but as a matter of fact said tariff was not actually printed until the 28d day of May, 1887, and hence under the law could not take effect until June 3, 1887. That said tariff was not posted nor in any manner published, or in any way whatever made known to shippers until June 1, 1887, or thereabouts; that it was not sent to said Company's agents along said line until about May 25, 1887, and then with no instructions to advise wool shippers of its contents.

12. That on June 1, 1887, said firm of Ayres & Fell shipped from Castle Rock to Wallula fifteen bales of wool, marked "'C. & G.' care of A. & G. Cummings, Wallula," in a car which left Castle Rock at 7:30 P. M. of said day, intending to forward other lots in a day or two to complete "a car load lot." The lot was billed at thirty-six cents at Castle Rock, but this was corrected at Wallula to correspond with the advanced rate.

The above lot of wool was at once transferred and went east over the Northern Pacific, and on June 2 another lot of twenty-seven bales was forwarded from Arlington, taking the new rate under protest. Said twenty-

seven bales, weighing 16,965 pounds, arrived in Wallula June 4, 1887, and were detained there, contrary to instructions, till June 9, 1887, and then were forwarded only upon our going personally and demanding that the same be forwarded, Mr. Cummings, the consignee, having been repeatedly informed by said Company's agent that no such wool was there; all of which caused great expense and damage to the petitioners.

13. That prior to said shipments, and up to June 1, 1887, said Ayres & Fell made frequent inquiries as to the rate on wool, and whether any different or greater rates from said points in Oregon to Wallula would be made; and was in all cases advised by said Company's agents, up to and including said June 1, that there were no new or higher rates.

14. That said firm of Cutler & Gilbert, of Duluth, Minnesota, had instructed their agents at the above named points to purchase for them 1,000,000 pounds of wool, which said Ayres & Fell were to grade, bale and ship for a commission; that said Ayres & Fell between May 25 and June 2, 1887, received wool purchased and made payment for same, and were under obligations to deliver the same to said Cutler & Gilbert at Duluth, at a stipulated expense per pound; that in consequence of said sudden, secret and unlawful increase of rates they have been unable to fulfil their contracts, and said Ayres & Fell have made purchases at prices which would not have been paid if there had been legal notice of said advance of rates, and that said Ayres & Fell were thus discouraged and prevented at all times after said June 1 from purchasing any further quantities of wool for said firm of Cutler & Gilbert, probable purchases which they were thus prevented from making for this firm being estimated at 1,000,000 pounds of wool. That in consequence of said increase of rates, the wool presses of said Ayres & Fell became idle, and their workmen, five in number, were thrown out of employment, and an expert wool grader employed at a high salary was left on expense with only slight employment.

15. That the business of said Ayres & Fell by this unlawful increase and discrimination has been greatly injured, and partially destroyed; that they have been put to great expense and suffered great loss in traveling, ascertaining facts, employing legal and other assistance, and their patrons have been disappointed and aggrieved; that their business has by said unlawful increase and discrimination been greatly injured, not only with said firm of Cutler & Gilbert, but also in their business with other dealers, notably Fenner Bros. & Childs, of Boston, Mass., and T. W. Hall & Co. of Chicago, Illinois.

16. Said petitioners therefore allege that the defendants have been guilty of a violation of the Interstate Commerce Law in the following particulars, namely:

1. A violation of section 6 of said Law in not printing, publishing or keeping for public inspection a schedule showing the rates charged upon wool shipped from Castle Rock, Arlington, Pendleton and other points in Oregon to Wallula, in Washington Territory, for ten full days prior to June 1, 1887.

2. A violation of said section 6 in advancing the rates upon wool from said points in Oregon to said Wallula, on or about June 1, 1887, without printing or in any manner publishing ten days' notice thereof, or giving shippers any notice whatever until large quantities of wool contracted for under the old rates were ready for shipment.

3. A violation of section 1 of said Law, on or about June 1, 1887, in making and giving said advanced rates upon wool, for the purpose of subjecting certain persons, companies and localities, and said whole wool traffic of Eastern Oregon to undue, unreasonable and unlawful disadvantages.

4. A violation of section 1 of said Law by charging an unjust and unreasonable rate of freight upon wool from said points in Oregon to said Wallula, namely: Castle Rock, fifty-two miles, fifty three cents per 100 pounds; Arlington, seventy-two miles, sixty-five cents per 100 pounds; Echo, forty-five miles, fifty cents per 100 pounds; Pendleton, seventy-one miles, sixty-five cents per 100 pounds and from other places in the same proportion.

17. That your petitioners are not the only ones damaged by this unlawful increase and discrimination, and these unjust rates, but that all the wool growers of Eastern Oregon are interested in a greater or less degree, in common with them, as will appear from a petition filed herewith, and marked "Exhibit A."

18. That the direct, immediate and consequential damage to your petitioners, said firm of Ayres & Fell, is as follows:

1. Unlawful overcharge on shipment of fifteen bales of wool from Castle Rock to Wallula, June 1, 1887, 9,226 pounds, at seventeen cents overcharge per cwt. \$15.68.

2. Unlawful overcharge on shipment of twenty-seven bales of wool from Arlington to Wallula, June 2, 1887, 16,965 pounds at sixteen cents per cwt. overcharge, \$27.14.

3. Direct loss and damage upon said petitioners' business with said Cutler & Gilbert, by reason of the detention of shipment and cancellation of contracts in consequence of unlawful increase of rates to Wallula, \$2,500.

4. Damage to wool commission business of Ayres & Fell as commission and forwarding agents at Arlington and Castle Rock, because of discrimination in favor of Portland and San Francisco packers, — \$2,500.

Based upon the foregoing, your petitioners claim and demand said several sums to be paid by said Oregon Railway & Navigation Company, and said Union Pacific Railroad Company, to wit:

The sum of \$15.68 direct overcharge, the further sum of \$27.14, direct overcharge, and the further sum of \$5,000 damages. We also demand a deduction of said Company's rates on wool from all said points in Oregon to Wallula, Washington Territory, of 50 per cent of present rates, as above set forth, and as appears in the tariff number 228, dated May 14, 1887.

For which your petitioners will ever pray.

Ayres & Fell,
by J. P. Wager,
Their Attorney.

BOSTON & ALBANY R. R. CO.

BOSTON & LOWELL R. R. CO. *et al.**

(Two Cases, Nos. 14 and 15.)

PLEADINGS in proceedings based upon allegations of the maintenance of higher rates for the short haul than for the long haul.

COMPLAINT IN No. 14.

(Filed May 24, 1887.)

Boston, Mass. May 21, 1887.

To the Honorable, the Interstate Commerce Commission:

Respectfully represents the Boston and Albany Railroad Company, a corporation established in the States of Massachusetts and New York, that the Boston and Lowell Railroad Company, a Massachusetts corporation; the Concord Railroad Company, a New Hampshire corporation; the Northern Railroad Company, a New Hampshire corporation; the Central Vermont Railroad Company, a Vermont corporation, and the Grand Trunk Railway Company, established by the laws of Canada, have issued schedules of joint rates under the name of the National Despatch Line, and under these schedules the rates from Boston to Detroit, Michigan are:

51-45-35-24-20-18 for the six classes of freight respectively; and to Montreal, Canada, 45-40-30-23-20-18 for the six classes of freight respectively; while at the same time the Boston and Lowell, Concord, Northern, and Central Vermont Railroad Companies, a part of the roads included in the National Despatch Line, have made and maintained rates from Boston to St. Albans, Vermont, a station on the Central Vermont Railroad, a less distance from Boston than either Detroit or Montreal, in the same direction over the same line as follows: 60-50-40-27-24-17 for the six classes of freight respectively.

The National Despatch Line comes into competition with the Boston and Albany Railroad Company and its connections at Detroit and other western points.

The grievance which this Company and its connections have is that the National Despatch Line makes rates to Detroit and other points in the West less than the Boston and Albany Railroad Company and its connections make to the same points; while at the same time a certain combination of roads, including a part of the roads in the National Despatch Line, viz.: the Boston and Lowell, Concord, Northern, and Central Vermont Railroad Companies maintain higher rates to St. Albans and other intermediate points; that is higher rates for the short haul than for the long haul on the same line in the same direction, on the five upper classes of freight; whereas, if the rates to Detroit and other western points were made the same—no higher and no lower—than to any intermediate point on the same line in the same direction, your petitioner would have no reason to complain.

With this petition and as a part of it, are

*See *ante*, 291. These cases have been set down by the Commission for hearing at Rutland, Vt., on September 1, 1887.

sent a copy of the tariff of the National Despatch Line, No. 4, dated April 5, 1887, a copy of the affidavit of H. B. Tindall, the original of which is filed as a part of the petition of this petitioner against the Ogdensburgh and Lake Champlain route, and a copy of the Boston and Albany Railroad and New York Central and Hudson River Railroad, joint west bound interstate freight tariff No. 1.

Boston & Albany Railroad Company

by Arthur Mills

General Traffic Manager.

Commonwealth of Massachusetts } ss.
Suffolk, }

May 21, 1887.

Sworn to before me. C. E. Stevens.
Justice of the Peace.

COMPLAINT IN No. 15.

(Filed May 24, 1887.)

Boston, Mass. May 21, 1887.

To the Honorable, the Interstate Commerce Commission:

Respectfully represents the Boston and Albany Railroad Company, a corporation established in the States of Massachusetts and New York, that the Boston and Lowell Railroad Company, a Massachusetts corporation; the Concord Railroad Company, a New Hampshire corporation; the Northern Railroad Company, a New Hampshire corporation; the Central Vermont Railroad Company, a Vermont corporation; and the Ogdensburgh and Lake Champlain Railroad Company, a New York corporation, have made an arrangement by which the Steamship Company operated by the Ogdensburgh and Lake Champlain Railroad Company has issued a tariff from Boston to lake ports in the United States at a less rate than is charged at the same time from Boston to Ogdensburgh and other points on the same line at a shorter distance from Boston in the same direction. The rates are as follows:

From Boston to
Cleveland, O. }
Detroit, Mich. } 41-36-29-20-17-14
Port Huron, } for the six classes of freight
respectively.

To
Milwaukee, } 44-39-31-23-19-16
Chicago, } for the six classes respectively,
and from Boston to

Ogdensburgh, 60-50-45-30-25-17 for the six classes of freight respectively.

This line via Ogdensburgh comes into competition with the Boston and Albany Railroad Company and its connections at Cleveland, Detroit, Port Huron, Milwaukee, Chicago and other western points.

The grievance which the Boston and Albany Railroad Company and its connections have is that the line via Ogdensburgh makes rates to the above places less than the Boston and Albany Railroad Company and its connections make to the same points, while at the same time the above named roads, viz.: the Boston and Lowell, Concord, Northern, Central Vermont, and Ogdensburgh and Lake Champlain Railroad Companies maintain higher rates to Ogdensburgh and other intermediate points; that is, higher rates for the short haul than for

the long haul on the same line, at the same time in the same direction; whereas, if the rates to Cleveland, Detroit, Port Huron, Milwaukee and Chicago were made the same, no higher and no lower than to intermediate points on the same line, in the same direction, your petitioner would have no reason to complain.

Herewith, and as a part of this petition, are sent a copy of the Central Vermont Line of Steamers west bound freight tariff No. 2, taking effect April 18, 1887, circular signed by the New England agent of the Central Vermont Line of Steamers dated April 20, 1887, the affidavit of H. B. Tindall, and a copy of the Boston & Albany Railroad Company, New York Central & Hudson River Railroad Company, and Western Transit Company's joint west bound interstate freight tariff No. 1 (A.)

Boston & Albany Railroad Company,

By Arthur Mills,

General Traffic Manager.

Commonwealth of Massachusetts, } ss.
Suffolk,

May 21, 1887.

Sworn to before me. O. E. Stevens,
Justice of the Peace.

EXHIBIT TO COMPLAINTS.

I, H. B. Tindall, of Boston, Massachusetts, on oath depose and say that I am in the employ of the Boston & Albany Railroad Company, and that on the 20th day of April, 1887, I went to the local freight office of the Boston & Lowell Railroad in Boston and requested the clerk in charge to show me the rates from Boston to points on the Central Vermont Railroad; whereupon, he showed me a set of tariffs numbered 8, purporting to give the rates from Boston to the stations named on the Central Vermont Railroad, which rates I copied and which are as shown on the sheet hereto annexed marked at the bottom thereof No. 1.

On the second day of May, 1887, I went to the general freight office of the Boston & Lowell Railroad and asked of the clerk in charge the rates from Boston to points on the Ogdensburgh & Lake Champlain Railroad; whereupon, he read to me from tariffs the following, shown on sheet hereto annexed marked at the bottom No. 2.

H. B. Tindall.

Suffolk } ss.

Boston, May 12, 1887.

Subscribed and sworn to before me.

F. H. Ratcliffe,

Justice of the Peace.

Tariff No. 8 in Effect April 5, 1887.

Central Vermont R. R. Freight Tariff.

E. A. Chittenden,

Sup't Local Frt. Traffic.

J. W. Hobart,
Genl. Mgr.

Between Boston and

(Lumber.)

East Swanton, Vt. - 60-50-40-27-24-17- 11- 7
Highgate Springs - " " " " " " "
Rouse's Point - " " " " " " "
Alburg - " " " " " " " 17
Alburg Springs - " " " " " " " 29-25-17

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Swanton	- - -	" " " 27-24-17	"
St. Albans	- - -	" " " " " "	"
No. Georgia	- - -	" " " " " "	113
Georgia	- - -	59-49-40-27-24-17-113	
Milton	- - -	58-48-40-27-24-17-	"
Colchester	- - -	56-47-39-27-23-17-	11
Essex Junction	- - -	55-45-38-27-23-16-	10
Winooski	- - -	55-45-38-27-23-16-	10
Burlington	- - -	55-45-38-27-23-16-	10
Willston	- - -	55-45-38-27-23-16-	10
Richmond	- - -	" " " " " "	"
Jonesville	- - -	" " " " " "	"
Bolton	- - -	" " " " " "	"
North Duxbury	- - -	" " " " " "	"
Waterbury	- - -	" " " " " "	"
Middlesex Junction	- - -	" " " " " "	"
Montpelier	- - -	" " " " " "	"
Barre	- - -	55-45-38-27-23-16-	10
Northfield	- - -	" " " " " "	"
Roxbury	- - -	" " " " " "	"
East Granville	- - -	" " " 20-22-16-	10
Braintree	- - -	" " " " " "	"
Randolph	- - -	" " " " " "	"
Bethel	- - -	53-43-36-25-21-15-	10
Royalton	- - -	50-40-33-23-21-15-	10
So. Royalton	- - -	45-38-30-21-20-15-	10

[No. 1.]

Tariff No. 5 in Effect April 5, 1887.

Central Vermont R. R. (Ogdensburgh & Lake Champlain Line)

Freight Tariff

between

Clinton Mills, Ellenburg, Forest, Irona, Altona, Woods Falls, Mooers Forks, Mooers Junction, Champlain, and Boston.

F. W. Baldwin, Frank Owen,
Sup't. Gen. Frt. Agent.

To all O. & L. C. points as above,
60-50-40-30-25-17.

Rates quoted from the printed tariff at the general freight office of the Boston & Lowell Railroad, Boston, May 2, 1887.

Between Boston and all Ogdensburgh & Lake Champlain points between Clinton Mills and Champlain inclusive.

60-50-40-30-25-17.

Between Ogdensburgh and Cherubusco, Irra. 60-50-45-30-25-17.

[No. 2.]

ANSWER OF BOSTON & LOWELL R. R. Co.
IN No. 14.

The answer of the Boston and Lowell Railroad Corporation to the petition of the Boston and Albany Railroad Company:

This defendant, saving to itself all benefit of exception to be taken to the petition of the Boston and Albany Railroad Company, for an answer thereto, says: that it admits that the several corporations therein named exist and are established as alleged; and denies that they have issued joint rates under the name of the National Despatch Company, as therein averred, and further denies that the line of railroads or the railroad which established and maintains any joint rates or any rates for the carriage of freight between Boston and St. Al-

bans and intermediate points, is the same line or railroad corporation as the line which establishes and maintains the rates of freight between Boston and Detroit, and other western points, as alleged in said petition, and further denies that the same carrier or line of railroads or this defendant charge higher rates for a short haul than for a long haul, over the same line in the same direction, for the like kind of property in the manner set out in said petition, and further alleges that the transportation of freight between the points named in said petition has not been and is not under substantially similar circumstances and conditions within the true intent and meaning of the Act of Congress, entitled "An Act to Regulate Commerce," approved February 4, 1887.

And this defendant further says that the Boston and Lowell Railroad, the Nashua and Lowell, the Concord, the Northern and the Central Vermont Railroads are connecting railroads so far as trackage is concerned, from Boston, Mass. to St. Albans, Vt. These roads are not managed or controlled by each other, except that the Nashua and Lowell and the Northern are in fact operated by the Boston and Lowell; nor is there between them an arrangement for a continuous carriage or shipment of property over the same, although it is true that they sometimes make joint tariffs of rates between Boston and St. Albans, aforesaid, and interchange cars. At the time of filing the petitioners' complaint the rate fixed by said joint tariff from Boston to St. Albans was and is as stated in said petition.

National Despatch Line.

These defendants further say that the National Despatch Line, referred to in the said petition, is a line of cars running from Boston, Mass., to all large points in Canada and in the Western States west of St. Johns in Canada via the Grand Trunk Line. They consist of 3,750 freight cars, marked "National Despatch Line," and they are owned as follows:

The National Car Company, a corporation chartered and organized under the laws of Vermont, owns 3,000 of said cars. The Grand Trunk Railway Company of Canada, owns 700, and the Chicago, Pekin, and the South Western Railroad owns fifty. The roads over which the National Despatch Line sends freight, and which use these cars, are as follows:

Boston and Lowell; Boston and Maine (Worcester and Nashua Division); Central Vermont; Cheshire; Chicago and Alton; Chicago and Eastern Illinois; Chicago and Grand Trunk; Chicago, Milwaukee and St. Paul; Chicago, Rock Island and Pacific; Cincinnati, Hamilton and Dayton; Concord, Connecticut River; Detroit, Grand Haven and Milwaukee; Detroit, Lansing and Northern; Evansville and Terra Haute; Fitchburg; Flint and Pere Marquette; Grand Trunk; Louisville, New Albany and Chicago; New London and Northern; Providence and Worcester; Toledo, Ann Arbor and Northern Michigan; Wabash, St. Louis and Pacific.

The National Despatch Line have their principal office in Boston, Mass. They solicit freight at Boston and other places in New England for transportation to all prominent points

in Canada and the Western States west of St. Johns. They have agencies in Boston and other eastern points and in Chicago and other western points. They do not receive or solicit freight at Boston or other New England points, the destination of which is south of St. Johns, for west bound freight. They issue their own bills of lading, according to the form hereto attached, marked "B," and they also issue and publish their tariff for transportation from New England points to points in the Western States and Canada west of St. Johns. The one now in force, and which has been in force since April 5, 1887, is hereto attached, marked "C." They do not issue bills of lading for west bound freight from New England points to points south of St. Johns, nor do they make a tariff nor profess to be carriers between those points in respect to west bound freight destined south of St. Johns. St. Albans, Vt., is south of St. Johns, and is not embraced in the tariff made by the National Despatch Line for west bound freight. The rates made to points west of St. Johns, where there is competition with complainants' line, are made under this tariff by the National Despatch Line.

And this defendant denies that the joint tariff aforesaid constitutes an arrangement for a continuous carriage within the meaning of the first section of the Interstate Commerce Law; but if it does, then it alleges that the joint tariff from Boston to St. Albans makes a wholly different line from the one made by the joint tariff of the National Despatch Line, within the meaning of the fourth section of said Law.

Rates at St. Albans, Vermont.

And this defendant further says that the rates from Boston and intermediate points to St. Albans are reasonable; that nobody along the line is dissatisfied with the rates made; that the Boston and Albany Line is not a competitor for traffic for west bound freight from Boston or intermediate points to St. Albans, and is in no way interested in the rates that are made thereto. It further says that the Central Vermont Road runs through a sparsely settled country; that the local traffic thereon is small, and that it was constructed at a great expense through an uneven country with high grades; that the road has been foreclosed and reorganized, and the original capital put into the construction of the same has been lost; that if said road was compelled to depend on local traffic, it could not pay its expenses and interest on its bonded debt, to say nothing of the stocks of the road as it has been reorganized. And this defendant further says that the additional expense of doing through traffic, as compared with local traffic, is small in degree; that its road is the same whether the traffic is local and small or large by reason of through business; that the profit which it makes out of the through business is quite as important to it as the profit on the local business, by reason of the volume of the through traffic as compared with the local traffic; that the volume of business from Boston to St. Albans is not one twentieth part of what it is to points beyond there, westward. That it has been to very large expense for terminal facilities, among other things, to accommodate such through

traffic, and this expense amounts to more than \$3,000,000.

Through Rates. Dissimilar Conditions and Circumstances.

And these defendants further say that the Central Vermont Road extends northerly from St. Albans to the state line, a distance of about ten miles; that it there connects with the Montreal and Vermont Junction Railroad, a Canada corporation which extends about twenty-two miles northerly to St. Johns, in Canada, where it connects with the Grand Trunk Railroad, which extends through Canada to Windsor, opposite Detroit.

It is over this line that the National Despatch cars principally run. And this defendant further says that the rate made by the National Despatch Line from Boston to Montreal is, and was at the time of the filing of the petitioner's complaint, the same as stated in said complaint, and for the following reasons: there are many competitors at Boston for traffic to Montreal; there are none for traffic to St. Albans. Boston traffic is taken by ocean steamers to Halifax, Nova Scotia, and St. Johns, New Brunswick, and thence by Canadian railways to Montreal. It is also taken via Passumpsic and Southeastern Railway to Montreal, the latter railroad being a foreign corporation. Traffic is also taken from New York to Montreal, by the Delaware and Hudson River Canal Company, which extends from New York City to Rouse's Point, within fifty miles of Montreal, and is a railroad entirely within the State of New York. Halifax and St. John, N. B., are foreign cities, and together with New York are competitors with Boston for the sale of goods to the merchants of Montreal. Unless the rate of freight is as low from Boston to Montreal as from the aforesaid cities to Montreal, the traffic will not go over the roads used, as the National Despatch Line, the Grand Trunk via Portland, is the strongest competitor for traffic from Boston to Montreal, and is a foreign corporation. The National Despatch Line makes the rates they do from Boston to Montreal from necessity and by reason of competition, and for no other reason.

And these defendants further say that the rate made by the National Despatch Line from Boston to Detroit is and was as stated in said petition, at the time of filing thereof. There are many competing lines for Boston traffic to the West, and especially to Detroit. The Baltimore and Ohio takes traffic at Boston by ocean steamers to Philadelphia and Baltimore and thence over their line to all large points in the West. The Boston and Albany Line via the New York Central, and Michigan Central Railroads and steamships from Buffalo, takes freight westward to all lake points, and more especially Detroit. The Grand Trunk Line via Portland is still another line in competition for west bound traffic to Detroit, and all other large points in the West. The Grand Trunk Railway Company is a foreign corporation, and their line runs principally through Canada to Windsor, Ontario, opposite Detroit, and Point Edward, Ontario, opposite Port Huron, Mich. The defendant's line from Boston to St. Albans, in connection with the Ogdensburg and Lake Champlain Railroad, and the

INTER 8.

line of boats on the Great Lakes, called the Central Vermont Line of Steamers, constitute still another line, which comes in competition with the National Despatch Line at Detroit and other western points. The Canadian Pacific, another foreign corporation, is in competition for this same traffic. Many others might be named, and especially the New York and New England and its connections, also the Fitchburg and Hoosac Tunnel Line.

And this defendant further says that these competing lines largely dictate the rates from Boston to Detroit, and other competing points in the West; that the defendant's lines must make as low rates to these points of competition as the other lines, or go out of the business. That the through business to competing points is important to this defendant and the other connecting roads, and is a source of large profits to this defendant. That the amount of traffic from Boston to St. Albans and intermediate points is not one twentieth part of what it is to points west of St. Albans. And this defendant further says that the circumstances and conditions under which freight traffic is taken and transported from Boston to St. Albans is wholly dissimilar to what it is in respect to freight traffic which they take and transport west of there to points of competition, and more especially Montreal and Detroit. That the rates made from Boston to Montreal and Detroit respectively are made from necessity and for no other reason. That the petitioner is in no wise interested in the rates from Boston to St. Albans; that its motive in filing its petition is to break down one of its principal competitors for through business from Boston to Detroit, and other points in the West, and from no other motive. And these defendants further say that they have acted in good faith in the premises; that they have given the best construction they could to the Interstate Commerce Law, and under the advice of counsel; and if they have erred, they will ask leave to file their petition to be relieved from the operation of the fourth section of said Act—without this that the facts set forth in said petition are true, except as herein confessed avoided or denied.

Boston and Lowell Railroad Corporation.

By Edwin Morey.

A. A. Strout,
Solicitor of the Boston and Lowell Railroad Corporation.

Commonwealth of Massachusetts, } ss.
Suffolk,

June 24, A. D. 1887.

Personally appeared before me Edwin Morey above named, and made oath that he is the President of said defendant corporation, and that the allegations of the above answer are true, according to his knowledge and belief.

C. E. A. Bartlett, Justice of the Peace.

MEMORANDUM BY CONCORD R. R. CORPORATION.

(Filed June 15, 1887.)

Concord Railroad.
Superintendent's Office.

Concord, N. H. June 14, 1887.

To the Honorable, the Interstate Commerce Commission:

Washington, D. C.

Sir:—In the matter of your communication of the 26th ult. enclosing copy of petition and complaint of the Boston & Albany Railroad Company against the Boston & Lowell Railroad Company, the Concord Railroad Company and others, filed with the Commission May 24, 1887, the Concord Railroad Corporation respectfully represents that although its roads form a small part of the through lines between Boston, Mass., and Detroit, Mich., via St. Albans, Vt., and Montreal, P. Q., and between said Boston, Mass., and western lake ports via said St. Albans, Vt., and Ogdensburgh, N. Y., and shares proportionately in the receipts from business passing over said lines between said Boston and said western points, the said Concord Railroad Corporation does not make and never has made rates for the transportation of passengers or freight, over said lines, between said Boston and said points; that all such rates are, and heretofore have been made by the managers of said lines; that said Concord Railroad Corporation has, by agreement, accepted its proportion of such through rates as were so made, stipulating only that such rates should be reasonable and within the requirements of the law.

The Concord Railroad Corporation is advised that the other railroads interested and the managers of the said lines will file with the Commission full and definite answers to said complaint.

Respectfully,
The Concord Railroad Corporation,
By S. E. Chamberlin,
Superintendent.

ANSWER OF GRAND TRUNK R. CO. IN NO. 14.

The answer of the Grand Trunk Railway Company of Canada to the petition of the Boston and Albany Railroad Company.

This defendant, saving to itself all benefit of exception which can be taken to the petitioner's complaint, for answer thereto says: that it admits that the several corporations therein named exist and are established as alleged, but denies that they have issued joint rates under the name of the National Despatch Line, as therein stated, and further denies that the line of railroads, or the railroad, which established and maintains any joint or other rates for the transportation of freight between Boston and St. Albans and intermediate points, is the same line, or railroad, as the line which establishes and maintains the rates of freight between Boston and Detroit and other western points, as named in said petition; and further denies that the same carrier, or line of railroads, or that this defendant, charges higher rates for a short haul than for a long haul, over the same line, in the same direction, for the like kind of property, in the manner set out in said petition; and further alleges that the transportation of freight between the points named in said petition has not been, and is not done under substantially similar circumstances and conditions within the true intent and meaning of the Act of Congress, entitled "An Act to Regulate Commerce," ap-

proved February 4, A. D. 1887. And this defendant further says that the Boston and Lowell Railroad, the Nashua and Lowell, the Concord, the Northern and Central Vermont Railroads are connecting railroads so far as trackage is concerned, from Boston, Mass. to St. Albans, Vt. These roads are not managed or controlled by each other, except that the Nashua and Lowell and the Northern are, in fact, operated by the Boston and Lowell; nor is there an arrangement for a continuous carriage or shipment of property over the same, although it is true that they sometimes make joint tariff of rates between Boston and St. Albans aforesaid. At the time of filing the petitioners' complaint the rate fixed by said joint tariff from Boston to St. Albans was and is as stated in said petition.

National Despatch Line.

This defendant further says that the National Despatch Line referred to in the said petition, is a line of cars running from Boston, Mass., to all large points in Canada and in the Western States west of St. Johns in Canada via the Grand Trunk Line. They consist of 3,750 freight cars, marked "National Despatch Line," and they are owned as follows:

The National Car Company, a corporation chartered and organized under the laws of Vermont, owns 3,000 of said cars, the Grand Trunk Railway Company of Canada, owns 700, and the Chicago, Pekin and Southwestern Railroad owns fifty. The roads over which the National Despatch Line sends freight, and which use these cars, are as follows:

Boston and Lowell; Boston and Maine (Worcester and Nashua Division); Central Vermont; Cheshire; Chicago and Alton; Chicago and Eastern Illinois; Chicago and Grand Trunk; Chicago, Milwaukee and St. Paul; Chicago, Rock Island and Pacific; Cincinnati, Hamilton and Dayton; Concord; Connecticut River; Detroit, Grand Haven and Milwaukee; Detroit, Lansing and Northern; Evansville and Terre Haute; Fitchburg; Flint and Pere Marquette; Grand Trunk; Louisville, New Albany and Chicago; New London and Northern; Providence and Worcester; Toledo, Ann Arbor and Northern Michigan; Wabash, St. Louis and Pacific.

The National Despatch Line have their principal office in Boston, Mass. They solicit freight at Boston and other places in New England for transportation to all prominent points in Canada and the Western States west of St. Johns. They have agencies in Boston and other eastern points and in Chicago and other western points. They do not receive or solicit freight at Boston or other New England points, the destination of which is south of St. Johns for western bound freight. They issue their own bills of lading, according to the form hereto attached, marked "B;" and they also issue and publish their tariff for transportation from New England points to points in the Western States and Canada, west of St. Johns. The one now in force, and which has been in force since April 5, 1887, is hereunto attached, marked "C." They do not issue bills of lading for west bound freight from New England points to points south of St. Johns,

nor do they make a tariff nor profess to be carriers between these points in respect to west bound freight destined south of St. Johns. St. Albans, Vt. is south of St. Johns, and is not embraced in the tariff made by the National Despatch Line for west bound freight. The rates made to points west of St. Johns, where there is competition with complainants' line, are made under this tariff by the National Despatch Line.

And this defendant denied that the joint tariff aforesaid constitutes an arrangement for a continuous carriage within the meaning of the first section of the Interstate Commerce Law; but if it does, then it alleges that the joint tariff from Boston to St. Albans makes a wholly different line from the one made by the joint tariff of the National Despatch Line, within the meaning of the fourth section of said Law.

Rates at St. Albans, Vermont.

And this defendant further says that the rates from Boston and intermediate points to St. Albans are reasonable; that nobody along the line is dissatisfied with the rates made; that the Boston and Albany Line is not a competitor for traffic for west bound freight from Boston or intermediate points to St. Albans, and are in no way interested in the rates that are made thereto. It further says that the Central Vermont Road runs through a sparsely settled country; that the local traffic thereon is small, and that it was constructed at a great expense through an uneven country, with high grades; that the road has been foreclosed and reorganized, and the original capital put into the construction of the same has been lost; that if the said road was compelled to depend upon local traffic, it could not pay its expenses and interest on its bonded debt, to say nothing of the stocks of the road, as it has been reorganized; that this defendant's road has been brought into a high state of efficiency with a view of doing such through traffic; that the additional expense of doing through traffic as compared with local traffic is small in degree; that its road is the same whether the traffic is local and small, or large by reason of through business; that the profit which it makes out of the through business is very important to it, by reason of the volume of through traffic as compared with the local traffic; that the volume of business from Boston to St. Albans is not one twentieth part of what it is to points beyond these westward.

Through Rates.

Dissimilar conditions and circumstances.

And this defendant further says that the Central Vermont Road extends northerly from St. Albans to the state line, a distance of about ten miles; that it there connects with the Montreal & Vermont Junction Railroad, a Canadian corporation, which extends about twenty-two miles northerly to St. Johns, in Canada, where it connects with this defendant's road, which extends through Canada to Windsor, opposite to Detroit.

It is over this line that the National Despatch cars principally run. And this defendant further says that the rate made by the National Despatch Line from Boston to Montreal is, and was at the time of the filing of the petitioner's

complaint, the same as stated in said complaint, and for the following reasons: there are many competitors at Boston for traffic to Montreal; there are none for traffic to St. Albans. Boston traffic is taken by ocean steamers to Halifax, Nova Scotia, and St. Johns, New Brunswick, and thence by Canadian railways to Montreal. It is also taken via Passumpsic & Southeastern Railway to Montreal, the latter being a foreign corporation. Traffic is also taken from New York to Montreal by the Delaware & Hudson River Canal Company, which extends from New York City to Rouse's Point, within fifty miles of Montreal, and is a railroad wholly within the State of New York. Halifax and St. Johns are foreign cities, and, together with New York, are competitors with Boston for the sale of goods to merchants of Montreal. Unless the rate of freight is as low from Boston to Montreal as from the aforesaid cities to Montreal, the traffic will not go over the roads used by the National Despatch Line, and this defendant would be injured thereby.

The National Despatch Line make the rate they do from Boston to Montreal from necessity, and for no other reason.

And these defendants further say that the rate made by the National Despatch Line from Boston to Detroit is and was as stated in said petition at the time of filing thereof. There are many competing lines for Boston traffic to the West, and especially to Detroit. The Baltimore & Ohio takes traffic at Boston by ocean steamers to Philadelphia and Baltimore, and thence over their line to all large points in the West. The Boston and Albany Line via the New York Central and Michigan Central Railroads and steamships from Buffalo take freight westward to all lake points, and more especially Detroit. This defendant's line runs principally through Canada, to Windsor, Canada, opposite Detroit, and Point Edward, opposite Port Huron, Michigan. The roads from Boston to St. Albans, in connection with the Ogdensburgh & Lake Champlain Railroad, and the line of boats on the great lakes, called the Central Vermont line of steamers, constitutes still another competitor with the National Despatch Line at Detroit and other western points. The Canadian Pacific, another foreign corporation, is in competition for this same traffic. Many others might be named, especially the New York & New England, and its connections; also the Fitchburg & Hoosac Tunnel.

And this defendant further says that these competing lines largely dictate the rates from Boston to Detroit, and other competing points in the West; that the defendant's lines must make as low rates to these points of competition as the other lines, or go out of the business; that the through business to competing points is important to this defendant and the other connecting roads, and is a source of large profit to this defendant; that the amount of traffic from Boston to St. Albans and intermediate points is not the one twentieth part what it is to points west of St. Albans. And this defendant further says that the circumstances and conditions under which traffic is taken from Boston and transported to St. Albans is wholly dissimilar from what it is in respect to traffic which they take and transport west of

there to points of competition, and more especially Montreal and Detroit; that the rates made from Boston to Montreal and Detroit respectively are made from necessity, and for no other reason; that the petitioner is in nowise interested in the rates from Boston to St. Albans; that its motive in filing its petition is to break down one of its principal competitors for through business from Boston to Detroit and other points in the West, and from no other motive. And these defendants further say that they have acted in good faith in the premises; that they have given the best construction they could to the Interstate Commerce Law, and under the advice of counsel; and if they have erred, they will ask leave to file their petition to be relieved from the operation of the fourth section of said Act, without this, that the facts set forth in said petition are true except as herein confessed, avoided, or denied.

The Grand Trunk Railway Company of Canada.

By L. J. Seargeant,
Traffic Manager.

A. A. Strout,
Solicitor for the Grand Trunk Railway
Company of Canada.

Personally appeared before me L. J. Seargeant above named, and made oath that he is the traffic manager of said Grand Trunk Railway Company of Canada, and that the allegations of the above answer are true, according to his knowledge and belief.

Wendell A. Anderson,
[Seal] Consul-General for the United States
of America at Montreal.

State of Maine,
Cumberland Co. June 27, 1887.

I, A. A. Strout, on oath say that I have this day mailed an exact copy of the within answer to the Boston & Albany Railroad Company the petition within named.

A. A. Strout,
State of Maine,
June 27, 1887.

Cumberland ss.
Subscribed and sworn to before me.
David W. Snow,
Justice of the Peace.

ANSWER OF NORTHERN R. R. CO. IN BOTH CASES.

In the matter of the petition of the Boston and Albany Railroad Company against the Boston & Lowell Railroad Corporation and others, dated May 21, 1887.

The Northern Railroad, named in said petition as the Northern Railroad Company, for answer to such petition says:

First: That its road is now, and has been since the 31st day of May, A. D. 1884, in the possession of and operated by the Boston & Lowell Railroad Corporation under a lease, and that the Northern Railroad during that time has not made and issued, or joined in making or issuing with the other railroad corporations named in said petition, joint rates, as set forth in the petition.

Second: The respondent corporation has not sufficient knowledge to admit or deny the other matters and things named in said petition, but

it requires the same to be proved if, and so far as material, for any purpose against it.

Northern Railroad.

By J. H. Benton, Jr., Atty.

Commonwealth of Massachusetts.

Suffolk ss. June 27, 1887.

Then personally appeared J. H. Benton, Jr., and made oath that he is the attorney of the Northern Railroad, by which the foregoing answer is made, and that the same is true.

Before me,

Arthur A. Maxwell,
Justice of the Peace.

ANSWER OF CENTRAL VERMONT R. R. CO. AND OGDENSBURG & LAKE CHAMPLAIN R. R. CO. IN NO. 15.

(Filed July 2, 1887.)

The joint and several answer of the Central Vermont R. R. Co. and the Ogdensburgh & Lake Champlain R. R. Co.:

These defendants, saving to themselves all benefit of exception which can be taken to said petition for answer thereto, say the Boston and Lowell, the Nashua and Lowell, the Concord, the Northern, the Central Vermont, and the Ogdensburgh and Lake Champlain Railroads, form a connecting line of railroads, so far as trackage is concerned, from Boston to Ogdensburgh, N. Y. These roads are not managed or controlled by each other, except the Nashua and Lowell and the Northern are under lease to the Boston and Lowell, and the Ogdensburgh and Lake Champlain is under lease to the Central Vermont Railroad; nor is there between them an arrangement for a continuous carriage or shipment, unless it may be implied from the making of joint tariffs and the interchange of cars. At the time complained of in the petition there was and still is a joint tariff for west bound traffic from Boston to Ogdensburgh over the aforesaid roads, at the rates stated in the petition, that is to say: 1, 2, 3, 4, 5, 6 classes 60, 50, 45, 30, 25, 17, cents per hundred pounds. Said tariff is hereto attached, marked "A."

From Ogdensburgh there is a line of eight steamers which run between there and Chicago and touch at various points on the Great Lakes, and more especially at Cleveland, Detroit, Port Huron, Milwaukee and Chicago. This line of steamers is controlled by the Central Vermont Railroad Company, and they have a joint tariff with the roads aforesaid, entirely different and independent from the one between the roads themselves, as before stated, from Boston to Ogdensburgh.

This line is called the Central Vermont Line of steamers. They take no traffic for points between Boston and Ogdensburgh, but only for points west of Ogdensburgh, for westward bound freight. Their joint tariff is hereto attached, and they make the rates from Boston to lake points as stated in the petition.

The defendants insist that the aforesaid joint tariffs do not constitute an arrangement for a continuous carriage or shipment within the meaning of the first section of the Interstate Commerce Law; but if they do, then they do not constitute the same lines within the meaning of the fourth section of said Law.

Ogdensburgh Rates.

And these defendants further say that the rates from Boston to Ogdensburgh referred to in said petition are entirely reasonable; that shippers do not complain, nor do the public at Ogdensburgh. There is no competition with the defendants' line at Ogdensburgh for traffic from Boston to Ogdensburgh. The Ogdensburgh and Lake Champlain and Central Vermont Roads embrace more than half the distance from Ogdensburgh to Boston. They run through a sparsely settled country with high grades, and are operated at unusually large expense, especially in the winter by reason of heavy drifts of snow and excessive frosts.

They have both been foreclosed and reorganized, and the original capital put into the construction has been lost; and if they were compelled to depend upon local traffic alone, they could not pay their expenses and interest on their bonded debt, to say nothing of the various stocks of the roads as now reorganized. These roads have been brought up to a high state of efficiency for the purpose of doing a through business from the seaboard to the West, and if the rates from Boston to points on the Great Lakes made by the Central Vermont line of steamers aforesaid were raised to the same rates as the tariff from Boston to Ogdensburgh, no traffic would go by this line to points on the Great Lakes by reason of competition with other lines, and more especially the Boston and Albany Line hereinafter referred to.

On the other hand, if the rates from Boston to Ogdensburgh were reduced to the same rates as from Boston to points on the Great Lakes, it would seriously cripple these defendants' roads and would weaken them as competitors for through business by the Boston and Albany Line without affording any relief to Ogdensburgh, but it would probably result in a large increase in the rates from Boston to Ogdensburgh in order to maintain the roads, if the through business is given up.

*Through Rates.**Different Circumstances and Conditions.*

And these defendants further say that there are many competing lines for Boston traffic to the West. The Baltimore and Ohio takes traffic at Boston by ocean steamers to Philadelphia and Baltimore, and thence over their line to all large points in the West. The New York and New England Line via New York City and Pennsylvania Central Railroad, and also via the Erie Railroad at Newburgh; the complainants' line via the New York Central, and a steamship line. These lines have generally been called the trunk lines. There is still another, the Grand Trunk Line via Portland, Maine, over the Boston and Maine, and also via St. Johns in Canada over the National Despatch Line. The Grand Trunk Company is a foreign corporation, and owns or controls nearly 4,500 miles of railway, and extends from Portland, Maine, to Windsor, opposite Detroit, Mich. through Canada.

They compete for Boston traffic destined to all large points in the West, and more especially at Port Huron, Detroit, Milwaukee and

Chicago, referred to in the petitioner's complaint. The Canada Pacific Railway, a foreign corporation controlling more than 4,600 miles of railway, also competes for this traffic to Detroit and west thereof; also the Fitchburg and Hoosac Tunnel line over the West Shore, Erie and Lackawanna Railroads.

And these defendants further say that these various lines compete with the defendant's line at the various lake points referred to in the petitioner's complaint and dictate the rates that shall be charged thereto; that the defendant's line must make as low rates to these points of competition as the other lines, or go out of the business; that this through business to competing points is quite as important to these defendants as their local traffic; that the amount of traffic from Boston to Ogdensburgh and intermediate points is not one twentieth part of what it is to points west of Ogdensburgh; that they make money on their through business, and without it they could not secure any adequate return for the capital invested in defendants' roads.

And these defendants further say that the circumstances and conditions under which they take traffic from Boston to Ogdensburgh is wholly dissimilar from what it is in respect to traffic which they take west of there to points of competition on the Great Lakes; that the cost of service is relatively small for the water carriage west of Ogdensburgh as compared with the railroad carriage between Boston and Ogdensburgh; but the rates made from Boston to lake points on this line are made from necessity, and for no other reason; that the petitioners are in no wise interested in the rates from Boston to Ogdensburgh; that their motive in filing their petition is to break down one of their principal competitors for through business from Boston to lake points aforesaid. And these defendants further say that they have acted in good faith in the premises, that they have given as good construction as they could to the Interstate Commerce Law, and under the advice of counsel; and if they have erred, they will ask leave to file their petition to be relieved from the operation of the fourth section of said Act, without this, that the facts set forth in said petition are true except as herein confessed, avoided or denied.

The Central Vermont R. R. Co.

J. Gregory Smith,

President.

Ogdensburgh & Lake Champlain R. R. Co.

J. Gregory Smith,

Chairman Executive Committee of the District.

I, J. Gregory Smith, on oath, say the facts set forth in the foregoing answer are true, to my knowledge or belief.

J. Gregory Smith,

Subscribed and sworn to before me.

B. F. Fifield,

Master in Chancery.

B. F. Fifield,

Solicitor for the Central Vermont R. R. Co.

—
In Effect April 5, 1887.

Central Vermont Railroad.

O. & L. C. Division.

Freight Tariff.

Between Ogdensburgh, Lisbon, Madrid,

Norwood, Knapps, Brasher, Lawrence, Moira, Brushton, Bangor, Malone, Burke, Chateaugay, Cherubusco, and the following stations on the Boston & Lowell Railroad.

Rates in Cents per 100 Pounds.
Governed by the New England
Classification.

Stations.	State.	1st Class.	2d Class.	3d Class.	4th Class.	5th Class.	6th Class.
Nashua.....	N. H.						
Nashua Jct.....							
Tyngsboro.....	Mass.						
No. Chelmsford.....							
Lowell.....	"						
No. Billerica.....	"						
East Billerica.....	"						
South Wilmington.....	"						
Walnut Hill.....	"						
Stoneham.....	"						
Woburn.....	"						
Winchester.....	"						
West Medford.....	"						
No. Somerville.....	"						
Mystic Wharf.....	"	60	50	45	30	25	17
Boston.....	"						
West Chelmsford.....	"						
Westford.....	"						
Grainville.....	"						
Forge Station.....	"						
Ayer Junction.....	"						
Lawrence.....	"						
South Lawrence.....	"						
Tewksbury Center.....	"						
Tewksbury Jct.....	"						
Wilmington.....	"						
Wilmington Jct.....	"						
West Peabody Jct.....	"						
Peabody.....	"						
Salem.....	"						

Frank Owen,
General Freight Agent.

F. W. Baldwin,
Superintendent.
General offices, Ogdensburgh, N. Y.

I, B. F. Fifield, on oath say that I am solicitor for the Central Vermont R. R. Co., on this 25th day of June, 1887. I enclosed a copy of the foregoing answer in a letter addressed to Arthur Mills, general traffic agent of the Boston & Albany R. R. Co., Boston, Mass., which letter duly stamped, I deposited in the post-office at Montpelier, Vt., on the day aforesaid.
B. F. Fifield.

At Montpelier, in Saul County, this 20th day of June, 1887.

State of Vermont, }
Washington County, }

Then personally appeared B. F. Fifield, and made oath to the truth of the above statement subscribed by him, before me.

R. G. Brown,
Notary Public.

INTERVENING COMPLAINT OF VERMONT STATE GRANGE OF PATRONS OF HUSBANDRY, IN BOTH CASES.

(Filed August 5, 1887.)

To the Honorable Interstate Commerce Commission:

Comes the Vermont State Grange of the Patrons of Husbandry, an association of farmers and business men organized and located within the State of Vermont, and respectfully represent that in response to the invitation of your honorable Commission, as contained in

the citation issued and ordered published in the above entitled causes now depending before you and set down for hearing at Rutland, in the State of Vermont, Thursday, September 1, 1887, and ask leave to intervene and be heard upon the questions presented in and by said proceedings.

And these complainants allege that the tariff rates and charges made by the defendants for the transportation of property from Boston in the State of Massachusetts and points near said Boston to St. Albans, Burlington, Middlebury and other places in the said State of Vermont, and from said places in Vermont to Boston and places near thereto, are higher than the charges made by the said defendants and said National Despatch Line from said Boston to Montreal, in the Province of Quebec, Detroit, in the State of Michigan, and other points beyond and northerly and westerly of the said State of Vermont, and from said northern and western points to said Boston, which said charges so made by them are in contravention of the provisions of the fourth section of the Act of Congress entitled An Act to Regulate Commerce, approved February 4, 1887.

And they also allege that said charges for transportation of property from Boston aforesaid to said points in Vermont, and from said Vermont points to Boston and other places in the vicinity thereof, so made by the defendants are exorbitant in fact and are not reasonable or just, which is in contravention of first section of said Act.

Wherefore, your petitioners ask that notice of this complaint and intervention be at once issued to the defendants, and that said charges above complained of be diminished and made to conform with the requirements of said Act; and for such other, further, or different relief as to Your Honors may seem meet.

The Vermont State Grange of the Patrons of Husbandry.

By Haskins & Stoddard,
Their Attorneys.

United States of America, }
District of Vermont, }

At Brattleboro, in said District, on the 4th day of August, A. D. 1887, personally appeared Kittredge Haskins, one of the attorneys above named, and made oath that the allegations of the foregoing petition, or complaint and intervention, are true according to his best knowledge, information and belief.

Before me,

Royall Tyler,
U. S. Commissioner.

POWERS AND PROCEDURE OF THE COMMISSION.

LETTER of *Chairman Cooley*, to a merchant who had sent a communication to the Commission complaining of a railroad rate.

Ann Arbor, August 15, 1887.

Dear Sir:—A communication from you complaining of a rate which has been imposed on merchandise transported by railroad for you, has been forwarded to me from Washington for answer. I incline to think from the wording of your letter that you suppose

one article of merchandise almost necessarily prejudices any other that to any extent is competitive; so that it is unsafe to answer without careful investigation that any proposed change will have injurious results to one unless it be the roads themselves.

I have made this statement that you might fully understand the necessity the Commission is under of requiring that complaints intended for its action be made responsibly, and with sufficient fullness, so that the statements fairly put the railroad on its defense. The Commission cannot assume from a mere statement of what has been paid for transportation that the amount is excessive. It may seem to be so, and yet an explanation which makes it reasonable be possible. At any rate, to make an explanation is as much a matter of right in these cases as to make defense when sued at law.

It is the desire of the Commission that complaints be made in the form of petition, but they may be perfectly simple and without technicality. If the petition states the facts, making out an apparent case of wrong which the Commission has jurisdiction to redress, it will be sufficient.

If after this statement of our course of procedure you desire to make complaint for the action of the Commission, the rules* which are herewith sent you will be a sufficient guide, and on the receipt of your petition it will have immediate attention. But the facts should be stated more fully than they were given in your letter, which, you will remember, was very meager in statement.

Very Respectfully Yours,
T. M. Cooley.

LETTER of the Commission replying to inquiries as to mode of procedure.

June 15, 1887.

Dear Sir: Yours of June 14 received. The rules of the Commission do not require a replication. It is intended that all its proceedings shall be in the simplest form consistent with a reasonable degree of certainty. Cases are considered as at issue when the answer is filed and copies served. If issues of fact are raised upon the answer by denials, or by allegations of new matter, it is the understanding of the Commission that the case stands for trial upon the questions of fact as well as of law; a day for hearing will be assigned on request of either party; witnesses can then be examined, if necessary, and argument made upon the law as applicable to the facts established by proof. The case can be presented by written or printed arguments if parties prefer to take that course. It is the desire of the Commission that parties agree upon facts relating to questions presented, so far as possible; and for this purpose stipulations in writing may be filed or oral concessions made on the hearing. In case parties cannot agree upon the facts and desire to avoid the expense of bringing witnesses to Washington, depositions for use before the Commission may be taken on notice to the other side, in the manner provided by sections 863 and 864 of the Revised Statutes of the United States. Such depositions when taken should be transmitted to the Secretary of the Commission, who will open and file the same. If the tak-

*See Appendix I. to this volume.

ing of depositions is deemed necessary, it should be entered upon as soon as practicable after the service of the answer.

For the Commission:

Yours Truly,
Edw. A. Moseley,
Secretary.

Sections 863 and 864, referred to above:

Sec. 863. The testimony of any witness may be taken in any civil cause depending in a district or circuit court by deposition *de bene esse*, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. The deposition may be taken before any judge of any court of the United States, or any commissioner of a circuit court, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases *in rem* the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts in such circuit or district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in court.

Sec. 864. Every person deposing as provided in the preceding section shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or by himself in the magistrate's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent.

NEW YORK, PHILADELPHIA & NORFOLK R. R. CO.

v.

SEABOARD LINE and Atlantic Coast Line.

(August 12, 1887.)

A PETITION has been filed by the New York, Philadelphia & Norfolk Railroad

Company against the "Seaboard Line" and "Atlantic Coast Line," complaining of unjust preferences on the part of the defendant carriers to other companies (in making through

rates, prorating, etc.), which it denies to complainant. It also complains of the refusal to furnish "reasonable, proper, and equal facilities for the interchange of traffic."

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF NEW JERSEY.

John P. STOCKTON, *Attorney-General of New Jersey,*

v.

BALTIMORE & NEW YORK R. R. CO.,
Staten Island Rapid Transit R. R. Co. *et al.*

1. The Act of Congress, approved June 16, 1886, entitled "An Act to Authorize the Construction of a Bridge across the Staten Island Sound, known as Arthur Kill," etc., is valid and constitutional under the power of Congress to regulate commerce among the States.
2. Said Act is not permissive merely, but gives authority and power to build such bridge, without reference to any authority or consent from the State on whose land under navigable water the bridge is to rest, and without compensation to the State.
3. In the pursuit of business authorized by the Government of the United States, and under its protection, corporations of other States cannot be prohibited or obstructed by any State.
4. In carrying on foreign and interstate commerce, corporations, equally with individuals, are within the protection of the commercial power of Congress, and cannot be molested in another State by state burdens or impediments.
5. Congress can confer upon a state corporation powers not contained in its original charter.
6. The power of Congress is supreme over

the whole subject of interstate commerce, unimpeded and unembarrassed by state lines or state laws.

7. The United States, when it does not seek to acquire exclusive jurisdiction over land within a State, may condemn such land for its purposes without the consent of the State.
8. The power to regulate commerce between the States extends not only to the control of the navigable waters of the country and the lands under them for the purpose of navigation, but for the purpose of erecting piers, bridges, and all other instrumentalities of commerce which in the judgment of Congress may be necessary or expedient.
9. The provision of the Fifth Amendment to the Federal Constitution: "Nor shall private property be taken for public use without just compensation;" does not apply to the use of the land of a State under navigable waters, for the support of a bridge erected under the authority of Congress in aid of interstate commerce.

(Decided August 1, 1887.)

INFORMATION by the Attorney-General of New Jersey, in the nature of a bill for an injunction. *Information dismissed and preliminary injunction dissolved.*

Before Hon. Joseph P. Bradley, Justice of the Supreme Court, sitting as Circuit Judge, and Hon. John T. Nixon, District Judge.

The facts and case are stated in the opinion.

NOTE.—*Power of the General Government in relation to interstate commerce.* The fundamental principle upon which the existing Interstate Commerce Law stands, that of the supreme power of the Federal Government over commerce both by land and water between two or more States, has been strikingly fortified by the recent decision of Justice Bradley of the United States Supreme Court in the case of the Arthur Kill Bridge. The Baltimore & Ohio and Staten Island Railroad Companies obtained specific authority from Congress to build a bridge over the navigable water between New Jersey and Staten Island known as the Arthur Kill. The Baltimore & Ohio had been for a long time fighting its way toward New York against the powerful opposition of the Pennsylvania and the Philadelphia & Reading interests, and these interests and others were brought to bear to secure the passage by the New Jersey Legislature of a law requiring the consent of that State to the construction of the proposed bridge. That consent was not obtained and an injunction was issued by the Chancery Court of New Jersey restraining the proposed construction. The case was taken to the higher tribunal, and Justice Bradley, in a written opinion concurred in by Judge Nixon, has overruled the injunction and left the railways free to proceed with their work.

It was claimed on behalf of the State that the land covered by the water which the bridge would cross belongs for one half the distance to New Jersey, and that the railway company holds its rights subject to the State's power of eminent domain. But Justice Bradley rules that where interstate commerce is concerned state authority does not exist. He declares that the power given to Congress is supreme

in all respects affecting commercial communication by land and water between the different States, and that it cannot depend on the consent of the States. If the claim of New Jersey that she has riparian rights which even the national government cannot override without her consent is admitted, then any State can interpose a barrier to commerce between the States. But the judge claims that the relinquishment by the State of its jurisdiction is not necessary to the use of the land by the United States for public purposes. "The law of eminent domain," he says, "cannot be invoked to frustrate the supreme power of the United States, especially where the regulation of interstate commerce is concerned."

While this decision, which it is to be assumed the full Bench of the supreme court will sustain, strikes very deep at the root of the States' rights doctrine, it must be admitted that the outcome is a logical one. If the Federal Government has been given power to regulate interstate commerce, it must not be prevented from doing so by the independent action of a State. Carried still farther the decision would seem to deny the right of a State to prevent the construction of a bridge over a navigable stream lying wholly within its own limits, if the general government should consider the structure necessary for the purpose of interstate commerce.

It is evident from this and many other decisions that the trend of the courts, as well as of public opinion, is in the direction of greater centralization of power over commercial and industrial interests, and we may be prepared to expect the passage by Congress of still more rigid and comprehensive regulations of railway traffic than those so recently put in force. [From *The Railway Age*.]

Mr. John P. Stockton, Atty-Gen, informant, pro se:

I. The State of New Jersey is seised and possessed of and entitled to an estate in fee simple absolute in the soil covered by the waters of the Arthur Kill and being within the boundaries of said State, subject only to the easement of navigation and the power of regulating such navigation ceded by the State to the general government by the Constitution of the United States.

Co. Litt. 107, 260 b; Colles, 17; 3 Leo. 75, 2 Molloy, 375; *Royal Fishery in the Banne*, Davies' Rep. 149; *Attorney-General v. Chambers*, 11 De G. M. & G. 206; *Stevens v. Paterson etc. R. R. Co.* 5 Vroom, 540; *Martin v. Waddell*, 16 Pet. 367-415 (41 U. S. bk. 10, L. ed. 997); *Arnold v. Mundy*, 1 Halst. Law, 191; *Den, Russell, v. Jersey Co.* 15 How. 432 (56 U. S. bk. 14, L. ed. 760); *Smith v. Maryland*, 18 How. 71-74; (59 U. S. bk. 15, L. ed. 269); *McCready v. Virginia*, 94 U. S. 391-394 (Bk. 24, L. ed. 248); *VanBroeklin v. Anderson*, 117 U. S. 151 (Bk. 29, L. ed. 845). See also as to Treaty with New York: *People v. Central R. R. Co.* 42 N. Y. 288; *People v. Central R. R. Co.* 12 Wall. 455 (79 U. S. bk. 20, L. ed. 458).

II. The power to regulate the public right of navigation is given to the general government for the preservation of the public right of way, and does not authorize the imposition of any additional servitude on the soil, or any interference with the possession of the owner thereof, except so far as it may be necessary for the purpose for which the right exists.

The owner of the soil has the exclusive right to all above and under the ground, except only the right of passage for the public.

The ownership of the Crown in the soil is subservient to the public right of navigation and cannot be used in any way so as to derogate from and interfere with such right. The grantees of the Crown take subject to this right, and any grant to a subject so as to be detrimental to a public right is void. Any injury to the public right is a nuisance. All such nuisances may be abated upon information. The right of navigation extends over every part of a navigable river and *a fortiori* of the sea, and includes the right to anchor without paying toll. As a necessary part of the right it is essential for its full enjoyment. It has been held that the right of navigation includes all such rights as are necessary for the full enjoyment, not only of the right of passage, but of the rights of trade and commerce; and that the private property of the Crown and its grantees is subservient to this public right.

Rez v. Russell, 6 Barn. & C. 566; *Original Hartlepool Collieries v. Gibb*, 5 L. R. Ch. Div. 718.

Lord Denman, delivering the opinion of the Court of Queen's Bench in the case of the *Mayor of Colchester v. Brooke*, said the right of soil in arms of the sea and public navigable rivers which the Crown *prima facie* has, independently of any ownership in the adjoining land, must be in all cases considered as subject to the public right of passage.

See Coulston & Forbes, *Law of Waters*, 34, 85.

It is beyond question that the same public

right which exists in this country over the public navigable waters was a part of the civil law as well as the common law of England. It existed before the Constitution; it was not ceded to the general government; but it exists as a public right, belonging to every individual. Its regulation was committed to Congress, but the right itself is not a power granted to the general government, but a reserved public right; a way over which Congress is the overseer.

Justice McLean said, in the *Wheeling Bridge Case*, 18 How. 442 (59 U. S. bk. 15, L. ed. 442), that the power to regulate commerce among the several States did not necessarily include the power to construct bridges which may obstruct commerce, but can never increase its facilities on a navigable water.

Justice Field, in the case of *Miller v. Mayor of New York*, says, whatever, therefore, may be necessary to preserve or improve its navigation, the general government may direct, and to that end it can determine what shall and what shall not be deemed an interference with or an obstruction with such navigation.

Chief Justice Savage says, in the case of *The People v. Rensselaer*, after ascertaining that the power to erect bridges existed in the State Legislature before the adoption of the Federal Constitution: It is not pretended that such power has been delegated to the general government, or that it is conveyed under the power to regulate commerce and navigation. It remains, then, in the State Legislature, or it exists nowhere. It does exist, because it has not been surrendered any further than such surrender may be qualifiedly implied; that is, the power to erect bridges over navigable streams must be considered so far surrendered as may be necessary for a free navigation upon those streams.

The extent of the public right was well expressed by Platt, Justice, delivering the opinion of the Supreme Court of New York in *Jackson v. Hathaway*, 15 Johns. 447. Highways, he remarks, are regarded in our law as easements. The public acquire no more than the right of way, with the powers and privileges incident to that right, such as digging the soil and using the timber and other materials found within the space of the road in a reasonable manner, for the purpose of making and repairing the road and its bridges. The proprietor retains his exclusive rights in all mines, quarries, springs of water, timber, and earth, for every purpose not incompatible with the public right of way. The owner of the fee may maintain trespass against one who builds on a highway; *Peck v. Smith*, 1 Conn. 108; *Cortelyou v. Van Brundt*, 2 Johns. 357; or one who digs up and removes the soil; *Gidney v. Earl*, 12 Wend. 98; *Willoughby v. Jenks*, 20 Wend. 96; *Tucker v. Eldred*, 6 R. I. 404; or cuts down trees or timber growing thereon. And though a surveyor may, as the agent of the town, cut such trees to be used in the repair of the way, or in order to improve it, yet, if he cuts them for his own use, he is a trespasser.

Babcock v. Lamb, 1 Cow. 238; *Makopess v. Worden*, 1 N. H. 16; *Tucker v. Eldred*, 6 R. I. 404.

The discussion which has taken place in re

gard to grants or concurrent use of streets by railroads and the public, or for its exclusive use by a railroad company, without compensation to the owner of the fee, have thrown much light on the determination of the limits of the public right of passage. The question has been discussed in every State of the Union and the decisions are innumerable. The general current of the later American decisions is in accordance with the English law and the doctrine of *Williams v. New York Central Railroad Co.* It is now well established that the use of streets for railways with cars propelled by horse power is not to be regarded as imposing a new servitude which will entitle the land owner to additional compensation, but that the use of streets for steam railroads is to be so regarded, and is so far different in its nature that it ought not to be regarded as within the contemplation of the parties in the laying out of an ordinary highway. The discussion has turned upon the kind of motive power used, and a distinction is generally made between the two classes of railroads.

In *Morris & Essex R. R. Co. v. Newark* a distinction is suggested between the exclusive occupation of the highway by the railroad and a concurrent use by the railroad and the public traveling in the ordinary mode, and it is said that the land owner is entitled to additional compensation only where the newly granted franchise, either from the kind of structure or the character of the extent of the use authorized, is inconsistent with the public use of a highway in the ordinary mode. The same question arises as to the establishment of telegraph and telephone lines upon the highway, with similar results as to uniformity of decisions. The use of streets for the use of sewers, gas, and water pipes, raises the same inquiry. The right to use the highway for these purposes is generally admitted, upon the ground that these uses are incidental to the purpose of a highway for which the land was originally taken. But there are also cases in which it is held that the use of the highway for these purposes puts an additional servitude upon the land.

Glasby v. Morris, 8 C. E. Green, 73; *Morrison v. Hinkson*, 87 Ill. 587. See Angell, Highways, 8d ed. § 91.

During the whole of this discussion it was conceded that the servitude could not be increased in extent or in character without compensating the owner of the fee for the additional burden imposed upon his land.

Whatever be the lawful purpose for which Congress desires to take any lands of the State of New Jersey, it can only accomplish such taking by providing just compensation therefor.

III. The permanent erections contemplated by the plan constitute a taking of private property within the Fifth Amendment of the Constitution of the United States; and whatever power Congress may have under the right to regulate commerce is held subject to the restriction of that amendment.

The defendants contend that the erection of piers upon the lands of the State under the Arthur Kill, is not a technical "taking" of such lands.

LITTE R. S.

The defendants undoubtedly do mean to take physical and exclusive possession of the lands described in the information, and it is difficult to conceive of any more effectual and actual "taking." They argue that as the "taking" is of lands under navigable water, any damage resulting therefrom is the consequence of a lawful use by the government of a navigable stream. But this matter is *res judicata*.

In *Pumpelly v. Green Bay etc. Canal Co.* 18 Wall. 166 (80 U. S. bk. 20, L. ed. 557), the Federal Supreme Court, speaking by Mr. Justice Miller, says:

"The argument of the defendant is, that there is no taking of the land within the meaning of the constitutional provision, and that the damage is a consequential result of such use of a navigable stream as the government had a right to for the improvement of its navigation. * * * It remains true that where real estate is actually invaded by superinduced additions of water, earth, sand or other materials, or by having any artificial structure placed on it, so as to effectually destroy or impair its usefulness, it is a "taking" within the meaning of the Constitution."

Sinnickson v. Johnson, 3 Harr. 126; *Gardner v. Newburgh*, 2 Johns. Ch. 162; Angell, Water Courses, 165.

Any serious interruption to the common and necessary use of property may be equivalent to the taking of it under the constitutional provision; it is not necessary that the land be absolutely taken.

Angell, Water Courses, § 85a; *Hooker v. New Haven & Northampton Co.* 14 Conn. 146; *Rowe v. Granite Bridge Corp.* 21 Pick. 844; *Canal Appraisers v. People*, 17 Wend. 604; *Lackland v. North Missouri R. Co.* 31 Mo. 180; *Stevens v. Proprietors of Middlesex Canal*, 12 Mass. 466.

The corporate body of the State itself can claim amends for its private property when taken for public use. Thus, suppose an Act of the Legislature, by which a railroad corporation is established in the usual manner, and with the ordinary powers and privileges of such corporations, authorizes the corporation to locate their road so that the same may pass over certain land which belongs to, and is held by, the State as a body politic, for a particular purpose, but without any expression in the Act of a design on the part of the Legislature to aid the corporation in their undertaking. In such a case it cannot be considered to be the intention of the Legislature to grant the land of the State, or any easement therein without compensation, and the State, accordingly, may institute proceedings and prosecute a claim for damages before an appropriate tribunal, in the same manner as an ordinary individual proprietor.

Commonwealth v. Boston & Maine Railroad, 8 Cush. 25; Angell, Highways, 8d ed. § 111.

Puffendorf, Grotius, Vattel and all eminent publicists insist that it is a rule founded in equity that a provision for compensation is a necessary attendant on the due exercise of the power of the lawgiver to deprive an individual of his property without his consent.

A statute to promote any work for a public use, which makes no provision for indemnifying the owner, of property proposed to be

taken, is entirely void as being unconstitutional, and an injunction may be obtained to prevent the taking.

Angell, Highways, 8d ed. § 106, and cases cited.

It has been held that by the law of eminent domain a State has not the right, without making compensation, to destroy the property of individuals situated upon a water course in making it navigable, or in appropriating such water courses for the public use by artificial erections and improvements.

Opinion of Chancellor Bland in *Binney's Case*, 2 Bland, 158; Angell, Highways, § 60, Title, *Navigable Rivers*; *Walker v. Board of Public Works*, 16 Ohio, 540; *Moore v. Veazie*, 2 Redf. 343; *Bell v. Gough*, 3 Zab. 624.

Judge Wallace, in the case of *Decker v. Balto. & N. Y. Railroad Company* (post, —), said: "It is not intended to intimate that Congress can authorize the appropriation of private property for the purposes of such a bridge. It was at one time doubtful whether the Government of the United States could exercise the right of eminent domain within the States." The question was settled in *Kohl v. United States*, 91 U. S. 376 (Bk. 23, L. ed. 453), where it was held that the government, if such property cannot be obtained by purchase, may appropriate it upon making just compensation to the owner. It is not necessary to consider whether Congress could enable the defendants to condemn property in New Jersey for the purposes of their bridge. This has not been attempted by the Act under consideration. All that is now necessary to decide is that if the defendants acquire the right from the owners of the land under the waters and on the shores, the Act of Congress gives them lawful authority to build and maintain their bridge without the consent of the State of New Jersey.

It seems, then, to be clear: That the State of New Jersey owns the fee. That the only servitude to which it is subject is the public right of navigation, subject to the regulation of Congress. That any interference with the soil for any other purpose but the preservation of the way and its use is a trespass. That any permanent erection on the soil deprives the owner of his possession and enjoyment, and amounts to a taking within the Fifth Amendment. That the government may take private property of individuals for its own use upon making compensation,—but it has not done so by the Act in question.

IV. The right to build bridges between States over navigable streams has never been held a part of the power to regulate commerce; but the authorities all agree that it requires both the authority of the States and the consent of Congress to bridge a navigable river.

In *Gilman v. Phila.* 3 Wall. 718 (70 U. S. bk. 18, L. ed. 96), the court said: "We will now turn our attention to the rights and powers of the States which are to be considered. The national government possesses no powers but such as have been delegated to it; the States have all but such as they have surrendered. The power to authorize the building of bridges is not to be found in the Federal Constitution. It has not been taken from the States. It must reside somewhere. They had it before the Constitution was adopted, and they have

it still. In *Wright v. Nagle*, 101 U. S. 791, (Bk. 25, L. ed. 921), Chief Justice Waite says: "The Legislature of a State alone has authority to make such grants."

Mr. Justice McLean said, in the *Wheeling Bridge Case*, 18 How. 442 (59 U. S. bk. 15, L. ed. 442): "Any power which Congress may have in regard to such a structure is indirect, and results from a commercial regulation. It may, under this power, declare that no bridge shall be built which shall be an obstruction to the use of a navigable water. And this it would seem is as far as the commercial power by Congress can be exercised."

Mr. Justice McKinley said, in *Pollard v. Hagan*, 8 How. 212 (44 U. S. bk. 11, L. ed. 565): "To give to the United States the right to transfer to a citizen the title to the shore and the soils under the navigable waters, would be placing in their hands a weapon which might be wielded greatly to the injury of state sovereignty, and deprive the States of the power to exercise a numerous and important class of police powers."

See also *Weber v. State Harbor Comrs.* 18 Wall. 57 (85 U. S. bk. 21, L. ed. 798).

In all the cases it will be found that the court simply asserts the power of Congress to regulate and preserve the public right of navigation as an incident to its constitutional power to regulate commerce.

In the *Wheeling Bridge Case* the Legislature of Virginia authorized the construction of a bridge across the Ohio River, which it was alleged was an obstruction to the navigation of the river. The supreme court adjudged the bridge to be a nuisance, because it obstructed the navigation of the Ohio River. The court said, however: "We have already said, and the principle is undoubted, that the Act of the Legislature of Virginia conferred full authority to erect and maintain the bridge, subject to the exercise of the power of Congress to regulate the navigation of the river. So in *Miss. R. R. Co. v. Ward*, the power to erect the bridge was granted by the laws of the respective States, and there is no intimation in the case that Congress had power to make such a grant."

In the case of the *Olinton Bridge*, 10 Wall. 454 (77 U. S. bk. 19, L. ed. 969), it was held that the power to erect a bridge having been granted by the States of Illinois and Iowa, and the obstruction to navigation having been legalized by the Act of Congress, the bridge was a lawful structure and not a nuisance.

In the case of *Newport etc. Bridge Co. v. United States*, 105 U. S. 470 (Bk. 26, L. ed. 1143), the States of Kentucky and Ohio granted the power of erecting a bridge across the Ohio River, and Congress passed an Act permitting the erection of the bridge upon certain plans.

In *Escanaba Co. v. Chicago*, 107 U. S. 678 (Bk. 27, L. ed. 442), Mr. Justice Field delivered the opinion of the court, and cites the case of *Gilman v. Phila.* with approval. He says that Congress, in the exercise of its commercial power, may exercise control to the extent necessary to protect, preserve and improve free navigation.

In *Miller v. Mayor of N. Y.* 109 U. S. 335 (Bk. 27, L. ed. 971), the bridge was being constructed under a grant from the Legislature of

the State of New York, and an Act of Congress prescribing the manner of its erection. Mr. Justice Field delivered the opinion of the court, and again declared that the power vested in Congress to regulate commerce includes the control of the navigable waters of the United States so far as may be necessary to insure their free navigation.

The same doctrine was clearly declared in the cases *United States v. Railroad Bridge Co.* 6 McLean, 64; *Silliman v. Hudson River Bridge Co.* 4 Blatchf. 414.

It was held in those cases that "Although, under its general power to regulate commerce, Congress may declare what shall constitute a nuisance or obstruction by general regulation, and provide proceedings for its abatement, yet it seems that neither under this power nor under the power to establish post roads can Congress construct a bridge over a navigable river. This belongs to the local or state authorities within which the work is to be done; and this authority must be so exercised as not materially to conflict with the paramount authority to regulate commerce."

V. The Act of Congress entitled "An Act to Authorize the Construction of a Bridge across the Staten Island Sound, Known as Arthur Kill, and to Establish the Same as a Post Road," is, as its title imports, nothing more than a license to obstruct navigation to the extent which the plans approved of permit.

It is submitted that the true intent and meaning of the Act in question can only be properly obtained by a legal construction thereof, and that no known rule of construction can construe the Act as anything more than a license.

1. It is to be observed, in the first place, that the words used both in the title and the body of the bill are precisely such words as would naturally be used to authorize and make lawful any obstruction to the free navigation of the sound on account of said bridge.

2. As this was all the power that Congress possessed, it is not to be inferred against the plain meaning of the words that Congress intended to make a grant beyond its power and such as had never been made before.

3. To give the Act any other construction would make it unconstitutional, and would therefore violate an accepted rule of judicial construction.

4. A grant from a State to a corporation to make a railroad between two given points, without containing express power to exercise the right of eminent domain, would be a mere license to make the road when they acquired the land, and would convey no power to take land against the consent of the owner, and it must be presumed that Congress knew this settled rule of construction.

5. By authorizing any litigation concerning any alleged obstruction to the free navigation of said sound on account of said bridge, to be tried before the Circuit Court of the United States, or either of said States, Congress manifested its intention to create a forum with jurisdiction competent to sustain the grant it had made of power to maintain as a lawful structure what would otherwise have been a nuisance. It is only in this point of view that the clause is proper.

6. The building of the bridge without the

consent of the State by the defendant corporation is an invasion of the State's control over its own citizens in municipal matters as well as a violation of her rights of property; and for this reason the Act is unconstitutional if construed to be operative without the consent of the State.

Chancellor Kent says: "It is admitted that the grant to Congress to regulate commerce on the navigable waters of the several States contains no cession of territory or of public or private property."

1 Kent, Com. 439; *Corfield v. Corjell*, 4 Wash. C. C. 371.

Mr. Cortlandt Parker, also for informant:

According to the claim of defendants, this case is a contest between sovereignty. New Jersey is, beyond question, a sovereignty—a lesser one, it is true, of narrower scope than the United States Government, but within that scope as sovereign as the Union within its special and larger field. Both are restricted sovereignties, but every maxim and rule in regard to sovereignties applies to New Jersey.

It is confessedly, undeniably true that as sovereign, and because she is sovereign, the State owns the bed of the waters which bound her shores *usque ad flum*; that she owns it in the same way that individuals ordinarily own property; that it can be leased, aye, even granted in fee, so long as the easement or right of navigation of the waters belonging to others, either by the law of nations or by compact, is not harmed; or indeed, subject only to the veto of Congress, whether or no. (See *Judge Grier in the Passaic Bridge Cases*). And yet the defendants claim that the United States, a State no more, no less, sovereign than New Jersey, only sovereign for other things and in certain directions, can take and occupy this property, can build over it, can maintain this building over it forever, at its pleasure; can do this in face of statutes expressive of her will interdicting the Act; nay, can authorize and justify her own citizens in breaking her laws, can add to the rights of a corporation which she creates; stranger still, can increase the rights and franchises of a foreign corporation; can actually justify such a corporation in disregarding her laws, and enforce their immunity in doing so.

If there is anything settled in the law of corporations, it is that, being artificial persons, they cannot exercise their functions outside of the State which creates them, except by its consent. The defendants abrogate that law, and insist that they, the Staten Island Rapid Transit Company, have the right, against our expressed will, to come into our State and do what our own citizens dare not do, or at least are forbidden to do.

If there is anything which distinguishes a sovereignty, it is that it has supreme control over its domain—its property; that it cannot be deprived of it by another sovereignty without its consent by grant, or by superior strength. There can be no eminent domain between sovereignties. There can be submission to conquest. There can be grants and treaties. There can be purchase, payment and release. But there can be no power in one

sovereignty by force of law to take the property of another.

It was understood and clearly apprehended when the Constitution of the United States was formed, that the National Government would need land within the States, and belonging to the States, for its public purposes. Every bay, every river, every headland, suggested the necessity of its being required in time for the purposes of the Union. How was it contemplated that such land should be acquired? Two provisions of the Constitution show: One is paragraph 17, of section 8, of article I; that gives Congress power to exercise "exclusive legislation * * * over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings;" the other is in article V. of the Amendments to the Constitution: "Nor shall private property be taken for public use without just compensation." How, then, did the people and the States who made this Constitution contemplate that the government it created should acquire land which it needed? It was to get land, or words fail, by purchase; which purchase was to have the consent of the Legislature, else the general government was, in some sort, the subject of the State. Private property only could be taken, and that only for public use, and only upon compensation. Such language, by all rules, imports that public property, the property of the State, cannot be taken. *Expressio unius est exclusio alterius*. Public corporations, vested with the right of exerting the State's right of eminent domain, cannot take the land of the State for any purpose. Certainly not, if in use, like the bed of a navigable stream, for the public purpose of navigation. *A fortiori* is this true when one sovereignty seeks to take the land of another. New York cannot take the bed of the Arthur Kill beyond her own line. Nor could New Jersey beyond her's. Why not? Because each is a different sovereignty.

What a strange proposition is advanced by the defendants. This property, if it belonged to private persons, could not be taken for even so public a use without just compensation. But inasmuch as it belongs to a State, and is public every way in its character—it may be taken. Compensation has nothing to do with it.

That such land as this could not, in the judgment of the fathers, be taken even for the public use of improving navigation without the consent of the sovereignty that owned it, and its cession for that purpose, is evident from the action of Congress, at the date of the Constitution, and ever since.

The first Congress was held March 4, 1789, and ended September 29, in that year.

August 7, 1789, an Act was passed for the establishment and support of light houses, beacons, buoys and public piers. It provided that all expenses which should thereafter accrue in the necessary support, maintenance and repairs of all such structures already then erected, placed or sunk at the entrance of or within any bay, inlet, harbor or port for rendering the navigation thereof easy or safe, should be defrayed out of the United

States Treasury, provided that this expense should not continue over a year, unless the edifices should in the mean time be ceded to and vested in the United States by the States in which they may be, with the lands thereto belonging and the jurisdiction of the same. The second section provided for a light house near the entrance of Chesapeake Bay, at such place, when ceded to the United States, as the President should direct.

1 Story, Laws, p. 32.

The States were slow in making these cessions. The time was year by year extended.

See 1 Story, Laws, pp. 107, 232, 316, 364, 391, 393; 3 *Id.* 1797, 1999, and the Acts establishing light houses, *passim*.

Not once, we venture to say, did the United States ever think of occupying the soil of a State, without obtaining cession by the State—never once under proceedings of condemnation.

The action of the United States jointly with the State of New Jersey in relation to the acquisition by the one of lands within the other, is directly in consonance with the views herein expressed. The general government never took any lands, even of private citizens. It always bought them. The State by statute agreed to the purchase and also ceded jurisdiction. If the lands were under tidal waters, they were granted by the State, either by special Act or by the Governor under an Act giving him such general power. If private owners would not sell their lands, the State appointed commissioners, exercised its power of eminent domain, condemned the property and vested the title in the general government.

In 1790 an Act was passed ceding to the United States jurisdiction over a lot of land at Sandy Hook. Sess. L. p. 669. In 1804 consent was given to the purchase by the United States of a lot at Sandy Hook, to erect a beacon, etc. Sess. L. p. 352. In 1846 a second Act was passed, vesting jurisdiction, etc., over Sandy Hook by designated boundaries. Sess. L. p. 124. In 1822 jurisdiction was ceded over land at Cape May for a light house. Sess. L. p. 37. In 1826 a like Act was passed as to land in Monmouth. Sess. L. p. 42. In 1848 another was passed as to Tucker's or Short Beach. Sess. L. p. 42. In 1871 an Act gave consent to the erection of defenses at Finn's Point. Pamph. L. p. 110. In 1853 an Act ceded jurisdiction over so much land as might be necessary for the construction and maintenance of light houses and keepers' dwellings within the State, at several places mentioned, among them for two beacons or range lights for the main Gedney's Channel—noticeable as in waters near the *locus in quo* now in dispute. Pamph. L. p. 384. In 1873 a general Act was passed, giving the consent of New Jersey to the purchase by the Government of the United States, or under its authority, from any individual or body corporate within the boundaries of the State, "For the purpose of erecting thereon light houses and all other needful buildings, to be used for light house purposes and life saving stations only." And the Act says: "The consent herein and hereby given being in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the United States, and

with the Acts of Congress in such cases made and provided."

This Act was deficient in making no cession of jurisdiction. It only consented to a purchase. Therefore, apparently, an Act in 1875 (Pamph. L. p. 28), providing that whenever the United States desires to acquire title to land belonging to this State and covered by tidal waters, for the site of a light house beacon or other aid to navigation, and application is made by a duly authorized agent of the United States describing the site required for one of the purposes aforesaid, then the Governor is authorized to procure a survey by the riparian commissioners, etc., and he shall convey the title of said lands to the United States upon such terms and conditions as may be agreed upon, and shall cede to the United States jurisdiction over the same. Pamph. L. p. 28.

These acts of permission, grant and cession, do they not show, convincingly, a practice beginning with the Constitution and continuing, unbrokenly, down, utterly inconsistent with the contention now made, that all the general government has to do when it wishes to occupy tide covered lands, is to take possession and construct such buildings as it desires? Is not such practice explanatory of the Constitution?

If this contention be law, why has the government sought, and the State given, these permissions to purchase, and these grants of its own property?

And the reason, what is it? Just this: no sovereignty can peaceably, and without at least legal violence, acquire the land of another sovereignty without its grant. Taking the property of a sovereign State without her permission, even when States are united by such a Constitution as ours, is making war upon it, whether or not the Act be so intended.

An Act of 1844 (Pamph. L. 106) is noticeable, if not useful, as exhibiting the method whereby the power of eminent domain is invoked on behalf of the State. It is entitled "An Act to Authorize the United States to Build a Dock on the Shore of the Navisink River and to Construct a Road therefrom to the Light Houses on the Highlands." Its first section authorizes such a road. Its second provides, in case of disagreement between owners of land and the government, that the agents of the latter or the former may apply to a judge of the supreme court, who shall appoint commissioners to appraise. Their report shall be final.

It is not intended to be argued that this course was necessary, nor to deny that the United States itself possessed the power of eminent domain. This has been settled as to the property of private persons, although for eighty years but one case of condemnation seems to have occurred. It was pertinently argued by *Mr. Justice Strong* in *Kohl v. United States*, 91 U. S. 867 (Bk. 28, L. ed. 449), that when the Amendment to the Constitution said that private property should not be taken for public use without just compensation, it implied that it might be taken with just compensation. And the same argument proves that only private property may be taken at all, and certainly that if public property, the property of another sovereignty, be taken, it must not

be forcibly nor without such just compensation.

We insist that our position is incontrovertible. One sovereignty cannot, by force of law, take the property of another. There must be cession. That remains true of the States, under the Constitution. It is so because "The powers not delegated to the United States by the Constitution, * * * are reserved to the States respectively." And no power was given to take. It is so because the instrument expresses that the general government must trust to the obtaining consent of the Legislatures of the States to all occupation and purchase even of private property sought for use for "needful buildings." It is so because the provision as to taking property refers only to private property—that of private persons—not that of sister, say, rather, parental sovereignties—least of all, to such property already devoted to a public use, yet susceptible of conversion to profit in its nature similar to that of a private person. The view is corroborated by the laws of the first and early Congresses, by which the practice under the Constitution was established not to "take even private property, but to buy it—to buy with the consent of the States, and to make action in behalf of navigation the price of cession both of title and jurisdiction." And the corroboration is increased by the practice, especially in New Jersey, presumably sought, at least accepted, by the Government of the United States, whereby tide covered lands were always, when wanted, the subject of grant by statute, and then only upon condition of use only for light houses, beacons and the like, with provisions to revert when the specified uses ceased.

The construction of the clause "by the consent of the Legislature of the State" may be aided by the history of its introduction. See *Madison Papers*, pp. 510-511. The provision for exclusive legislation, etc., over all places purchased for forts, etc., being under consideration. "Mr. Gerry contended that the power might be made use of to enslave any particular State by buying up its territory, and that the strongholds proposed would be a means of awing the State into an undue obedience to the general government. Mr. King himself thought the provision unnecessary, the power being already involved; but would move to insert, after the word 'purchased,' the words 'by the consent of the Legislature of the State.' This would certainly make the power safe. Mr. Gouverneur Morris seconded the motion, which was agreed to *nem. con.*, as was then the residue of the clause as amended."

See also, *The Federalist*, No. 48 (Dawson's ed.), vol. 1, p. 299, where Madison says: "All objections and scruples are here also obviated by requiring the concurrence of the States concerned, in every such establishment."

Here the argument would stop but for the insistence of the projectors of this proposed bridge.

They say that the power to regulate commerce with foreign Nations, and among the several States, implies the power to build bridges as a means of commerce, and that therefore the adoption of the Constitution invested the general government with the right to take the land

of New Jersey under her tidal waters to carry out this project.

Their conclusion does not follow. We have seen that if land is needed for the erection of forts, magazines, arsenals, dockyards and other needful buildings, it must be purchased (whether or not that word includes acquired by condemnation), but purchased by the consent of the Legislature of the State in which the same shall be; that this is true of simple private property, but that it is not true, even, of property belonging to a sovereignty, which is not within the right of purchase mentioned. We say, therefore, that the right to bridge, if it is possessed by Congress, is subject to the right of the State, since bridging here is taking the land of the State; taking it, first, so far as necessary, for piers and supports; taking it, secondly, by occupying it to the width of the bridge from high water mark to the line of boundary at the middle of the kill or sound.

But we follow our adversaries in the argument, and insist that the power to regulate commerce does not confer upon the United States Government the power to build or authorize the building of bridges.

The power conferred is preventive and corrective, not creative or constructive. Bridges over navigable waters require authority from two sources: first, the right to build at all, which must be given by the State; second, the right to build as proposed in place, direction to the current and mode of structure, especially as to its draw. This last must come from Congress. The defendants stand upon no right coming from the State. They have no authority to build anything. The authority they have obtained is therefore valueless. It does not come from a source which can give the right of construction itself.

To estimate the claim let us state it and some circumstances which attend it. It is made for the first time, now, after nearly a century since the formation of the Constitution, and if it be true, then the United States Government has power almost illimitable. The power to regulate commerce has been expounded to place all navigable waters in the custody of the government, whether they be boundaries or whether they have no flow except within the borders of the States themselves, if they can be reached by commerce from other States. Therefore, if this claim be lawful, all the great tidal rivers of the Eastern States, and through other construction, all the great navigable pathways of the continent, can be bridged, anywhere, at the will of Congress.

Nor is this all. The claim is that the power to regulate commerce is not simply to protect it, preserve it from injury, and leave it to advance according to the energy of the people, seeing to it that natural highways are kept clear, and that passage across is not unduly obstructed, but that Congress has the right (and if so, the duty) to inaugurate and put into execution all means of travel. Turnpike roads, railroads, canals, come within the asserted authority.

The argument against the asserted power is *reductio ad absurdum*. But even a stronger one naturally occurs. What becomes of state sovereignty, of the wonderful invention, if, indeed, it was an invention of the fathers, should

such a power be carried out? If Congress can do all this, Congress can do it, as in this case, by agents. Congress then becomes the great corporation factory, and either thus, indirectly, or if it please directly, the creative source of methods or means of commercial intercourse. The character of our composite government, if this doctrine be admitted, will undergo either change.

It is useless to multiply words on either side of this most important question. The meaning of the clause giving commercial power to Congress has been so often discussed and decided that it would seem impossible that it should be questionable. There is this fact worthy of remark: that all the great judges who took liberal and national views upon the meaning of the clause—Marshall, and with him Washington, Story, Thompson, Todd, Duvall, who concurred in the great opinion delivered in *Gibbons v. Ogden*, 9 Wheat. 203, (22 U. S. bk. 6, L. ed. 71), (McLean dissenting), in the *Wheeling Bridge Case*, expressing what was implied or expressed by all the judges who united in originally declaring the bridge a nuisance—and every Judge of the Supreme Court of the United States who has expressed opinions according, in the main question, with the rulings in *Gibbons v. Ogden*, either say directly that the power to build a bridge belongs only to the State, or, refraining from direct utterance upon that point, set forth views as to the power of Congress which advance no farther than that it has the right to say whether or not a bridge built directly or indirectly by a State shall or shall not stand; or, if it stand, whether it shall be altered so as to allow of free navigation.

There are two opinions worthy of veneration, which have not been emphasized, if they have been mentioned in my associate's brief. One is that of *Chief Justice Marshall*, rightly termed by high authority, the father of our constitutional law, delivered in *Gibbons v. Ogden*. The other, that of *Chief Justice Savage*, of New York, given just fifty years ago, in the case of *The People v. The Saratoga & Rensselaer R. R. Co.*, respecting a proposed bridge at Troy. It was argued for the people by Samuel Stevens, for the railroad company by Benj. F. Butler, then Attorney-General of the United States. 15 Wend. 114. I mention this not only to show that it was a case gravely considered, but also because of the opinions which the Attorney-General then expressed on the question mooted here, and as evidence of views then generally held by all good lawyers. He says (p. 128): "The object of the Act in question was to facilitate intercommunication. * * * It is an internal improvement for a local purpose, to which the power of the general government does not extend and which exclusively belongs to the state government. The general government cannot authorize the erection of such a bridge, nor can it prohibit its erection. The right of a State to establish ferries has never been questioned, and bridges are but substitutes for ferries. The law provides that the bridge in question shall not interfere with navigation by requiring that the river shall be restored to its former usefulness, and the defendants have averred that they have constructed their works so as to leave, over the main or principal part of the channel, an open-

ing for a convenient and suitable draw to enable vessels navigating the river to pass and repass."

The court (*Savage, C. J., Samuel Nelson and Greene C. Bronson, JJ.*), by the Chief Justice, said (page 191): "The information charges that the Hudson River, from the ocean to the City of Troy, and above it to the Villages of Lansingburg and Waterford, is an arm of the sea in which the tide ebbs and flows, and for forty years has been used in carrying on commerce in pursuance of the laws of the United States."

The place, therefore, where the bridge is to be built, is one which coasting vessels have a right to pass, and where any obstruction entirely preventing or essentially impeding the navigation would be unlawful. It is, however, a proposition not disputed that but for the power granted by the Constitution to Congress, the State Legislatures would have as full and entire control over the waters of their several States as they have over the land. It follows, therefore, without the declaratory amendment to that effect, that the States reserve all power not granted to Congress. The entire sovereignty over the waters of the States, then, vests in Congress and the several State Legislatures. If this entire sovereignty rested in one government, it could not be doubted that such government might authorize the erection of a bridge across navigable waters, if the business and intercourse of society required such an accommodation. The only objection to the exercise of such a power might be that the injury to navigation might exceed the benefits to be derived to society otherwise than from such an accommodation, and on that point the sovereign power must be judge. It is for the Legislature, and the Legislature alone, to judge of the expediency of exercising any of its acknowledged powers in any given case.

I think I may safely say that a power exists somewhere to erect bridges over waters which are navigable, if the wants of society require them, provided such bridges do not essentially injure the navigation of the waters which they cross. Such power certainly did exist in the State Legislatures before the delegation of power to the Federal Government by the Federal Constitution. It is not pretended that such a power has been delegated to the general government, or is conveyed under the power to regulate commerce and navigation; it remains, then, in the State Legislatures, or it exists nowhere. It does exist, because it has not been surrendered any farther than such surrender may be qualifiedly implied,—that is, the power to erect bridges over navigable streams, must be considered so far surrendered as may be necessary for a free navigation upon those streams. By a free navigation must not be understood a navigation free from such partial obstacles and impediments as the best interests of society may render necessary. For example, a vessel arrives at the Port of New York from a foreign port; Congress has the exclusive power to regulate commerce and navigation with foreign Nations; the vessel arrived has sailed under the authority of the laws of Congress, but she is met at the quarantine

ground, not by a bridge with a draw which she may pass in half an hour, but by a mandate from the state authorities stating in substance that the conveniences or necessities of the people of the port which the ship is approaching, require that she shall remain at quarantine one, ten or twenty days, according to circumstances. Is such a detention unconstitutional?

It has never been pretended. The contrary has been expressly adjudged, as far as that point could be adjudicated, in the case of *Gibbons v. Ogden*. Chief Justice Marshall says (9 Wheat. 208); (23 U. S. bk. 6, L. ed. 71): "Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, etc., are component parts of this mass."

He had just spoken of "that immense mass of legislation which embraces everything within the territory of a State not surrendered to the general government, all which can be most advantageously exercised by the States themselves." It is here conceded that inspection laws, quarantine laws, laws regulating internal commerce, laws which respect turnpike roads and ferries, are constitutional, and are, of course, no infringement of the powers granted to the general government. The Chief Justice adds an "etc.," after the word "ferries," implying that there were other subjects of a similar nature in his mind that it was unnecessary to specify; and what is more analogous to a ferry than a bridge, for which a ferry is but a substitute? I have already stated that the general government and the state government, between them, possess the sovereign power, and the sovereign power may doubtless build bridges where necessary. It has been correctly said that the Federal Constitution is a grant of power, while the State Constitutions are limitations of power. There is in our State Constitution no limitation of the power to build bridges, and there is in the Federal Constitution no grant of such a power. There can be no question, therefore, that the State Legislature has the power to build bridges, when they shall be necessary for the convenience of its citizens. The right must be so exercised, however, as not to interfere with the right to regulate and control the navigation of navigable streams. Both governments have rights which they may exercise over and upon navigable waters; and it is the duty of both so to exercise their several portions of the sovereign power that the greatest good may result to the citizens at large. It is the right and the duty of the general government to adopt such measures that the commerce and navigation of the country shall not be improperly obstructed, and it is the duty of the State Governments to afford their citizens all the facilities of intercourse which are consistent with the interest of the community, and which shall not obstruct the powers granted to the general government.

The language of Chief Justice Marshall being here quoted, it need not be repeated.

Chief Justice Savage says: "It is not pretended that such a power (to erect bridges) has been delegated to the general government, or is conveyed under the power to regulate com-

merce and navigation." Now, fifty years farther away from the founders of the Constitution, this is pretended.

Let us consider the authoritative construction of the language said to convey this power, and see with what reason the pretense is made:

"To regulate commerce with foreign Nations and among the several States."

"Commerce," says *Chief Justice Marshall* "is intercourse," and includes intercourse by navigation. 9 Wheat. 189 (22 U. S. bk. 6, L. ed. 68), *et seq.* "A power to regulate navigation is as expressly granted as if that term had been added to the word 'commerce.'" P. 198.

What is this power? P. 196. It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed.

The *gravamen* in *Gibbons v. Ogden* was that the State of New York had by law interdicted steam vessels, having a United States license, from navigating its waters. The court held this to be regulation of commercial intercourse by the State, opposed to the law of Congress which by licensing coasters declared navigation free, and so held the law of New York void.

So, when the States of Ohio and Virginia authorized a bridge over the waters of the river which was their boundary, constructed in such a way that some vessels already used in its navigation could not pass, the supreme court held this law a regulation of commercial intercourse by the States, opposed to the freedom of navigation insured by Congress, and held that law and the bridge itself unlawful. But when Congress enacted that the bridge, as constructed or agreed to be constructed, was not an obstruction to navigation the bridge was suffered to stand.

This was the *Wheeling Bridge Case*. Later, the Schuylkill, a river entirely within Pennsylvania, was bridged at Philadelphia, without a draw. The supreme court held such a bridge, one over such a river rather, not unlawful till Congress said it was, holding that something beside a license to a coaster was necessary to show the will of Congress that the regulation by state law embodied in the bridge was an interference with the power of Congress in an inland river.

This was the case of *Gilman v. Philadelphia*, in which *Mr. Justice Swayne* gave the opinion quoted in my associate's brief, declaring that the power to build a bridge was solely with the State, the power to pull them down, alter them, or declare in what manner they shall be constructed, remaining with Congress.

It is the misconception of the action taken by Congress with respect to the *Wheeling Bridge*, and the obedience to it by the supreme court, which was only negative action—action simply forbidding the pulling down of a bridge already erected, out of which possibly has grown this new idea that the right of building a bridge is vested in Congress by the power to regulate commerce.

These cases are all consistent with *Chief Justice Marshall's* definition of the word "regulate." They are illustrations of "prescribing the rules by which commerce is governed." One rule was and is that navigation shall be free. Therefore the law of New York exclud-

ing certain steam vessels from her waters was declared inoperative and void. The same rule, enforced, made the *Wheeling Bridge* unlawful. But when Congress said it did not obstruct navigation, then the higher power, the power to give the rule, let it stand.

But how does this power "to prescribe the rule by which commerce (commercial intercourse) is to be governed" give power to Congress to create a new physical highway for commerce, or to authorize it, or to create and convey the franchise for its construction and its maintenance? How can such a right be tortured out of the power to "regulate commerce."

How do these words authorize Congress to foster one class of commerce at the expense of another; to say there shall not be so much navigation, but there shall be more railroad travel, and especially to seek this object, not only by framing and enforcing rules, but by constructing material appliances, in order to the bringing it about?

It would increase commercial intercourse with foreign Nations were Congress to build an improved line of swift and safe merchant steamships, or to authorize their being constructed. Yet, will anyone pretend that Congress, at least under the power to regulate commerce, can do this?

And yet, what are ships but floating bridges?

That such an attempt as this has never been made throughout the century during which the Constitution has well nigh lasted, is the strongest of arguments why it cannot be within congressional power. The scheme of building this particular bridge has been agitated for many years. New York has exhausted every effort to induce New Jersey to consent to this act of self destruction for certainly a quarter of a century past.

Congress does a new thing when it creates a bridge building, or any other manufacturing, corporation.

It does a still stranger thing when it confers the right of such manufacture in New Jersey upon a corporation of New York; and especially when the law of New Jersey says that it shall not do it.

But it is contended that the question of right involved in this case is *res judicata*—that the supreme court, in the case of *South Carolina* against *Georgia* has really decided it.

That was an effort on the part of South Carolina to enforce an agreement between herself, before the Constitution, and Georgia, whereby the free navigation of the Savannah River by the citizens of both States was stipulated. The prayer of the bill was to restrain the obstructing or interrupting the navigation of the river. The argument of counsel shows that "The property rights of South Carolina were not involved, and there was no pretense of any apprehended damage to them by reason of a pretended obstruction. The only ground of complaint was that the interests of her citizens might be thereby injuriously affected" (98 U. S. 8, bk. 23, L. ed. 783), unless there was, additionally, the giving preference to the ports of Georgia over those of South Carolina.

The alleged obstruction or wrong was the action of United States officers in improving the navigation of the river. This was effected

by obstructing one of two water ways so as to compel all the water to seek the other. But all had the use of the greater depth thus produced.

Says the court: "This is, in no just or legal sense, destroying or impeding the navigation." P. 11. And the court was undoubtedly right. The suit was most unfounded. It did not appear that the land of South Carolina was invaded. Her contract, upon which her claim rested, was evidently abrogated by the adoption of the constitution. By that instrument she invited the Union to increase the facilities of navigation in this her boundary river. She alleged no damage to herself, only possible inconvenience or injury to some of her citizens. And what was done was improving, not obstructing, navigation; bettering what was, not supplying a new highway; facilitating interstate commerce as it existed from the beginning, not endeavoring to inaugurate a new and different highway.

All the doctrine upon this subject originated with Marshall in that great authoritative constitutional dissertation, the opinion in *Gibbons v. Ogden*.

His words are: "Commerce includes navigation. The power to regulate commerce comprehends the control for that purpose (that is, for navigation), and to the extent necessary of all the navigable waters of the United States which are accessible from a State other than those in which they lie."

Control for purposes of navigation—regulation of its use for that purpose, including in the word "use," improvement of these waters as means of navigation, are vested in the United States under its power to regulate commerce; hence, the doctrine of the *Savannah* case is not disputed. The United States can improve these means of navigation for that purpose, for that is but control of them for the very purpose for which the United States was given control of them.

But the United States cannot divert these waters to another purpose, or use them, or that land under them which is necessary to them, for another purpose, namely: to build bridges, or make filled ground for wharves or the like. If it can, why has it not the right thus to use our entire water front?

Control and ownership for all purposes other than for purposes of navigation, of which the waters were then an instrument by nature and use, was retained by the State; and the United States cannot seize this property and ownership and convert the property adversely into an instrument of commerce of another kind, any more than the State can convert a canal into a railroad without compensation to the original owner of the soil.

The force and effect of the Act of Congress under which the defendants assume to act, the intention of the lawmakers, is a part of this case of the highest importance. The defendants, confessedly, have no standing or right except what that statute may be held to give them.

If the bridge were in course of construction when the Act was passed, under authority given on the one part by the State of New York, and, on the other, by the State of New Jersey, then the Act would seem to be entirely within the power and the usage of Congress.

INTER S.

Shall the Act, then, have the construction of a grant of the franchise to build, or merely that of permitting a franchise already bestowed by lawful authority to be exercised?

Is it a grant or a license?

As a grant, it is subject to exceptions already taken and argued, and to others still to be stated.

As a license necessary to the exercise of a grant, just as if New Jersey had authorized it with the consent of New York anterior to the Constitution, the words used are exactly appropriate.

It is to be observed that nothing in the Act exhibits any knowledge on the part of Congress as to whether this franchise had been granted, or even that the bridge was not actually begun. Indeed, the last clause in the Act (excepting the section reserving power to amend or repeal) would seem to imply that Congress thought the power obtained and the bridge in course of construction. It says: "If said bridge shall not be finished within two years from the passage of this Act, the rights and privileges hereby granted shall determine and cease."

What, then, according to legal rules, is the meaning and intent of the Act in question?

Says *Morawetz on Corporations*, § 323, after stating that provisions indicating in detail some of the kinds of transactions in which companies may engage: "The rule of, construction stated has no application to a grant of special privileges in derogation of common right, or of an exemption from the operation of general laws governing other persons. It should always be presumed that the Legislature does not intend to confer franchises of this character, unless a contrary intention be expressed in unambiguous terms." The author proceeds: "The distinction here pointed out is not an arbitrary one, but is founded on evident reasons. Accordingly, it has been held that a law or charter granting a right to exercise the power of eminent domain or to create a nuisance, or to hold a lottery, or to do any other act not lawful to the members of the community generally, should be strictly construed. Every presumption will be made against the existence * * * of a right to a monopoly or special privilege, to the exclusion of others or at the public expense."

These are familiar rules, expressed or implied, in all decided cases.

What, then, do we find in this Act? The same language, or language substantially the same, with that employed when the object and intent of the Legislature was simply to give license for the exercise of an otherwise derived franchise, to withhold objection which they might make to structures under state authority. There are no words of grant; none of incorporation for a purpose; none inconsistent with the ordinary action pursued in obtaining the right to erect bridges over navigable streams, viz.: to get the right to build from the State, and the permission to exert the right from Congress. We confidently ask who, looking at this statute alone, without knowledge of any circumstances precedent or subsequent, can say that Congress meant to do any more than it was accustomed to do? Who can say that it meant to do a thing entirely new; that is to say, to assume and execute a power always hitherto de-

nied it, of bridging a State's waters against its will?

This Act is valueless unless it achieves the novelty of increasing the franchises of a state corporation, unless it achieves the greater novelty of enabling this Corporation to exercise franchises within the State of New Jersey against its consent and in disobedience to its law, unless it achieves the equally great novelty of enabling this foreign Corporation to settle itself without even making compensation upon New Jersey soil, and the novelty, finally, of building and running a railroad within the State of New Jersey. If an individual within that State should attempt to exert such a franchise, he would be forced by its law to quit. Can it be possible that Congress intended such authorization? Can it be possible that this court will so hold, when, as shown, it may hold otherwise, in perfect consonance with a century of judicial action?

See what implications the construction of this Act insisted upon, calls for:

1. A grant of New Jersey's lands to a New York Corporation.

2. A repeal of New Jersey's Law as to the use of riparian property.

3. A repeal of the Statute of New Jersey authorizing the formation of railroad corporations so far as it imposes conditions upon the use of lands of the State.

4. A repeal or immunity from disobedience to the Acts of 1878 and 1886 inhibiting any such bridge.

5. The exercise of the power of eminent domain, without compensation, and when there exists no way through any legislative provision of carrying out that right.

Summing up the argument as to construction, there is, in this case, an allegation of the greatest advance in congressional assumption, made since the formation of the government, alleged to be made by the exact language in which heretofore the necessary provision by Congress for the protection of navigation from injury by a bridge has been made. And this court is invited to give this novel, if not arrogant, construction to a law susceptible of one altogether beyond objection.

It would scarcely be respectful for me to fail to allude to the case of *Decker v. The Baltimore & New York Railroad Co.*, decided April 27, 1887, the opinion wherein is found reported in the *New Jersey Law Journal* for July (*post*, —) as if on purpose to be ready for the argument now in hand. That suit is a remarkable one. It has seemed to us something of a fishing suit, where, really there was but one party and that party the corporation defendant here, the Baltimore & New York Railroad Co., which here declares that it has nothing to do with building the bridge, while in that case, by its demurrer, it confessed that it intended to erect it. Jurisdiction in the New York Circuit was obtained by suing the Baltimore & New York R. R. Co., a corporation created under the general Railroad Law of New Jersey, but up to this day not organized. Who the plaintiff in it was; how he came to be plaintiff; whether the enterprising party that has originated this bridge scheme, and thus all this litigation and contention, or some one in that interest, did not employ coun-

sel on both sides; whether the bill of complaint, before it was filed, did not have revision, at least, from the parties defendant or their counsel—are interesting questions, the answer to which may or may not be pertinent.

As I read the case, the decision is with us; much of the reasoning of the learned judge directly so; some of it that is against us (I say it with much respect) apparently not carefully considered; and the main point of the controversy here is passed over with disrespect to the State of New Jersey far more common than it is praiseworthy.

The learned judge well states the question. He rightly decides that the clause in the Constitution authorizing the establishment of post roads has nothing to do with the contest. He rightly says that the Act of Congress now under discussion is the first attempt on the part of Congress to grant such a right as is asserted by the defendants. And all he says as to the power of Congress to erect bridges or vest in others the franchise of doing so, all his citations from learned jurists, without exception negating it, can safely be adopted into our argument. Until, in his review, he strikes the case of *South Carolina v. Georgia*, the opinion, except upon the construction of the Act, is wholly with us.

When remarking upon that case, he fails to say that if the words of *Mr. Justice Strong*, which he quotes, are to be regarded as to the contrary of the other opinions which he cites—they are also as open as the others to the criticism of being *obiter dicta*, or unnecessary to the decision. He fails to notice that, so far as appears by the report, the property rights of South Carolina were not involved, that she made no complaint of injury to herself, and only of possible damage to some of her citizens. He leaps, we submit, very far, in saying that Congress can close a river, and further still when he adds that "If Congress can close a river, it can certainly bridge one." He fails to notice the generic difference between the proposition (if true) that Congress can use the bed of a stream in order to preserve its navigation, and the other that Congress can use it in order to construct a new instrumentality of commerce, either to take the place of such navigation or to obstruct it.

And when the learned judge avers that "Both the language and the history of the Act preclude the doubt whether it can be construed as intended to grant a privilege which is to become operative when concurrent authority to build the bridge is obtained from the States of New Jersey and New York," we submit that his attention could not have been called to the considerations suggested in the argument before the court at this time upon the right judicial construction of that Act.

The party really interested, the State of New Jersey, had no knowledge of that suit, no part or lot in the hearing; nor ought it to be set up against her. If, as we suppose, a *deus ex machina* may have to do with the suit, its institution ought rather to bear against the parties defendant here.

There is one remark of the learned judge in that opinion to which I must be permitted, though at some risk of departure from the path of simply legal discussion, to make respectfu-

reply. Noticing himself that New Jersey had protested against this Act, that she had passed two statutes embodying that protest in absolute inhibition of the erection of any bridge over the kill, he nevertheless says that "The argument that the rights of the State of New Jersey are ignored or invaded by permitting such a bridge to be built without her consent is purely a sentimental one."

The course of New Jersey in this matter is anything but sentimental. It is the assertion of her rights for the benefit of her citizens, and of herself as a community for her material, pecuniary benefit. Good policy has demanded, and does demand that the boundary navigable waters between her and her neighboring States should not be bridged. She would be untrue to the interests of her citizens if she did not do all she could to maintain her geographical situation as nature, original grants, and subsequent treaties have made it.

But the material, pecuniary interest of New Jersey in this litigation is of small comparative consequence. Its great importance lies in the danger to our national system, involved in this denial to her, and the assumption by Congress, of such power as is claimed to reside in this Act. Ours is a government of distributive sovereignty. Sovereignty in the States is as necessary to the greatness of the American Union as sovereignty in the national government. Supremacy in the Federal Government is necessary to our being a Nation. Sovereignty in the States is necessary to our continuance, to our remaining forever the free Nation we are. Our civil war did not destroy state rights. If it had, it would have destroyed, not saved, the Constitution. But out of the contest has unhappily sprung the great danger of this day, that, namely: of centralization. Men have forgotten that ours is a government of distributive sovereignty. And yet it seems to me plain that if this Nation is to be saved from the fate of Rome; if its greatness is not to be the occasion of its fall, it will be through the existence of the States as sovereignties. This was one great reason why the fathers were so jealous of state rights; and experience has thoroughly shown their wisdom. And our wonderful success in internal improvements, the magnificence of each State as a separate community, is the direct consequence of state sovereignty and of the doctrine that to each State belongs the exclusive right of benefiting her citizens by local, otherwise called police, regulation.

It was New Jersey who led in the formation of the Constitution. It was a citizen of New Jersey whose assertion of his rights under the Constitution produced those definitions of the rights of the general and the state governments which have ever since made navigation free. It is New Jersey now, who, on this occasion when it is claimed that Congress has overruled and has the right to overrule her views of her rights and of her policy, stands forth in assertion of her sovereignty, and says that if the navigation of her waters is not to remain free, if her long determined and pursued policy is to be obstructed and changed, and her property is to be used for her injury, her assent should first be given.

INTER 8.

Mr. Barker Gummere also appeared for the informant.

Messrs. A. Q. Keasbey, William W. MacFarland, and John K. Cowen, for defendants:

Before examining the specific grounds for the interference of the state court set up in the information, it is proposed to state certain general propositions which we suppose to be established firmly by the judicial decisions on the subject of the power of Congress over navigable waters of the United States, whether flowing wholly within the State and accessible from other States, or forming the boundaries between the States.

It will be convenient in the first place to give a list of the most important cases in which the subject in some of its aspects has been considered in the United States Courts.

In the Supreme Court of the United States:

Gibbons v. Ogden, 9 Wheat. 1, and *Brown v. Md.* 12 Wheat. 419 (22 and 25 U. S. bk. 6, L. ed. 23, 678); *Wilson v. Blackbird Creek Marsh Co.* 2 Pet. 245 (27 U. S. bk. 7, L. ed. 412); *U. S. v. Coombs*, 12 Pet. 72 (37 U. S. bk. 9, L. ed. 1004); *Pollard v. Hagan*, 3 How. 280 (44 U. S. bk. 11, L. ed. 574); *License Cases*, 5 How. 504, and *Passenger Cases*, 7 How. 282 (46 and 48 U. S. bk. 12, L. ed. 256, 702); *Cooley v. Board of Wardens*, 12 How. 299 (53 U. S. bk. 18, L. ed. 996); *Pa. v. Wheeling etc. Bridge Co.* 18 How. 421 (59 U. S. bk. 14, L. ed. 435); *Gilman v. Phila.* 3 Wall. 718 (70 U. S. bk. 18, L. ed. 96); *Paul v. Va.* 8 Wall. 168, and *Clinton Bridge Case*, 10 Wall. 454 (75 and 77 U. S. bk. 19, L. ed. 867, 969); *Ward v. Md.* 12 Wall. 418 (79 U. S. bk. 20, L. ed. 449); *State Tax on Railway Receipts*, 15 Wall. 284, and *Chicago etc. R. Co. v. Fuller*, 17 Wall. 560 (82 and 84 U. S. bk. 21, L. ed. 164, 710); *The Mohler*, 21 Wall. 250, *Balt. etc. R. R. Co. v. Md.* 21 Wall. 450 and *The Lottowana*, 21 Wall. 558 (88 U. S. bk. 22, L. ed. 485, 678, 654); *Welton v. Mo. and Union Pac. R. R. Co. v. Hall*, 91 U. S. 282, 343 (Bk. 28, L. ed. 850, 428); *Henderson v. Wickham*, 92 U. S. 259 (Bk. 28, L. ed. 549); *South Carolina v. Ga. and Sherlock v. Alling*, 93 U. S. 4, 99 (Bk. 28, L. ed. 782, 819); *Hannibal etc. R. R. Co. v. Husen*, *Hall v. DeCuir*, and *Pound v. Truck*, 95 U. S. 465, 485, 459 (Bk. 24, L. ed. 527, 547, 525); *Wisconsin v. Duluth*, 96 U. S. 879, and *Cook v. Pa.* 97 U. S. 566 (Bk. 24, L. ed. 668, 1015); *Miss. etc. Boom Co. v. Patterson*, 98 U. S. 403, and *Guy v. Baltimore*, 100 U. S. 484 (Bk. 25, L. ed. 206, 748); *Tieman v. Rinker*, and *Mobile Co. v. Kimball*, 102 U. S. 128, 691, *Newport etc. Bridge Co. v. U. S.* and *Cincinnati etc. Packet Co. v. Callettsburg*, 105 U. S. 470, 559 (Bk. 26, L. ed. 103, 238, 1143, 1169); *Escanaba Co. v. Chicago*, and *Parkersburgh etc. Transportation Co. v. Parkersburgh*, 107 U. S. 678, 691; *Miller v. Mayor of N. Y.* 109 U. S. 385 (Bk. 27, L. ed. 442, 584, 971); *Moran v. New Orleans*, 112 U. S. 69, and *Cardwell v. American Bridge Co.* 118 U. S. 205 (Bk. 28, L. ed. 653, 959); *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 190 (Bk. 29, L. ed. 158, ante, 882); *Brown v. Houston*, 114 U. S. 622, *Pacific R. R. Removal Cases*, *New Orleans Gas Co. v. Louisiana Light Co.* 115 U. S. 2, 650-652, *Stone v. Farmers Loan & Trust Co.* and *Walling v. Michigan*, 116 U. S. 807, 446; *Pickard v. Pullman Southern Car Co.* 117

U. S. 84 (Bk. 29, L. ed. 257, 319, 517, 686, 691, 785); *Morgan's R. R. etc. Co. v. Louisiana Bd. of Health*, 118 U. S. 455 (Bk. 80, L. ed. 237); *Wabash etc. R. Co. v. Ill.* 118 U. S. 557 (Bk. 80, L. ed. 244, ante, 33); *Huss v. Glover*, 119 U. S. 543 (Bk. 80, L. ed. 487); *Robbins v. Tasing Dist. of Shelby Co.* 120 U. S. 489 (Bk. 80, L. ed. 694, ante, 45); *Barron v. Burnside*, 121 U. S. 186 (Bk. 80, L. ed. 915, ante, 295); *Fargo v. Stephens*, 121 U. S. 230 (Bk. 80, L. ed. 888, ante, 51); *Ouachita etc. Packet Co. v. Aiken*, 121 U. S. 444 (Bk. 80, L. ed. 979, ante, 379); *Phila. etc. Mail S. S. Co. v. Pa. and Western Union Tel. Co. v. Pendleton*, 122 U. S. 326, 347 (Bk. 80, L. ed. —, ante, 808, 806).

Circuit Court Cases: *Clinton Bridge Case*, 1 Woolw. 150; *U. S. v. Duluth*, 1 Dill. 469; *Hatch v. Wallamet Iron Bridge Co.* (Deady, J.) 6 Fed. Rep. 326; *Wallamet Iron Bridge Co. v. Hatch*, 19 Fed. Rep. 847; *Silliman v. Hudson River Bridge Co.* (Nelson, J.) 4 Blatchf. 74; *S. C. 4 Blatchf.* 408 (Hall, J.); *Easton v. N. Y. & Long Branch R. R. Co.* (McKenna, J.) 9 Phila. 475; *U. S. v. Rum River etc. Boom Co.* 1 McCrary, 397; *Atty.-Gen. of New Jersey v. American Dredging Co.* (injunction from state court preventing United States work in the Delaware, stopping channel on New Jersey side; removed to U. S. Circuit Court; heard before McKenna and Nixon, JJ.; injunction dissolved, October 17, 1885.) *Decker v. Balto. & N. Y. R. R. Co. and Staten Island Rapid Transit Co.*, post.—

All of these cases, increasing in frequency with the expanding interstate commerce of the country, relate to some of the aspects of the question of the paramount and exclusive power of the Congress of the United States to regulate and control commerce and all its instrumentalities. The result of them is to establish the following general propositions:

1. That the United States has paramount control of all the navigable waters of the country for any purpose whatever which has relation to commerce, whether it is carried on by navigating the waters themselves, or by railroads or other instrumentalities which require the use of the bed or soil of such waters, for the support of bridges, or other structures.

2. That this control extends to authorizing bridges, railway viaducts, docks, wharfs, dams, jetties, light houses, buoys, or any other fixed structures pertaining to commerce, over or in such waters, as well as to prohibiting obstructions to navigation therein.

3. That it is entirely within the discretion of Congress to determine in each case what action with respect to any navigable stream the interests of commerce require, and how far such action shall be exclusive of state authority.

4. That whenever such action is taken, and is designed to be exclusive, it is wholly independent of state authority, legislative or judicial.

5. That while these propositions are true with respect to all the navigable waters of the United States, whether within or between States, they are especially true as to interstate streams, which in their very nature must be used as channels for commerce between the States, or as obstacles to be surmounted by it in order to render such commerce possible. As to them, at least, it is true, in the language of Judge Field, quoted by Mr Justice Bradley,

that the mere failure of Congress to act "is equivalent to a declaration that such commerce shall be free and untrammelled" or in Judge Bradley's own words: "Where Congress has failed to restrict such commerce, it must necessarily be free."

6. That it follows conclusively *a fortiori* that when the will of Congress is manifested by definite legislation, its expression must, in the words of Chief Justice Waite, "override all that the States can do," by legislative, judicial or executive action. To admit the contrary would be to abandon the national power to regulate commerce, by surrendering control over its most important instrumentalities.

If these propositions are definitely established, it follows that the exercise of the national power over this important interstate stream cannot be arrested by judicial authority on the grounds specified in the information, or on any grounds whatever.

But it is claimed that if all these propositions be granted and the supreme and exclusive power of Congress over commerce and all its instrumentalities be admitted, and if it be also granted that railroads and their bridges crossing interstate streams are such instrumentalities, and also that Congress in this Act to authorize a bridge over Staten Island Sound, did intend to exercise its paramount power, yet with all this, the specific grounds stated in this information are sufficient to arrest the power, and to stop this work at the line of New Jersey in the middle of the stream. And this the Court of Chancery of New Jersey held, without notice or argument, and granted an injunction stopping the contractors in their operations.

I. As to the first ground, that New Jersey owns the bed of this stream, and, that therefore it cannot be taken without compensation by the United States for this public purpose relating to commerce, without violating the Constitution, which requires that private property shall not be taken for public use without just compensation:

The answer to this is twofold: *first*, New Jersey is not the absolute owner of this property; and *second*, it is not private property.

New Jersey may have owned it absolutely in fee simple before she entered the Union; but even then she held it for her people *publici juris*. But on ratifying the National Constitution she surrendered this entire navigable stream, with its waters and all its bed to high water mark on either shore, to the United States, also to hold *publici juris* for the benefit of the whole people of the United States, including the people of New Jersey and of all States that shall ever exist in the Union, for all purposes of every nature connected with foreign or interstate commerce, or adapted to promote in any way the transportation of the subjects of commerce among the States or to foreign countries. From that time the United States was the owner of all of the navigable waters of the State of New Jersey for all the purposes of national commerce, and had the same power to dispose of them that the State itself had before the Constitution was adopted. This was distinctly settled in *South Carolina v. Ga.* 93 U. S. 4 (Bk. 28, L. ed. 782); *New Hampshire v. La.* 109 U. S. 76-90 (Bk. 27, L. ed. 656:

Pensacola Tel. Co. v. Western Union Tel. Co. 96 U. S. 1 (Bk. 24, L. ed. 708).

See also *McCready v. Virginia*, 94 U. S. 891 (Bk. 24, L. ed. 248); *American Dock Improvement Co. v. Trustees*, 12 Stew. Eq. 409; *Ormerod v. New York etc. R. Co.* 18 Fed. Rep. 370; *People v. Humphrey*, 28 Mich. 471 (1871).

It follows therefore that the State has no such property in the two pieces of land described in the information as requires compensation for its use as a United States post road crossing the stream on a bridge.

Again; it is not "private" property. The words of the Fifth Amendment of the Constitution are "nor shall private property be taken for public use without just compensation." This provision refers to private property alone—to the property of the individual as distinguished from property held by the Sovereign for the common benefit of the people. It was intended to guard the rights of the individual citizen against the encroachments of the sovereign power. It declared a common-law right acknowledged in every civilized country. Its familiar mode of assertion was that the King or the State could not take the land of A and give it to B without compensation, by an act of power. The provision had no relation to the property held by any organized governmental body for the public use of its citizens. This is shown by the language of the various state constitutions, most of which contain a like provision. Most speak of "private property." Some use what are deemed equivalent expressions.

In the Texas Constitution the words are "no person's property."

In that of Vermont, "no part of any person's property."

In New Hampshire, "no part of a man's property."

In Connecticut, "the property of no person."

In Delaware, "nor shall any man's property be taken without the consent of his representatives and without compensation."

In Indiana and Tennessee, "no man's particular services and no man's property."

In Massachusetts, "no part of the property of any individual."

All this shows that the design of the constitutional provision, wherever it appears, is to protect the man, the individual, the person, against the State or the sovereign power. It has no application to the case of lands in the bed of a stream whose bed and waters are under the control of the national power, though held in some bare and fruitless ownership by the State. These are not such private and individual property as the Fifth Amendment to the Constitution was designed to protect. The stream is a national highway of commerce which may be used to float ships upon, to carry, if necessary, a floating bridge so that it may be crossed, to build a floating dock where vessels to navigate other streams may be repaired, or to sustain a permanent bridge so constructed that the rights of navigation along the river and transportation across the river may be conducted in harmony and for the largest public benefit.

It is like the case of a city street, where the city holds the fee subject to its uses as a highway and in trust for all the people and not as

corporate or municipal property, such as court houses, jails, hospitals, etc. In this case the Legislature may grant the use of the street to a private company for a street railroad or gas pipes or telephones, without making compensation to any one.

Potter, Dwar. 377 note. See also *People v. Kerr*, 27 N. Y. 188; *Albany Northern R. R. Co. v. Brownell*, 24 N. Y. 345; *Transportation Co. v. Chicago*, 99 U. S. 635 (Bk. 25, L. ed. 336).

II. As to Riparian Acts.

It is not perceived how the riparian laws of New Jersey affect the question at all.

The object of those laws is simply to provide a board to dispose of, for the benefit of the school fund, the title of the State in the shores, declared to exist and to be capable of sale, by the court of errors, in *Stephens v. Paterson etc. R. R. Co.* 5 Vroom, 682.

Every grant made under these laws admits the paramount authority of the United States, and provides that the grantee shall claim no damages of the State in case the United States authorities shall change the lines established.

This assumes that the grant, which is only a license to fill in to a certain line, may be nullified by action of the United States pushing back that line.

It gives only a right in the sufferance of the general government.

As to the land under water the State has not assumed to give the riparian commissioners the power to grant it even in this restricted way to any but the land owner. It is stated in the information that the Arthur Kill is a part of Kill von Kull, and that the Riparian Act of 1869 provides that no one shall fill in or reclaim any lands under water in New York Bay, Hudson River, or Kill von Kull, without the consent of the riparian commissioners. This is not correct. The Act does so provide, but Arthur Kill is not part of Kill von Kull. The Act of 1864, in the first section creating the board, provides for the survey of the lands under the waters of the Bay of New York, the Hudson River, the Kill von Kull, Arthur Kill, the Raritan Bay and the Delaware. And the provisions of the Act of 1869 against filling in are directed only to the New York Bay, Hudson River and Kill von Kull—and not to Arthur Kill.

The answer in this case shows that the owner of the shore who has put the defendants in possession and authorized the use of his land for this bridge, has made his application for a grant of all the State has to give in these waters in front of it.

The price has been fixed as the law provides.

Grants at that price have been made to both adjoining owners. This owner is ready to pay the price. The Act of 1869, § 8, provides that upon due application and upon payment of the fixed price, "the commissioners shall, in the name of the State and under the great seal, grant the lands," etc.

The Act of 1871 says that any riparian owner elsewhere may apply to the commissioners who may make the lease, grant or conveyance with due regard to the interests of navigation, and upon such compensation as they shall determine, which lease, conveyance or grant shall be executed as directed in the former Act.

The application has not yet been granted, but it must be assumed that the board will do its duty within a reasonable time, and then the riparian owner of the land on which this bridge is to rest will own all that the State has to give him in the lands of Arthur Kill beneath the bridge, subject to the paramount rights of the United States.

How then can the State now claim to arrest this work authorized by the United States, and permitted by the riparian owner, by reason of anything arising out of the riparian laws?

III. As to the Consent of the State.

Not only has no such consent been given to the building of this bridge, but the State, by the Act of April 6, 1886, has declared in a preamble "that it reserves to itself the right to determine in each case whether the navigable boundary waters of this State shall be crossed or occupied by bridges, viaducts, or other fixed structure, and if so, when, where and in what manner;" and has forbidden any bridge, viaduct or fixed structure in any navigable waters separating New Jersey from other States, without express permission by statute. The only exception in this statute, is, that it shall not be construed to forbid the construction of docks or wharves. Both the preamble and the body of the Act assume that New Jersey has the power to declare when, where and how any fixed structure whatever shall be placed in the Delaware, New York Bay, the Hudson River or Arthur Kill. It includes lighthouses, buoys, jetties, and indeed everything which can come within the meaning of the term "fixed structures." This claim is asserted and this power assumed in the year 1886, after the long line of decisions on the subject of the power of Congress over navigable waters had been made.

The position assumed by New Jersey in this Act was well known to the Congress of the United States and fully considered.

In fact a concurrent resolution, passed by the House of Assembly January 27, 1886, and by the Senate February 8, 1886, was forwarded to the senators and representatives of New Jersey for presentation to Congress, and they were requested to use their utmost endeavors to defeat the bill to authorize this bridge. Those resolutions made the same claim as to the title of the State in these waters, and solemnly protested that any action of Congress to authorize the bridge would be unconstitutional and the usurpation of a power belonging to New Jersey. They asserted that the bridge could only be authorized by the States of New York and New Jersey. They alleged "that the attempt to legalize such a bridge in advance of its construction by enacting that it shall be a post road is an evident subterfuge and should be rejected as an attempt to establish a precedent under which all exclusive powers of the States may be set at naught."

And the fourth resolution declared "that in aid of this protest New Jersey invoked the sympathy of all her sister States in the maintenance of the doctrine of established and acknowledged state rights."

Notwithstanding these resolutions and the Act of the Legislature subsequently passed, Congress afterwards passed a law to authorize the construction of this bridge over Arthur Kill

and to establish it as a post road without requiring the consent of the State. It undoubtedly considered the doctrine that consent of the State is not needed to give power to the United States to build any fixed structure in and across any of the navigable waters of the country for the promotion of interstate commerce, was too fully established for further discussion or legislation.

More than twenty years before it had passed a law authorizing such a bridge, anything in the laws of either of the States between which the river ran to the contrary notwithstanding.

In *Wallamet Iron Bridge Co. v. Halsey*, 19 Fed. Rep. 347, Judge Dundy said, that the theory that Congress can only legislate concerning navigable waters so as to limit or affect the power of each State equally, so as to preserve its equal footing with the others, was founded on a total misapprehension of the relation of the national and state governments to the subject and to one another. He said:

"For the purposes of commerce and the exercise of the power of Congress over that subject, every navigable water in the Union which, of itself or by means of its connections, forms a continuous highway for interstate or foreign commerce, is primarily the navigable water of the United States, over which it has the same power for the purposes of such commerce as if it was wholly in a Territory or the District of Columbia."

See also *Miss. etc. Boom Co. v. Patterson*, 98 U. S. 408 (Bk. 25, L. ed. 206); *People v. Humphrey*, *supra*.

IV. As to Authorizing a Foreign Corporation to Build a Bridge.

This same Congress authorized thirty-three railroad corporations to build bridges. Many of these were corporations foreign to the States where the bridges were to be built.

Ever since the Telegraph Act of 1866, foreign companies of one State have extended their lines over the highways and post roads of other States under the authority of that Act.

In the *Pensacola Case*, *supra*, the corporation seeking to set aside the excluding Act of the State of Florida, was not a corporation of that State. In that case the court, admitting the general proposition that a corporation of one State exercises its business and franchises in another by comity, and that it is strictly in the power of a State to withdraw or refuse such comity, nevertheless clearly manifests its view that if the subject matter of the business or the franchise supposed to be carried on or enjoyed by a corporation of one State within the limits of another be national in its nature, and relate to the commercial dealings of the country as a whole, the power of the United States is sufficient to prevent the interference of the State, and the interruption of commerce, through motives of state pride, jealousy or self interest.

Chief Justice Waite said that the court was aware that in *Paul v. Virginia*, 8 Wall. 168 (75 U. S. bk. 19, L. ed. 357), they had held that a State might exclude a corporation of another State from its jurisdiction and that the corporations were not within section 2, article 4 of the Constitution.

But he added:

"This was not, however, the case of a corpo-

ration engaged in interstate commerce; and enough was said by the court to show that, if it had been, very different questions would have been presented."

Enough has been said in recent cases to show that it will never be held that any State can bar out from its soil at its will, or its caprice, any corporation existing under the laws of another, and desiring to cross that State for the purpose of commerce with another.

V. As to What the Act of Congress Means.

It is strongly insisted in the information that the Act does not purport to, nor does it authorize and empower the defendants to build a bridge, but that its true meaning is merely to permit and to license them to do so when they have acquired the lands from the State on which they place the pier and have obtained the consent of the State that any bridge at all shall be erected. It seems unnecessary to argue this point. There is no hint of any kind in the Act that any conveyance from the State or consent of the State were deemed necessary.

Notwithstanding the solemn protest of New Jersey and the invocation to her sister States solemnly presented to Congress, and in spite of the Act of April 6, 1886, declaring the rights in the navigable boundary which the State had reserved to itself and enacting that no fixed structure should be built over it by any person or corporation without its permission by statute, this Act of Congress was passed after several months' consideration of the action of New Jersey.

It is by its very title an Act to authorize the bridge and to establish it as a post road. It declares that its construction shall be lawful, provided the work is done as prescribed in the statute and approved by the secretary of war. It declares that when that approval is obtained, the companies or either of them may proceed to build it. Nowhere in the Act is there a suggestion of any other condition or limitation, nor any hint that the protests of the State, so urgently made, were to be considered, or anything to be done in pursuance of such protests as a preliminary to the work.

The Act of Congress rests upon the paramount power of the United States over the subject, and upon that basis the defendants stand.

It is to be observed that this is not the first time that New Jersey has attempted, through its courts, to put a stop to the work of the Federal Government in the bed of its navigable waters.

Although such work has been eagerly invited in the Passaic, the Raritan, Chessequakes Creek and Arthur Kill itself—yet in 1885 the same Attorney-General filed an information in the court of chancery to restrain the agents of the United States from work in the bed of the Delaware, on the Camden shore.

It made the same assumptions of *jura regalia* regularly acquired by the State, and of oyster and riparian laws passed and acted upon.

It alleged the same invasion of state rights, on a more ruinous scale. It charged the actual taking of the shores to high water mark between Petty's Island—Jersey soil—and the Camden shore for the purpose of a dyke, stopping the entire eastern channel, to the injury of

health, the destruction of the navigation interests of Jersey Creek, and the ruin of the Camden water supply.

The injunction was granted, as in this case, but upon an answer simply saying that the work was going on under the authority of a few lines in an appropriation bill for the improvement of the Delaware, and on the removal of the cause to this court, *Judges* Mc Kennan and Nixon promptly dissolved the injunction, and the work went on.

This court thought it unnecessary to write an opinion, and the case is not reported.

Finally, This very case has been decided by *Judge* Wallace in the Southern District of New York in the case of *Decker v. The Baltimore & New York Railroad Co. and the Staten Island Rapid Transit Railroad Co.*, two of the defendants in this cause, 30 Fed. Rep. 723, *post*,—

The bill was for an injunction to restrain the building of this bridge. It alleged that the defendants were about to build the bridge under the Act of Congress and with the approval of the secretary of war. That the construction of the bridge would greatly injure navigation. That the Legislature of New Jersey, January, 1886, passed a concurrent resolution against it, and that on the 6th of April, 1886, in order more effectually to prevent it, the Legislature passed a law requiring express permission. That the State had granted no such permission and also that no such permission had been granted by the State of New York. A copy of the Act of Congress, the concurrent resolution of the Legislature and the Act of April 6, 1886, was appended to the bill. The motion for injunction was argued upon a demurrer to the bill. *Judge* Wallace discussed the subject fully, citing the most important cases and denied the injunction.

It is insisted, therefore, that the injunction which is now arresting this work, undertaken under the authority of the United States, ought to be dissolved so that it can go on without delay.

Bradley, C. J., delivered the opinion of the court:

This case was commenced by information filed by the Attorney-General of New Jersey in the Court of Chancery of that State, praying for an injunction to restrain the defendants from erecting a bridge across Arthur Kill, between New Jersey and Staten Island in the State of New York, upon the lands of the State situated on the shore and under the waters of said Kill.

The chancellor granted a preliminary injunction upon the bill and affidavits. The defendants have removed the case to this court, as one arising under the Constitution and laws of the United States, and have filed an answer.

Motion was then made to dissolve the injunction; but after argument, the parties stipulated to submit the case as upon final hearing on bill and answer. There are no controverted facts in the case.

The Staten Island Rapid Transit Railroad Company, a corporation of New York, one of the defendants, claims the right to build the bridge in question, and to occupy the lands under water, necessary for the support of its piers,

under an Act of Congress, approved June 16, 1886, entitled "An Act to Authorize the Construction of a Bridge Across the Staten Island Sound, Known as Arthur Kill, and to Establish the Same as a Post Road."

This Act declares: "Sec. 1. That it shall be lawful for the Staten Island Rapid Transit Railroad Company, a corporation existing under the laws of the State of New York, and the Baltimore and New York Railroad Company, a corporation existing under the laws of the State of New Jersey, or either of said companies, to build and maintain a bridge across the Staten Island Sound, or Arthur Kill, from New Jersey to Richmond County, New York, for the passage of railroad trains, engines, and cars thereon, and to lay on and over said bridge railway tracks for the more perfect connection of any railroads that are or shall be constructed to the said sound at or opposite said point; and in a case of any litigation concerning any alleged obstruction to the free navigation of said sound on account of said bridge, the cause may be tried before the Circuit Court of the United States of either of said States in which any portion of said obstruction or bridge touches; and that all railway companies desiring to use the said bridge shall have and be entitled to equal rights and privileges in the passage over the same, and in the use of the machinery and fixtures thereof and of all the approaches thereto, for a reasonable compensation to be paid to the owners of said bridge, under and upon such terms and conditions as shall be prescribed by the secretary of war upon hearing the allegations and proofs of the parties in case they shall not agree.

"Sec. 2. That said bridge shall be constructed as a pivot draw bridge, with a draw over the main channel of the sound at an accessible and navigable point, and with spans of not less than 200 feet in length in the clear on each side of the central or pivot pier of the draw; and said spans shall not be less than thirty-two feet above mean low water mark measuring to the lowest member of the bridge superstructure: *And Provided also*, That said draw shall be opened promptly, upon reasonable signal, except when trains are passing over the said bridge, for the passage of the boats whose construction shall not be such as to admit of their passage under the draw of said bridge when closed; but in no case shall unnecessary delay occur in opening the said draw after the passage of trains; and the said company or corporation shall maintain, at its own expense, from sunset to sunrise, such lights or other signals, on said bridge, as the light house board shall prescribe.

"Sec. 3. That any bridge constructed under this Act and according to its limitations shall be a lawful structure, and shall be recognized and known as a post route, upon which also no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States, than the rate per mile paid for their transportation over the railroads or public highways leading to said bridge; and the United States shall have the right of way for postal telegraph purposes across said bridge.

"Sec. 4. That the plan and location of said bridge, with a detailed map of the sound at

the proposed site of the bridge, and near thereto, exhibiting the depths and currents, shall be submitted to the secretary of war for his approval, and until he approve the plan and location of said bridge it shall not be built; but upon the approval of said plan by the secretary of war, the said companies, or either of them, may proceed to the erection of said bridge in conformity with said approved plan; and should any change be made in the plan of said bridge during the progress of the work thereon, such change shall be subject likewise to the approval of the secretary of war. If the secretary of war shall at any time deem any change or alteration necessary in the said bridge, so that the same shall not obstruct navigation, or if he shall think the removal of the whole structure necessary, the alteration so required or the removal of the whole structure, shall be made at the expense of the parties owning said bridge; and if said bridge shall not be finished within two years from the passage of this Act, the rights and privileges hereby granted shall determine and cease.

"Sec. 5. That the right to alter, amend, or repeal this Act is hereby expressly reserved."

The said Staten Island Rapid Transit Railroad Company proposes to build a bridge across Arthur Kill, under and in conformity with this Act, to connect its own road on Staten Island with another railroad through and across the State of New Jersey for the purposes of interstate transportation; and in pursuance of that design, has adopted a site for the location of the bridge, from a certain point in the City of Elizabeth to Staten Island; and has caused the plan and location of said bridge, with a detailed map of the sound at and near the same (as required by the Act) to be submitted to the secretary of war, who has approved the same.

The Company, by its engineers and contractors (who are made codefendants in the case), proceeded to make preparations for laying the piers and erecting the bridge according to the plan thus approved. Thereupon the Attorney-General of New Jersey, deeming the property rights and sovereignty of the State in danger of violation from the erection of the proposed bridge, filed the present information to prevent it.

The information states the ordinary doctrine, that the State is owner of the shore and land under water of all navigable streams and arms of the sea within its borders; that this ownership was a part of the *jura regalia* of the King of Great Britain, by virtue of which he was seized and possessed of an estate in fee simple absolute in said lands; and that, at the Revolution, the State, in its sovereign capacity, succeeded to the rights of the Crown; and that this right of supreme dominion had never been ceded or surrendered to the United States; and that without such cession or surrender the United States could not take possession of such lands, or authorize other parties to do so, except by making compensation therefor as provided in the Fifth Amendment to the Constitution; and that at the place of location of the proposed bridge this ownership of the soil on the part of the State extended from ordinary high water mark to the center line of the

sound, being the boundary line between New Jersey and New York, as settled by agreement in 1883, and confirmed by Act of Congress, June 28, 1884.

The information further states that this ownership on the part of the State has been practically exercised by it for more than a century past, by regulating the enjoyment and disposition of the lands under the navigable waters within its limits, passing laws for the preservation and protection of the oyster fisheries therein, and authorizing the construction of wharves, with solid filling, to certain prescribed limits beyond low water mark; and that for these privileges, the grantees are required to pay and have paid a certain compensation to the State. It is contended by the informant that the Act of Congress cannot be construed as intending to give any authority to take any portion of said lands without compensation; and that said Act must be construed as a mere license or permission to erect the proposed bridge, so far as Congress, the conservator of navigation, is concerned, leaving the Companies to obtain from the State the usual authority to build the bridge on the territory and lands of the State; but that if the Act should be construed as giving authority to erect the bridge without the consent of the State and without compensation for taking its lands therefor, then it is violative of the Constitution of the United States—not only for authorizing the lands of the State to be taken without compensation, but for enlarging the powers of a corporation created by the State itself (if the bridge should be built by the Baltimore and New York Railroad Company) and authorizing it to do what, by its own charter and other laws of the State, it is prohibited from doing.

The information further contends that the other corporation defendant, the Staten Island Rapid Transit Company, is not a corporation of New Jersey, and has no authority from the State to exercise any corporate franchises therein, and cannot lawfully do so, except by the comity of the State, which has not been accorded to it; that instead of any such comity having been exercised, the said Company is expressly prohibited from exercising any such powers or franchises as that of building said bridge, by an Act of the Legislature of New Jersey, passed April 6, 1886, which prohibits any person or corporation from erecting any bridge, viaduct or fixed structure over or in any part of the navigable waters where the tide ebbs and flows, and separating said State from other States, without permission of the Legislature of New Jersey first given by statute for that purpose; and that no such permission has ever been asked or given.

The answer of the defendants does not advance any material new facts, except to state that the Baltimore and New York Railroad Company has nothing to do with the proposed building of the bridge, and that the Staten Island Rapid Transit Railroad Company proposes to build it as a connecting link in a line of railroad extending from the Bay of New York across the soil of the States of New York, New Jersey, Pennsylvania and other States as an instrument of commerce among the States; and claims the right to do so under the Act of Congress before cited.

INTER S.

The first question to be examined is the true construction of the Act of Congress on which the case arises,—the informant contending that it is merely permissive in its character, and the defendants, that it gives authority and power to build a bridge, without reference to any authority from the State. This question need not detain us long. The words of the Act are broad enough to confer the authority, if Congress had power to confer it. The language is, "It shall be lawful for the Staten Island Rapid Transit Railroad Company, etc., to build and maintain a bridge across the Staten Island Sound or Arthur Kill." This is the ordinary language used for conferring authority. Had the State Legislature passed a law in these terms, there could not be a doubt of its sufficiency to give authority. And there are expressions in the Act which imply that plenary authority was intended to be given. The minute directions laid down as to the manner of construction and use of the bridge imply this. The third section declares "that any bridge constructed under this Act and according to its limitations shall be a lawful structure," etc. implying that the construction of the bridge, when built, would be under the Act.

If Congress had no power to authorize the construction of the bridge, independent of state legislation, the Act would, of course, be properly construed as permissive in its character, auxiliary to, or confirmatory of state legislation which might be adopted for the purpose of authorizing such a bridge.

In other words, the Act, within the scope of its terms, may have such effect given to it as comports with the power of the legislative body which enacted it; just as a deed of conveyance may operate as a grant, a bargain and sale, a release or a confirmation, according to the interest of the grantor, on the one hand, and of the grantee on the other.

The true construction of the Act, therefore, depends on the power of Congress, which will be examined hereafter.

Another question of a preliminary character relates to the capacity and right of the defendant, the Staten Island Rapid Transit Railroad Company, to perform any acts and transact any business as a corporation in New Jersey.

It is argued that corporations, as such, have no legal existence outside of the State by whose laws they are created, and cannot transact business in another State except by the comity of its laws, which is not accorded in the present case.

This doctrine is subject to much qualification. The habits of business have so changed since the decision in the case of *Bank of Augusta v. Earle*, 13 Pet. 519 [38 U. S. bk. 10, L. ed. 274], and corporate organizations have been found so convenient, especially as avoiding a dissolution at every change of membership, that a large part of the business of the country has come to be transacted by their instrumentality, while their most objectionable feature—the nonliability of corporators—has in most instances been abrogated in whole or in part; and to deny their admission from one State to another in ordinary cases, at the present day, would go far to neutralize that provision in the fourth article of the Constitution which secures to the citi-

zens of one State all the privileges and immunities of citizens in another, and that provision of the Fourteenth Amendment, which secures to all persons the equal protection of the laws. So strongly is this felt that in the recent case of *Santa Clara County v. Southern Pacific R. R. Co.* 118 U. S. 394-396 [Bk. 80, L. ed. 118], the doctrine that corporations are not citizens or persons within the protective language of the Constitution, was unanimously disapproved, and the court expressly held that they are entitled, as well as individuals, to the equal protection of the laws under the Fourteenth Amendment of the Constitution.

It is undoubtedly just and proper that foreign corporations should be subject to the legitimate police regulations of the State and should have, if required, an agent in the State to accept service of process when sued for acts done or contracts made therein. In reference to some branches of business, like those of banking and insurance, which affect the people at large, they may also be subject to more stringent regulations for the security of the public, and may be even prohibited from pursuing them except on such terms and conditions, not unlawful in themselves, as the State chooses to impose.

But in the pursuit of business authorized by the Government of the United States, and under its protection, the corporations of other States cannot be prohibited or obstructed by any State. If Congress should employ a corporation of shipbuilders to construct a man-of-war, they would have the right to purchase the necessary timber and iron in any State of the Union; and in carrying on foreign and interstate commerce, corporations, equally with individuals, are within the protection of the commercial power of Congress, and cannot be molested in another State by state burdens or impediments.

This was held and decided in the case of *GloUCESTER Ferry Co. v. Pennsylvania*, 114 U. S. 204 [Bk. 29, L. ed. 163, ante, 883], and affirmed in the recent case of *Philadelphia S. S. Co. v. Pennsylvania*, 123 U. S. [Bk. 80, —, ante, 808]; and although the decision in *Paul v. Virginia*, 8 Wall. 168 [75 U. S. bk. 19, L. ed. 857], conformed to the doctrine of *Bank of Augusta v. Earle*, the following striking language was used by the court to wit: "At the time of the formation of the Constitution, a large part of the commerce of the world was carried on by corporations. The East India Company, the Hudson's Bay Company, the Hamburg Company, the Levant Company, and the Virginia Company, may be named among the many corporations then in existence, which acquired, from the extent of their operations, celebrity throughout the commercial world. This state of facts forbids the supposition that it was intended in the grant of power to Congress, to exclude from its control the commerce of corporations. The language of the grant makes no reference to the instrumentalities by which commerce may be carried on; it is general and includes alike commerce by individuals, partnerships, associations and corporations. We may fairly supplement this language by adding that when the Constitution was adopted, it could not have been supposed that the regulations of com-

merce to be made by Congress, might be of no avail to commercial corporations, or at least might be rendered nugatory with regard to them, in consequence of state restrictions upon their power to act as corporations in any other State than that of their origin.

At all events, if Congress, in the execution of its powers, chooses to employ the intervention of a proper corporation, whether of the State or out of the State, we see no reason why it should not do so.

There is nothing in the Constitution to prevent it from making contracts with, or conferring powers upon, state corporations for carrying out its own legitimate purposes.

What right of the State would be invaded? The corporations thus employed or empowered, in executing the will of Congress, could do nothing which the State could rightfully oppose or object to. It may be added that no state corporation more suitable than the defendant could be empowered to build the bridge in question in this case, since one half of the bridge is in the State of New York, and the railroad of the defendant is to connect with it on the New York side.

In our judgment, if Congress itself has the power to construct a bridge across a navigable stream for the furtherance of commerce among the States, it may authorize the same to be done by agents, whether individuals or a corporation created by itself, or a state corporation already existing and concerned in the enterprise. The objection that Congress cannot confer powers on a state corporation is untenable. It has used their agency for carrying on its own purposes from an early period. It adopted as post roads the turnpikes belonging to the various turnpike corporations of the country as far back as such corporations were known, and subjected them to burdens and accorded to them privileges arising out of that relation. It continued the same system with regard to canals and railroads when these modes of transportation came into existence. Nearly half a century ago, it constituted every railroad built or to be built in the United States, a post route. This, of course, involved duties and conferred privileges and powers not contained in their original charter. In 1866, Congress authorized every steam railroad company in the United States to carry passengers and goods on their way from one State to another, and to receive compensation therefor, and to connect with roads of other States, so as to form continuous lines for the transportation of the same to the place of destination. The powers thus conferred were independent of the powers conferred by the charter of any railroad company. Surely these Acts of Congress cannot be condemned as unconstitutional exertions of power.

In the present case the corporate capacity of the Staten Island Rapid Transit Railroad Company is admitted by making it a defendant. It is not excluded from the State by any want of comity in the laws of the State. Its alleged want of power under those laws to build the bridge in question does not arise from anything peculiar to it as a foreign corporation, but from the general prohibition of the State Law of April 6, 1896, which is applicable to all persons and corporations, and

declares "that no bridge, viaduct or fixed structure shall be erected by any person or corporation over or in any part of the navigable waters separating this State from other States where the tide ebbs and flows, without express permission of the Legislature of this State given by statute for that purpose." This prohibition, in its broadest sense, inhibits the erection of such a bridge as is described therein, by Congress itself, or (which is the same thing) by any person or corporation acting under the authority of Congress, and, of course, is to that extent void, if Congress has power to erect such a bridge. But if it is not to be taken in this broad sense, but as subject to the condition in law of being inoperative as against the paramount power of Congress, then the authority of the defendant is unaffected by it, inasmuch as the defendant has express power from Congress to build the bridge. So that we are brought back to the question of the power of Congress to build the bridge, and whether that power is independent of the consent and concurrence of the State government. And, in our judgment, this question must be answered in the affirmative.

The power to regulate commerce in the several States is given by the Constitution in the most general and absolute terms. The "power to regulate," as applied to a government has a most extensive application. With regard to commerce it has been expressly held that it is not confined to commercial transactions, but extends to seamen, ships, navigation and the appliances and facilities of commerce. And it must extend to these or it cannot embrace the whole subject. Under this power the navigation of rivers and harbors has been opened and improved; and we have no doubt that canals and water ways may be opened to connect navigable bays, harbors and rivers with each other or with the interior of the country.

Nor have we any doubt that, under the same power, the means of commercial communication by land as well as by water may be opened up by Congress between different States, whenever it shall see fit to do so, either on failure of the States to provide such communication or whenever, in the opinion of Congress, increased facilities of communication ought to exist.

Hitherto, it is true, the means of commercial communication have been supplied either by nature in the navigable waters of the country or by the States in the construction of roads, canals and railroads so that the functions of Congress have not been largely called into exercise under this branch of its jurisdiction and power, except in the improvement of rivers and harbors and the licensing of bridges across navigable streams.

But this is no proof that its power does not extend to the whole subject in all its possible requirements.

Indeed it has been put forth in several notable instances which stand as strong arguments of practical construction given to the Constitution by the legislative department of the government.

The Cumberland or National Road is one instance of a grand thoroughfare projected by Congress and extending from the Potomac to the Mississippi. After being nearly completed,

it was surrendered to the several States within which it was situated. The system of Pacific Railroads presents several instances of railroads constructed through or into different States, as Iowa, Kansas and California. The main stem of the Union Pacific commences at Council Bluffs, in Iowa, and crosses the Missouri by a bridge at that place, erected under the authority of Congress alone. In 1862 a bridge was authorized by Congress to be constructed across the Ohio River at Steubenville between the States of Virginia and Ohio, to be completed, maintained and operated by the railroad company authorized to build it, and by another company named, "anything in any law or laws of the above named States to the contrary notwithstanding." (12 Stat. 569).

Still it is contended that although Congress may have power to construct roads and other means of communication between the States, yet this can only be done with the concurrence and consent of the States in which the structures are made. If this is so, then the power of regulation in Congress is not supreme; it depends on the will of the States. We do not concur in this view. We think that the power of Congress is supreme over the whole subject, unimpeded and unembarrassed by state lines or state laws; that in this matter the country is one and the work to be accomplished is national; and that state interests, state jealousies and state prejudices do not require to be consulted. In matters of foreign and interstate commerce there are no States.

It is very true that in some cases of bridges authorized to be erected and other things authorized to be done, Congress may have required that the consent of the State should be first obtained. But the power of the United States cannot depend on the consent of the States. It is only to be found in the Constitution. The consent of a State may sometimes facilitate the execution of a power, as the consent to the use of the prisons, court houses and other public buildings of the State, but it never can confer power. Particular States have sometimes consented to the employment of their courts and judicial machinery by the officers of the United States for condemning land for public purposes. But if the United States had no power to take land by condemnation, such consent could not give it. So where, in any case, Congress may have authorized the construction of a railroad or a bridge upon the condition of obtaining the consent of the State, it is clear that such consent was not required for the purpose of supplementing the power of Congress to authorize the structure to be made, but rather for the purpose of manifesting a disposition of comity and good will towards the State. For if Congress had not the power to authorize the structure, consent could not give it. All those cases, therefore, in which Congress has given such authority, whether with or without the consent of the State, are precedents for affirming the power of Congress. They are all instances of practical construction of the Constitution in favor of it.

The most strenuous objection, however, to the exercise of the power in this case, and in the manner proposed, is based on the fact that the piers of the bridge are to rest, and the bridge is to stand, on land which belongs to

to be an obstruction to navigation and abated as a nuisance. In the mean time Congress had passed an Act declaring the bridge to be a lawful structure, and on this ground a motion was made to dismiss the bill, and it was granted. The whole subject is very thoroughly discussed by Judge Miller who decided the case in the circuit court. The decision was affirmed on appeal in a short opinion by Judge Nelson reaffirming the exclusive power of Congress in the premises, and the efficacy of the Act in legalizing the bridge.

III. The principle was again affirmed in *South Carolina v. Ga.* 98 U. S. 4 (Bk. 23, L. ed. 793). The case concerned an alleged obstruction to the navigation of the Savannah River under authority of an Act of Congress. It was held that the obstruction was lawful. Among other things the court says: "The power to regulate commerce comprehends the control for that purpose, and to the extent necessary of all the navigable rivers of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the Nation and subject to all the regulate legislation by Congress."

IV. The case of the *Pensacola Tel. Co. v. West. U. Tel. Co.* 98 U. S. 1 (Bk. 24, L. ed. 708), brought in question the validity of a state statute conferring an exclusive right to build and maintain a telegraph line in a particular locality. It was decided that the State had no such power, and that the statute was void because in conflict with an Act of Congress on the same subject.

The court reaffirms the supremacy of Congress, saying, among other things:

"The Government of the United States within the scope of its powers operates upon every foot of territory under its jurisdiction. It legislates for the whole Nation and is not embarrassed by state lines. * * * The State has attempted to regulate commercial intercourse between its citizens and those of other States. * * * It is unnecessary to decide how far this might have been done if Congress had not acted upon the same subject, for it has acted."

V. In *Newport etc. Bridge Co. v. United States*, 105 U. S. 470 (Bk. 36, L. ed. 1143), the question is again thoroughly reviewed. The subject matter was a bridge over the Ohio River between Newport and Cincinnati. The court, among other things, say: "The paramount power of regulating bridges that effect the navigation of the navigable waters of the United States is in Congress. It comes from the power to regulate commerce with foreign Nations and among the States."

VI. It has been decided that a State may, in the absence of federal legislation, permit the bridging of navigable waters within its own jurisdiction (*Gilman v. Philadelphia*, 8 Wall. 781, 70 U. S. bk. 13, L. ed. 96), the court saying, however, that: "Congress may interpose, whenever it shall be deemed necessary, by either general or special laws. It may regulate all bridges over navigable waters, remove offending bridges and punish those who shall thereafter erect them. Within the sphere of their authority both the legislative and judicial power are supreme." *Pound v. Turck*, 95 U. S.

459 (Bk. 24, L. ed. 525), was a similar case. The court says, among other things: "In the absence of legislation by Congress a statute of a State which authorizes the erection of a dam across a navigable river which is wholly within her limits is not unconstitutional."

VII. The doctrines of constitutional law laid down in the foregoing cases were again reaffirmed in the case of *Miller v. Mayor of New York*, 109 U. S. 885 (Bk. 27, L. ed. 971), which was a suit brought to restrain the erection of the East River Bridge. The case was tried below before Judge Blatchford, who decided against the plaintiff. The decision was affirmed on appeal. It was held not to impair the efficacy of the Act, that certain incidental matters were left to the determination of the secretary of war. And it declared that the action of Congress was "paramount and conclusive." The court said that all the questions presented had been finally settled by a long line of decisions, and that what the court "say in this opinion will be little more than a condensation of what was there declared."

Authorities in the support of the supreme exclusive power of Congress in this and in analogous cases might be multiplied almost indefinitely, but it would be a waste of time; the question is no longer open for discussion. It follows that when Congress, acting within its powers, says a thing may be done, and a state statute says that it shall not be done, the latter is void. It was so declared in *Wilson v. Black Bird Creek Marsh Co.*, in the *Wheeling Bridge Case*, in *Gilman v. Philadelphia*, and in *Pensacola Tel. Co. v. Florida*; and the principle is necessarily involved in all the cases. Nowhere is there a suggestion that in the case of bridges or in any other case must there be concurrent action of the State Legislature.

For all purposes navigable waters and the land under them are the "public property of the Nation."

South Carolina v. Ga. supra. See also the opinion of Judge Miller, 1 Wall. 150 (68 U. S. bk. 17, L. ed. 578).

From supplemental brief for the defendants in answer to the brief for the complainant.

The able and ingenious brief for the plaintiff presents his case in the strongest and most plausible way possible. But the premises (not altogether without support in early decisions of state courts) have long since been decided to be unsound by the Supreme Court of the United States, whose decisions are conclusive upon all questions of constitutional law. Although not stated in so many words, the fundamental proposition of the brief is that the power of Congress extends only to saying that bridges may not be built over navigable waters, and that there is no power in Congress to say what bridges may be erected; that every federal statute on the subject, no matter how strong and definite in expression, must be held to express only that Congress would not object if the consent of the State or States interested could be obtained. That state courts were in the beginning so inclined to construe the constitutional provision in question is undoubtedly true; this clearly appears by the case of the *People v. Rensselaer etc. R. R. Co.* 15

Wend. 118, cited for the plaintiff. But in this case, as in many others, the tribunal having jurisdiction to finally determine all questions arising under the Constitution has disapproved of the interpretation which would limit the power of Congress merely to giving its assent subject to the approval of the State. The supreme court has asserted for Congress the sole power, and has over and over again declared that any state law obstructing the full and efficient operation of an Act of Congress is void. State courts have, of course, accepted this interpretation as conclusive. Indeed, the court of appeals, in the case of this very bridge, has declared the rule to be settled as above stated in the following words:

"It is also proper to say that the enactment by Congress during its last session of a bill authorizing the contracting parties hereinbefore referred to, to build a railroad bridge or viaduct across Arthur Kill, has apparently removed any legal objection to such a structure, and rendered it quite certain that the connections contracted for between such parties will be made and the property sought to be obtained by this proceeding devoted to the purposes alleged in the petition."

Nothing could be more explicit nor is the decision in the *People, Murphy, v. Kelly*, 76 N. Y. 475, in conflict with what the court here say; for in that case the court say, referring to the power of Congress:

"What it authorizes may be justified upon its authority; what it forbids is necessarily unlawful" (at p. 483).

In the case of the Brooklyn Bridge, it was necessary to take for its use a large amount of land, far within the limits of the two cities, and for that purpose, state legislation was, of course, necessary. An Act of Congress authorizing a bridge does not necessarily have anything to do with the acquisition of land on the shore, or of other property necessary for its construction; and it is quite conceivable that in the absence of any general law on the subject, state legislation might be necessary for its condemnation; but with that question we are not, at present, concerned. But if it were held that the right of the State to the land under water was superior to that of the United States, it would be equivalent to holding that no bridge could be built under an Act of Congress, and we have seen that the court of appeals has decided in the case of this very bridge that such an Act gives all the authority that is required. If it were not so, it is obvious that a State might wholly nullify the provision of the Federal Constitution in question.

If, for example, a state law is essential to the legality of the structure, a repeal of that law, under a power of repeal reserved as is usual, would make it unlawful; and so after all, everything would depend upon the pleasure of the State and the ever changing views of successive Legislatures as to the State's interest. This cannot be so.

The superior right of Congress over the land under water is a necessary incident of its constitutional supremacy, and essential to its efficient exercise. For all the purposes of that constitutional power, the State is regarded as having transferred to the Federal Government, for the benefit of the people of the United

States, the interest which it held in the land under water for the benefit of the people of the State; and that interest, for all the purposes of commerce, is now held by the United States upon a larger and more comprehensive trust. That is what the court says in *South Carolina v. Ga.* (brief, p. 4, pt. 8).

The dissenting opinion of Judge Field in *Bridge Co. v. U. S.* is cited. But while not altogether approving, he admits that the question is settled for, he says:

"Yet out of this assertion of a power to legalize a structure, which, without such sanction, would be deemed an obstruction to navigation, has grown up the doctrine of an independent power in Congress to authorize the construction of bridges over navigable streams, without the permission of the States, and to control them when constructed."

In the late case of *Cardwell v. American Bridge Co.* 113 U. S. 205 (Bk. 28, L. ed. 959), Judge Field delivered the opinion of the court, and the views expressed in his dissenting opinion in *Bridge Co. v. United States*, appear to have been modified, for he says, among other things, after referring to the cases in which the plenary and controlling power of Congress is asserted: "We are entirely satisfied with the soundness of the conclusions reached." Again, referring to the States, he says: "And as to bridges over navigable streams this power is subordinate to that of Congress, as an Act of the latter body is by the Constitution made the supreme law of the land."

The opinion of the court, it will be noticed, asserts the doctrine in the strongest way.

In *South Carolina v. Ga.* 93 U. S. 4 (Bk. 23, L. ed. 782), the court says:

"It is not, however, conceded that Congress has no power to order obstructions to be placed in the navigable waters of the United States. * * * If, as we have said, the United States have succeeded to the power and rights of the several States, so far as control over interstate and foreign commerce is concerned, this is not to be doubted" (at pp. 11, 12).

In the case of the *Newport etc. Bridge Co. v. U. S.* 105 U. S. 479 (Bk. 26, L. ed. 1147), Judge Miller, in his opinion below, commences his elaborate discussion of this question with the following sentence: "If the determination of the circumstances under which a bridge may be built over a navigable stream, or the presenting of general rules for its construction and maintenance, be a regulation of commerce either with foreign Nations or among the States, then the enactment under consideration falls within the power conferred on Congress by that clause." He then goes on to show that it has been definitely settled that Congress has this power.

1 Woolw. p. 156.

But it is said, on the other side, that in many of these cases there was also the authority of the State for doing that which was contemplated. This is true, but there is no case in which the existence of that authority was regarded as a factor of any importance in the decision. Some of the cases related to structures in waters wholly within one State, as in the case of the *Eust River Bridge*, and of the *Becanaba Co. v. Chicago*, 107 U. S. 678 (Bk. 27, L. ed. 442), and in the case of *Gilman v. Philadel-*

phia. In all these cases, rights of a different nature from those under consideration were essential both to create corporations with corporate power to do what was purposed, and to acquire property over which Congress had no control. For these subsidiary purposes, therefore, state legislation was essential. This is well illustrated in the case of the *Clinton Bridge*. In that instance, the respective State Legislatures professed to do nothing more than to create corporations capable of building the bridge, and then in express terms left it to Congress to decide whether they might build a bridge, and what sort of a bridge it should be. Another illustration of the same principle is to be found in the case of the *Pensacola Tel. Co. v. Western Union Tel. Co.* 96 U. S. 1 (Bk. 24, L. ed. 708).

In that case, as in the case before the court, the land required had been obtained by private purchase, and it was only necessary to find a law which authorized the work. That was found in an Act of Congress, and a state statute that stood in the way of that Act was swept out of the way and declared to be void. And we know that in the great leading case of the *Wheeling Bridge* no importance at all was attached to a statute of Virginia and no force allowed to it; for in spite of that statute, the bridge was, in the first instance, declared to be a nuisance, then, before that judgment was carried into execution, came the Act of Congress which at once made it a lawful structure, the bridge obtaining its status, so to speak, wholly from that Act.

Again; whatever plausibility an argument on the lines of the plaintiff's brief might once have had, or may now have, in respect to waters wholly interstate, disappears when applied to navigable waters constituting a boundary between two States. All constitutional law is, from its very nature, exclusive when brought into exercise. Indeed, volition which is in any wise dependent upon the will of another is not power; nor is there any case in which, under the Federal Constitution, co-operative legislation on the part of a State is necessary to communicate vitality and efficiency to an Act of Congress. And in a case where, in the absence of action on the part of Congress, the State is left free to legislate, the moment Congress does exercise its superior authority, the statute of the State ceases to be operative; it remains in abeyance or becomes a nullity. Therefore, it follows, of course, as laid down in all the authorities, that when Congress, acting within its powers, declares that a thing may be done, the state statute forbidding it to be done is simply void. It will be noticed that the Act of Congress makes this bridge part of a post road, and if it were at all necessary, this provision might well be referred to as strengthening the main position and argument for the defendant. But the efficiency of the Act upon the broad general principles already mentioned seems to be too clear to call for further discussion.

Wallace, C. J., delivered the following opinion:

The complainant is a vessel owner whose business of transportation makes it necessary for him to use the narrow navigable water-

way known as Arthur Kill, which constitutes one of the boundaries between the States of New York and New Jersey. He has brought this suit to restrain the defendants from constructing a railroad bridge across these navigable waters, which they propose to build and maintain under claim of authority conferred by the Act of Congress of June 16, 1886, entitled "An Act to Authorize the Construction of a Bridge across the Staten Island Sound, Known as Arthur Kill, and to Establish the Same as a Post Road." The case is now here upon the defendants' demurrer to the bill of complaint, and upon complainant's motion for an injunction *pendente lite*.

It is not disputed that the complainant has a sufficient standing in a court of equity to challenge the right of the defendants to build the bridge; and the single question to be decided is whether they have a legal right to build the bridge. If they have, it is solely by the efficacy of the Act of Congress as a constitutional exercise of the power to regulate commerce between the several States.

The Legislature of New Jersey, by an Act passed April 6, 1886, has forbidden the erection of any bridge or structure over any part of the navigable waters where the tide ebbs and flows, separating the State from other States, without express permission given by the Legislature by statute in that behalf. The Act was passed after the bill had been introduced in Congress authorizing the construction of this bridge, and before it became a law, and was preceded by the adoption of concurrent resolutions of the Senate and House of Assembly of New Jersey protesting against any action on the part of Congress intended to legalize the erection of such a bridge.

The case thus presents the constitutional question whether Congress can lawfully confer upon a private corporation the capacity to occupy navigable waters within a State, and appropriate the soil under them, for the purposes of interstate commerce, without the consent of the State.

Although the Act of Congress establishes the bridge, when constructed as a post road, this is wholly an incidental and an unnecessary feature of the legislation. The Act does not purport to authorize the bridge in order to provide an additional post road; and the provision establishing the bridge as a post road, when built, was unnecessary, because it would become such by force of pre-existing law. Sec. 3964, R. S. U. S.

Neither does it in terms purport to be an exercise of the power to regulate commerce between the States; but that this is its essential character is apparent from the recitals which show that it was designed to afford a connection between railroads already constructed, or to be constructed, on opposite sides of the Sound. Obviously, Congress intended to plant the rights conferred on the defendants upon the validity of the Act as a regulation of commerce.

Both the language and the history of the Act preclude the doubt whether it can be construed as intended to grant a privilege which is to become operative when concurrent authority to build the bridge is obtained from the States of New Jersey and New York. It

is silent as to any such condition, and this silence is emphatic, in view of the provisions contemplating the assent of the State which have been inserted in all previous Acts of a similar character when permission by the State had not been given in advance. As it was passed notwithstanding the protest of New Jersey, which was in effect a declaration that she would not consent, it must be assumed that Congress did not regard the consent of the State necessary.

The precise question to be decided has never been adjudicated; and the present Act is the first attempt on the part of Congress to grant such a right as is asserted by the defendants.

In the language of the Supreme Court of the United States in *Miller v. Mayor of New York*:

"The power vested in Congress to regulate commerce with foreign Nations, and among the several States, includes the control of the navigable waters of the United States so far as may be necessary to insure their free navigation; and by navigable waters of the United States are meant such as are navigable in fact, and which, by themselves, or by their connection with other waters, form a continuous channel for commerce with foreign countries or among the States." 109 U. S. 395 [Bk. 27, L. ed. 976].

Whether the waters are wholly within the boundaries of a State, or, as here, lie between two States, is not material. They are navigable waters of the United States if they form, by themselves or by uniting with others, a continuous highway for commerce with other States or countries. *The Daniel Ball*, 10 Wall. 557 [77 U. S. bk. 19, L. ed. 999]; *Escanaba etc. Transportation Co. v. Chicago*, 107 U. S. 683 [Bk. 27, L. ed. 444.]

The power of control over such waters necessarily includes the power of deciding what structures are impediments to commerce; and, by an unbroken line of decisions, it is settled that the paramount authority regulating bridges that affect the navigation of the navigable waters of the United States is in Congress.

So long as this authority lies dormant, the States may authorize the erection of bridges over navigable waters within their limits, which may to some extent obstruct navigation, or, by concurrent action, may bridge the waters lying between them; but, so soon as Congress intervenes and exercises its power of regulation, what has been done by state authority must give way to the paramount authority of Congress. The power of the State ends where that of the Nation begins. *Wilson v. Black Bird Creek Marsh Co.* 2 Pet. 250 [37 U. S. bk. 7, L. ed. 414]; *Pa. v. Wheeling etc. Bridge Co.* 18 How. 421 [59 U. S. bk. 15, L. ed. 495]; *Gilman v. Philadelphia*, 3 Wall. 728 [70 U. S. bk. 18, L. ed. 100]; *Mobile Co. v. Kimball*, 102 U. S. 691 [Bk. 26, L. ed. 238]; *Pound v. Turck*, 93 U. S. 459 [Bk. 24, L. ed. 525].

These decisions, however, fall short of adjudicating the present case, because they do not decide in terms that the power of regulation extends further than is required to preserve the free and unobstructed navigation of the public waters. If the power ends there, the present Act is nugatory. That it does end there never has been authoritatively determined.

The lands under the water on the New Jersey side of Arthur Kill belong to the State of New Jersey, or to those who have derived title from the State. The shores of navigable waters, and the soil under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. *Potlard v. Hagan*, 8 How. 212 [44 U. S. bk. 11, L. ed. 565].

The right of eminent domain over such lands, for all municipal purposes, resides in the State within the boundaries of which they lie, and within the legitimate limitations of this right the power of the State to appropriate the shores of navigable waters, and the lands under them, is absolute. *Ormerod v. New York etc. R. Co.* 21 Blatchf. 106.

Expressions of opinions by learned jurists are found in several adjudged cases, to the effect that Congress cannot, under the power of regulating commerce, authorize the erection of bridges over navigable waters without the consent of the State, or sanction an obstruction of commerce.

In *People v. Rensselaer etc. R. R. Co.* 15 Wend. 113, Chief Justice Savage, after asserting that the power to erect bridges over such waters existed in the State Legislature before the adoption of the Federal Constitution, says:

"It is not pretended that such power has been delegated to the general government as is conveyed under the power to regulate commerce and navigation. It remains, then, in the State Legislature, or it exists nowhere. It does exist because it has not been surrendered any further than such surrender may be qualifiedly implied; that is, the power to erect bridges over navigable streams must be considered so far surrendered as may be necessary for a free navigation upon those streams."

In *People, Murphy, v. Kelly*, 76 N. Y. 475, Earl, J., says:

"The East River is a public navigable water, and to bridge it requires the concurrent authority of the State of New York and of the United States; of the former by reason of its rights in the lands on the shore, and under the water, and of its qualified sovereignty over the water; and of the latter by reason of the exclusive power of Congress to regulate commerce, and to determine in its regulation thereof to what extent navigation upon the water may be obstructed or interfered with."

In the *Wheeling Bridge Case*, Mr. Justice McLean, in considering whether Congress could legalize a bridge over navigable water within the jurisdiction of any State or States, uses this language:

"But this does not necessarily include the power to construct bridges which may obstruct commerce, but can never increase its facilities on a navigable water. Any power which Congress may have in regard to such a structure is indirect, and results from a commercial regulation. It may, under this power, declare that no bridge shall be built which shall be an obstruction to the use of a navigable water. And this, it would seem, is as far as the commercial power by Congress can be exercised. * * * If, under the commercial power, Congress may make bridges over navigable waters, it would be difficult to find any limitation of such a power. * * * So extravagant and absorbing

The application has not yet been granted, but it must be assumed that the board will do its duty within a reasonable time, and then the riparian owner of the land on which this bridge is to rest will own all that the State has to give him in the lands of Arthur Kill beneath the bridge, subject to the paramount rights of the United States.

How then can the State now claim to arrest this work authorized by the United States, and permitted by the riparian owner, by reason of anything arising out of the riparian laws?

III. As to the Consent of the State.

Not only has no such consent been given to the building of this bridge, but the State, by the Act of April 6, 1886, has declared in a preamble "that it reserves to itself the right to determine in each case whether the navigable boundary waters of this State shall be crossed or occupied by bridges, viaducts, or other fixed structure, and if so, when, where and in what manner;" and has forbidden any bridge, viaduct or fixed structure in any navigable waters separating New Jersey from other States, without express permission by statute. The only exception in this statute, is, that it shall not be construed to forbid the construction of docks or wharves. Both the preamble and the body of the Act assume that New Jersey has the power to declare when, where and how any fixed structure whatever shall be placed in the Delaware, New York Bay, the Hudson River or Arthur Kill. It includes lighthouses, buoys, jetties, and indeed everything which can come within the meaning of the term "fixed structures." This claim is asserted and this power assumed in the year 1886, after the long line of decisions on the subject of the power of Congress over navigable waters had been made.

The position assumed by New Jersey in this Act was well known to the Congress of the United States and fully considered.

In fact a concurrent resolution, passed by the House of Assembly January 27, 1886, and by the Senate February 3, 1886, was forwarded to the senators and representatives of New Jersey for presentation to Congress, and they were requested to use their utmost endeavors to defeat the bill to authorize this bridge. Those resolutions made the same claim as to the title of the State in these waters, and solemnly protested that any action of Congress to authorize the bridge would be unconstitutional and the usurpation of a power belonging to New Jersey. They asserted that the bridge could only be authorized by the States of New York and New Jersey. They alleged "that the attempt to legalize such a bridge in advance of its construction by enacting that it shall be a post road is an evident subterfuge and should be rejected as an attempt to establish a precedent under which all exclusive powers of the States may be set at naught."

And the fourth resolution declared "that in aid of this protest New Jersey invoked the sympathy of all her sister States in the maintenance of the doctrine of established and acknowledged state rights."

Notwithstanding these resolutions and the Act of the Legislature subsequently passed, Congress afterwards passed a law to authorize the construction of this bridge over Arthur Kill

and to establish it as a post road without requiring the consent of the State. It undoubtedly considered the doctrine that consent of the State is not needed to give power to the United States to build any fixed structure in and across any of the navigable waters of the country for the promotion of interstate commerce, was too fully established for further discussion or legislation.

More than twenty years before it had passed a law authorizing such a bridge, anything in the laws of either of the States between which the river ran to the contrary notwithstanding.

In *Wallamet Iron Bridge Co. v. Hatch*, 19 Fed. Rep. 347, Judge Deady said, that the theory that Congress can only legislate concerning navigable waters so as to limit or affect the power of each State equally, so as to preserve its equal footing with the others, was founded on a total misapprehension of the relation of the national and state governments to the subject and to one another. He said:

"For the purposes of commerce and the exercise of the power of Congress over that subject, every navigable water in the Union which, of itself or by means of its connections, forms a continuous highway for interstate or foreign commerce, is primarily the navigable water of the United States, over which it has the same power for the purposes of such commerce as if it was wholly in a Territory or the District of Columbia."

See also *Miss. etc. Boom Co. v. Patterson*, 98 U. S. 408 (Bk. 25, L. ed. 206); *People v. Humphrey*, *supra*.

IV. As to Authorizing a Foreign Corporation to Build a Bridge.

This same Congress authorized thirty-three railroad corporations to build bridges. Many of these were corporations foreign to the States where the bridges were to be built.

Ever since the Telegraph Act of 1866, foreign companies of one State have extended their lines over the highways and post roads of other States under the authority of that Act.

In the *Pensacola Case*, *supra*, the corporation seeking to set aside the excluding Act of the State of Florida, was not a corporation of that State. In that case the court, admitting the general proposition that a corporation of one State exercises its business and franchises in another by comity, and that it is strictly in the power of a State to withdraw or refuse such comity, nevertheless clearly manifests its view that if the subject matter of the business or the franchise supposed to be carried on or enjoyed by a corporation of one State within the limits of another be national in its nature, and relate to the commercial dealings of the country as a whole, the power of the United States is sufficient to prevent the interference of the State, and the interruption of commerce, through motives of state pride, jealousy or self interest.

Chief Justice Waite said that the court was aware that in *Paul v. Virginia*, 8 Wall. 168 (75 U. S. bk. 19, L. ed. 357), they had held that a State might exclude a corporation of another State from its jurisdiction and that the corporations were not within section 2, article 4 of the Constitution.

But he added:

"This was not, however, the case of a corpo-

ration engaged in interstate commerce; and enough was said by the court to show that, if it had been, very different questions would have been presented."

Enough has been said in recent cases to show that it will never be held that any State can bar out from its soil at its will, or its caprice, any corporation existing under the laws of another, and desiring to cross that State for the purpose of commerce with another.

V. As to What the Act of Congress Means.

It is strongly insisted in the information that the Act does not purport to, nor does it authorize and empower the defendants to build a bridge, but that its true meaning is merely to permit and to license them to do so when they have acquired the lands from the State on which they place the pier and have obtained the consent of the State that any bridge at all shall be erected. It seems unnecessary to argue this point. There is no hint of any kind in the Act that any conveyance from the State or consent of the State were deemed necessary.

Notwithstanding the solemn protest of New Jersey and the invocation to her sister States solemnly presented to Congress, and in spite of the Act of April 6, 1886, declaring the rights in the navigable boundary which the State had reserved to itself and enacting that no fixed structure should be built over it by any person or corporation without its permission by statute, this Act of Congress was passed after several months' consideration of the action of New Jersey.

It is by its very title an Act to authorize the bridge and to establish it as a post road. It declares that its construction shall be lawful, provided the work is done as prescribed in the statute and approved by the secretary of war. It declares that when that approval is obtained, the companies or either of them may proceed to build it. Nowhere in the Act is there a suggestion of any other condition or limitation, nor any hint that the protests of the State, so urgently made, were to be considered, or anything to be done in pursuance of such protests as a preliminary to the work.

The Act of Congress rests upon the paramount power of the United States over the subject, and upon that basis the defendants stand.

It is to be observed that this is not the first time that New Jersey has attempted, through its courts, to put a stop to the work of the Federal Government in the bed of its navigable waters.

Although such work has been eagerly invited in the Passaic, the Raritan, Cheesquakes Creek and Arthur Kill itself—yet in 1885 the same Attorney-General fled an information in the court of chancery to restrain the agents of the United States from work in the bed of the Delaware, on the Camden shore.

It made the same assumptions of *jura regalia* regularly acquired by the State, and of oyster and riparian laws passed and acted upon.

It alleged the same invasion of state rights, on a more ruinous scale. It charged the actual taking of the shores to high water mark between Petty's Island—Jersey soil—and the Camden shore for the purpose of a dyke, stopping the entire eastern channel, to the injury of
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health, the destruction of the navigation interests of Jersey Creek, and the ruin of the Camden water supply.

The injunction was granted, as in this case, but upon an answer simply saying that the work was going on under the authority of a few lines in an appropriation bill for the improvement of the Delaware, and on the removal of the cause to this court, Judges Mc Kennan and Nixon promptly dissolved the injunction, and the work went on.

This court thought it unnecessary to write an opinion, and the case is not reported.

Finally, This very case has been decided by Judge Wallace in the Southern District of New York in the case of *Decker v. The Baltimore & New York Railroad Co. and the Staten Island Rapid Transit Railroad Co.*, two of the defendants in this cause, 80 Fed. Rep. 723, *post*.—

The bill was for an injunction to restrain the building of this bridge. It alleged that the defendants were about to build the bridge under the Act of Congress and with the approval of the secretary of war. That the construction of the bridge would greatly injure navigation. That the Legislature of New Jersey, January, 1886, passed a concurrent resolution against it, and that on the 6th of April, 1886, in order more effectually to prevent it, the Legislature passed a law requiring express permission. That the State had granted no such permission and also that no such permission had been granted by the State of New York. A copy of the Act of Congress, the concurrent resolution of the Legislature and the Act of April 6, 1886, was appended to the bill. The motion for injunction was argued upon a demurrer to the bill. Judge Wallace discussed the subject fully, citing the most important cases and denied the injunction.

It is insisted, therefore, that the injunction which is now arresting this work, undertaken under the authority of the United States, ought to be dissolved so that it can go on without delay.

Bradley, C. J., delivered the opinion of the court:

This case was commenced by information filed by the Attorney-General of New Jersey in the Court of Chancery of that State, praying for an injunction to restrain the defendants from erecting a bridge across Arthur Kill, between New Jersey and Staten Island in the State of New York, upon the lands of the State situated on the shore and under the waters of said Kill.

The chancellor granted a preliminary injunction upon the bill and affidavits. The defendants have removed the case to this court, as one arising under the Constitution and laws of the United States, and have filed an answer.

Motion was then made to dissolve the injunction; but after argument, the parties stipulated to submit the case as upon final hearing on bill and answer. There are no controverted facts in the case.

The Staten Island Rapid Transit Railroad Company, a corporation of New York, one of the defendants, claims the right to build the bridge in question, and to occupy the lands under water, necessary for the support of its piers,

under an Act of Congress, approved June 16, 1886, entitled "An Act to Authorize the Construction of a Bridge Across the Staten Island Sound, Known as Arthur Kill, and to Establish the Same as a Post Road."

This Act declares: "Sec. 1. That it shall be lawful for the Staten Island Rapid Transit Railroad Company, a corporation existing under the laws of the State of New York, and the Baltimore and New York Railroad Company, a corporation existing under the laws of the State of New Jersey, or either of said companies, to build and maintain a bridge across the Staten Island Sound, or Arthur Kill, from New Jersey to Richmond County, New York, for the passage of railroad trains, engines, and cars thereon, and to lay on and over said bridge railway tracks for the more perfect connection of any railroads that are or shall be constructed to the said sound at or opposite said point; and in a case of any litigation concerning any alleged obstruction to the free navigation of said sound on account of said bridge, the cause may be tried before the Circuit Court of the United States of either of said States in which any portion of said obstruction or bridge touches; and that all railway companies desiring to use the said bridge shall have and be entitled to equal rights and privileges in the passage over the same, and in the use of the machinery and fixtures thereof and of all the approaches thereto, for a reasonable compensation to be paid to the owners of said bridge, under and upon such terms and conditions as shall be prescribed by the secretary of war upon hearing the allegations and proofs of the parties in case they shall not agree.

"Sec. 2. That said bridge shall be constructed as a pivot draw bridge, with a draw over the main channel of the sound at an accessible and navigable point, and with spans of not less than 200 feet in length in the clear on each side of the central or pivot pier of the draw; and said spans shall not be less than thirty-two feet above mean low water mark measuring to the lowest member of the bridge superstructure: *And Provided also*, That said draw shall be opened promptly, upon reasonable signal, except when trains are passing over the said bridge, for the passage of the boats whose construction shall not be such as to admit of their passage under the draw of said bridge when closed; but in no case shall unnecessary delay occur in opening the said draw after the passage of trains; and the said company or corporation shall maintain, at its own expense, from sunset to sunrise, such lights or other signals, on said bridge, as the light house board shall prescribe.

"Sec. 3. That any bridge constructed under this Act and according to its limitations shall be a lawful structure, and shall be recognized and known as a post route, upon which also no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States, than the rate per mile paid for their transportation over the railroads or public highways leading to said bridge; and the United States shall have the right of way for postal telegraph purposes across said bridge.

"Sec. 4. That the plan and location of said bridge, with a detailed map of the sound at

the proposed site of the bridge, and near thereto, exhibiting the depths and currents, shall be submitted to the secretary of war for his approval, and until he approve the plan and location of said bridge it shall not be built; but upon the approval of said plan by the secretary of war, the said companies, or either of them, may proceed to the erection of said bridge in conformity with said approved plan; and should any change be made in the plan of said bridge during the progress of the work thereon, such change shall be subject likewise to the approval of the secretary of war. If the secretary of war shall at any time deem any change or alteration necessary in the said bridge, so that the same shall not obstruct navigation, or if he shall think the removal of the whole structure necessary, the alteration so required or the removal of the whole structure, shall be made at the expense of the parties owning said bridge; and if said bridge shall not be finished within two years from the passage of this Act, the rights and privileges hereby granted shall determine and cease.

"Sec. 5. That the right to alter, amend, or repeal this Act is hereby expressly reserved."

The said Staten Island Rapid Transit Railroad Company proposes to build a bridge across Arthur Kill, under and in conformity with this Act, to connect its own road on Staten Island with another railroad through and across the State of New Jersey for the purposes of interstate transportation; and in pursuance of that design, has adopted a site for the location of the bridge, from a certain point in the City of Elizabeth to Staten Island; and has caused the plan and location of said bridge, with a detailed map of the sound at and near the same (as required by the Act) to be submitted to the secretary of war, who has approved the same.

The Company, by its engineers and contractors (who are made codefendants in the case), proceeded to make preparations for laying the piers and erecting the bridge according to the plan thus approved. Thereupon the Attorney-General of New Jersey, deeming the property rights and sovereignty of the State in danger of violation from the erection of the proposed bridge, filed the present information to prevent it.

The information states the ordinary doctrine, that the State is owner of the shore and land under water of all navigable streams and arms of the sea within its borders; that this ownership was a part of the *jura regalia* of the King of Great Britain, by virtue of which he was seised and possessed of an estate in fee simple absolute in said lands; and that, at the Revolution, the State, in its sovereign capacity, succeeded to the rights of the Crown; and that this right of supreme dominion had never been ceded or surrendered to the United States; and that without such cession or surrender the United States could not take possession of such lands, or authorize other parties to do so, except by making compensation therefor as provided in the Fifth Amendment to the Constitution; and that at the place of location of the proposed bridge this ownership of the soil on the part of the State extended from ordinary high water mark to the center line of the

sound, being the boundary line between New Jersey and New York, as settled by agreement in 1833, and confirmed by Act of Congress, June 28, 1834.

The information further states that this ownership on the part of the State has been practically exercised by it for more than a century past, by regulating the enjoyment and disposition of the lands under the navigable waters within its limits, passing laws for the preservation and protection of the oyster fisheries therein, and authorizing the construction of wharves, with solid filling, to certain prescribed limits beyond low water mark; and that for these privileges, the grantees are required to pay and have paid a certain compensation to the State. It is contended by the informant that the Act of Congress cannot be construed as intending to give any authority to take any portion of said lands without compensation; and that said Act must be construed as a mere license or permission to erect the proposed bridge, so far as Congress, the conservator of navigation, is concerned, leaving the Companies to obtain from the State the usual authority to build the bridge on the territory and lands of the State; but that if the Act should be construed as giving authority to erect the bridge without the consent of the State and without compensation for taking its lands therefor, then it is violative of the Constitution of the United States—not only for authorizing the lands of the State to be taken without compensation, but for enlarging the powers of a corporation created by the State itself (if the bridge should be built by the Baltimore and New York Railroad Company) and authorizing it to do what, by its own charter and other laws of the State, it is prohibited from doing.

The information further contends that the other corporation defendant, the Staten Island Rapid Transit Company, is not a corporation of New Jersey, and has no authority from the State to exercise any corporate franchises therein, and cannot lawfully do so, except by the comity of the State, which has not been accorded to it; that instead of any such comity having been exercised, the said Company is expressly prohibited from exercising any such powers or franchises as that of building said bridge, by an Act of the Legislature of New Jersey, passed April 6, 1888, which prohibits any person or corporation from erecting any bridge, viaduct or fixed structure over or in any part of the navigable waters where the tide ebbs and flows, and separating said State from other States, without permission of the Legislature of New Jersey first given by statute for that purpose; and that no such permission has ever been asked or given.

The answer of the defendants does not advance any material new facts, except to state that the Baltimore and New York Railroad Company has nothing to do with the proposed building of the bridge, and that the Staten Island Rapid Transit Railroad Company proposes to build it as a connecting link in a line of railroad extending from the Bay of New York across the soil of the States of New York, New Jersey, Pennsylvania and other States as an instrument of commerce among the States; and claims the right to do so under the Act of Congress before cited.

INTER S.

The first question to be examined is the true construction of the Act of Congress on which the case arises,—the informant contending that it is merely permissive in its character, and the defendants, that it gives authority and power to build a bridge, without reference to any authority from the State. This question need not detain us long. The words of the Act are broad enough to confer the authority, if Congress had power to confer it. The language is, "It shall be lawful for the Staten Island Rapid Transit Railroad Company, etc., to build and maintain a bridge across the Staten Island Sound or Arthur Kill." This is the ordinary language used for conferring authority. Had the State Legislature passed a law in these terms, there could not be a doubt of its sufficiency to give authority. And there are expressions in the Act which imply that plenary authority was intended to be given. The minute directions laid down as to the manner of construction and use of the bridge imply this. The third section declares "that any bridge constructed under this Act and according to its limitations shall be a lawful structure," etc. implying that the construction of the bridge, when built, would be under the Act.

If Congress had no power to authorize the construction of the bridge, independent of state legislation, the Act would, of course, be properly construed as permissive in its character, auxiliary to, or confirmatory of state legislation which might be adopted for the purpose of authorizing such a bridge.

In other words, the Act, within the scope of its terms, may have such effect given to it as comports with the power of the legislative body which enacted it; just as a deed of conveyance may operate as a grant, a bargain and sale, a release or a confirmation, according to the interest of the grantor, on the one hand, and of the grantee on the other.

The true construction of the Act, therefore, depends on the power of Congress, which will be examined hereafter.

Another question of a preliminary character relates to the capacity and right of the defendant, the Staten Island Rapid Transit Railroad Company, to perform any acts and transact any business as a corporation in New Jersey.

It is argued that corporations, as such, have no legal existence outside of the State by whose laws they are created, and cannot transact business in another State except by the comity of its laws, which is not accorded in the present case.

This doctrine is subject to much qualification. The habits of business have so changed since the decision in the case of *Bank of Augusta v. Earle*, 18 Pet. 519 [38 U. S. bk. 10, L. ed. 274], and corporate organizations have been found so convenient, especially as avoiding a dissolution at every change of membership, that a large part of the business of the country has come to be transacted by their instrumentality, while their most objectionable feature—the nonliability of corporators—has in most instances been abrogated in whole or in part; and to deny their admission from one State to another in ordinary cases, at the present day, would go far to neutralize that provision in the fourth article of the Constitution which secures to the citi-

zens of one State all the privileges and immunities of citizens in another, and that provision of the Fourteenth Amendment, which secures to all persons the equal protection of the laws. So strongly is this felt that in the recent case of *Santa Clara County v. Southern Pacific R. Co.* 118 U. S. 394-396 [Bk. 80, L. ed. 118], the doctrine that corporations are not citizens or persons within the protective language of the Constitution, was unanimously disapproved, and the court expressly held that they are entitled, as well as individuals, to the equal protection of the laws under the Fourteenth Amendment of the Constitution.

It is undoubtedly just and proper that foreign corporations should be subject to the legitimate police regulations of the State and should have, if required, an agent in the State to accept service of process when sued for acts done or contracts made therein. In reference to some branches of business, like those of banking and insurance, which affect the people at large, they may also be subject to more stringent regulations for the security of the public, and may be even prohibited from pursuing them except on such terms and conditions, not unlawful in themselves, as the State chooses to impose.

But in the pursuit of business authorized by the Government of the United States, and under its protection, the corporations of other States cannot be prohibited or obstructed by any State. If Congress should employ a corporation of shipbuilders to construct a man-of-war, they would have the right to purchase the necessary timber and iron in any State of the Union; and in carrying on foreign and interstate commerce, corporations, equally with individuals, are within the protection of the commercial power of Congress, and cannot be molested in another State by state burdens or impediments.

This was held and decided in the case of *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 204 [Bk. 29, L. ed. 162, ante, 383], and affirmed in the recent case of *Philadelphia S. S. Co. v. Pennsylvania*, 123 U. S. [Bk. 30, —, ante, 308]; and although the decision in *Paul v. Virginia*, 8 Wall. 168 [75 U. S. bk. 19, L. ed. 357], conformed to the doctrine of *Bank of Augusta v. Earle*, the following striking language was used by the court to wit: "At the time of the formation of the Constitution, a large part of the commerce of the world was carried on by corporations. The East India Company, the Hudson's Bay Company, the Hamburg Company, the Levant Company, and the Virginia Company, may be named among the many corporations then in existence, which acquired, from the extent of their operations, celebrity throughout the commercial world. This state of facts forbids the supposition that it was intended in the grant of power to Congress, to exclude from its control the commerce of corporations. The language of the grant makes no reference to the instrumentalities by which commerce may be carried on; it is general and includes alike commerce by individuals, partnerships, associations and corporations." We may fairly supplement this language by adding that when the Constitution was adopted, it could not have been supposed that the regulations of com-

merce to be made by Congress, might be of no avail to commercial corporations, or at least might be rendered nugatory with regard to them, in consequence of state restrictions upon their power to act as corporations in any other State than that of their origin.

At all events, if Congress, in the execution of its powers, chooses to employ the intervention of a proper corporation, whether of the State or out of the State, we see no reason why it should not do so.

There is nothing in the Constitution to prevent it from making contracts with, or conferring powers upon, state corporations for carrying out its own legitimate purposes.

What right of the State would be invaded? The corporations thus employed or empowered, in executing the will of Congress, could do nothing which the State could rightfully oppose or object to. It may be added that no state corporation more suitable than the defendant could be empowered to build the bridge in question in this case, since one half of the bridge is in the State of New York, and the railroad of the defendant is to connect with it on the New York side.

In our judgment, if Congress itself has the power to construct a bridge across a navigable stream for the furtherance of commerce among the States, it may authorize the same to be done by agents, whether individuals or a corporation created by itself, or a state corporation already existing and concerned in the enterprise. The objection that Congress cannot confer powers on a state corporation is untenable. It has used their agency for carrying on its own purposes from an early period. It adopted as post roads the turnpikes belonging to the various turnpike corporations of the country as far back as such corporations were known, and subjected them to burdens and accorded to them privileges arising out of that relation. It continued the same system with regard to canals and railroads when these modes of transportation came into existence. Nearly half a century ago, it constituted every railroad built or to be built in the United States, a post route. This, of course, involved duties and conferred privileges and powers not contained in their original charter. In 1866, Congress authorized every steam railroad company in the United States to carry passengers and goods on their way from one State to another, and to receive compensation therefor, and to connect with roads of other States, so as to form continuous lines for the transportation of the same to the place of destination. The powers thus conferred were independent of the powers conferred by the charter of any railroad company. Surely these Acts of Congress cannot be condemned as unconstitutional exertions of power.

In the present case the corporate capacity of the Staten Island Rapid Transit Railroad Company is admitted by making it a defendant. It is not excluded from the State by any want of comity in the laws of the State. Its alleged want of power under those laws to build the bridge in question does not arise from anything peculiar to it as a foreign corporation, but from the general prohibition of the State Law of April 6, 1886, which is applicable to all persons and corporations, and

declares "that no bridge, viaduct or fixed structure shall be erected by any person or corporation over or in any part of the navigable waters separating this State from other States where the tide ebbs and flows, without express permission of the Legislature of this State given by statute for that purpose." This prohibition, in its broadest sense, inhibits the erection of such a bridge as is described therein, by Congress itself, or (which is the same thing) by any person or corporation acting under the authority of Congress, and, of course, is to that extent void, if Congress has power to erect such a bridge. But if it is not to be taken in this broad sense, but as subject to the condition in law of being inoperative as against the paramount power of Congress, then the authority of the defendant is unaffected by it, inasmuch as the defendant has express power from Congress to build the bridge. So that we are brought back to the question of the power of Congress to build the bridge, and whether that power is independent of the consent and concurrence of the State government. And, in our judgment, this question must be answered in the affirmative.

The power to regulate commerce in the several States is given by the Constitution in the most general and absolute terms. The "power to regulate," as applied to a government has a most extensive application. With regard to commerce it has been expressly held that it is not confined to commercial transactions, but extends to seamen, ships, navigation and the appliances and facilities of commerce. And it must extend to these or it cannot embrace the whole subject. Under this power the navigation of rivers and harbors has been opened and improved; and we have no doubt that canals and water ways may be opened to connect navigable bays, harbors and rivers with each other or with the interior of the country.

Nor have we any doubt that, under the same power, the means of commercial communication by land as well as by water may be opened up by Congress between different States, whenever it shall see fit to do so, either on failure of the States to provide such communication or whenever, in the opinion of Congress, increased facilities of communication ought to exist.

Hitherto, it is true, the means of commercial communication have been supplied either by nature in the navigable waters of the country or by the States in the construction of roads, canals and railroads so that the functions of Congress have not been largely called into exercise under this branch of its jurisdiction and power, except in the improvement of rivers and harbors and the licensing of bridges across navigable streams.

But this is no proof that its power does not extend to the whole subject in all its possible requirements.

Indeed it has been put forth in several notable instances which stand as strong arguments of practical construction given to the Constitution by the legislative department of the government.

The Cumberland or National Road is one instance of a grand thoroughfare projected by Congress and extending from the Potomac to the Mississippi. After being nearly completed,

it was surrendered to the several States within which it was situated. The system of Pacific Railroads presents several instances of railroads constructed through or into different States, as Iowa, Kansas and California. The main stem of the Union Pacific commences at Council Bluffs, in Iowa, and crosses the Missouri by a bridge at that place, erected under the authority of Congress alone. In 1863 a bridge was authorized by Congress to be constructed across the Ohio River at Steubenville between the States of Virginia and Ohio, to be completed, maintained and operated by the railroad company authorized to build it, and by another company named, "anything in any law or laws of the above named States to the contrary notwithstanding." (12 Stat. 569).

Still it is contended that although Congress may have power to construct roads and other means of communication between the States, yet this can only be done with the concurrence and consent of the States in which the structures are made. If this is so, then the power of regulation in Congress is not supreme; it depends on the will of the States. We do not concur in this view. We think that the power of Congress is supreme over the whole subject, unimpeded and unembarrassed by state lines or state laws; that in this matter the country is one and the work to be accomplished is national; and that state interests, state jealousies and state prejudices do not require to be consulted. In matters of foreign and interstate commerce there are no States.

It is very true that in some cases of bridges authorized to be erected and other things authorized to be done, Congress may have required that the consent of the State should be first obtained. But the power of the United States cannot depend on the consent of the States. It is only to be found in the Constitution. The consent of a State may sometimes facilitate the execution of a power, as the consent to the use of the prisons, court houses and other public buildings of the State, but it never can confer power. Particular States have sometimes consented to the employment of their courts and judicial machinery by the officers of the United States for condemning land for public purposes. But if the United States had no power to take land by condemnation, such consent could not give it. So where, in any case, Congress may have authorized the construction of a railroad or a bridge upon the condition of obtaining the consent of the State, it is clear that such consent was not required for the purpose of supplementing the power of Congress to authorize the structure to be made, but rather for the purpose of manifesting a disposition of comity and good will towards the State. For if Congress had not the power to authorize the structure, consent could not give it. All those cases, therefore, in which Congress has given such authority, whether with or without the consent of the State, are precedents for affirming the power of Congress. They are all instances of practical construction of the Constitution in favor of it.

The most strenuous objection, however, to the exercise of the power in this case, and in the manner proposed, is based on the fact that the piers of the bridge are to rest, and the bridge is to stand, on land which belongs to

the State, and that no compensation is proposed to be made for the taking thereof. It is contended that if the land of the State can be taken at all (which is denied), it can, at most, only be taken like other private property after just compensation has been made.

First, it is denied that the land of the State can be taken at all without voluntary cession, or consent of the State Legislature. If this is so, we are brought back to the dilemma of requiring the consent of the State in almost every case of an interstate line of communication by railroad; for hardly a case can arise in which some property belonging to a State will not be crossed. It will always be so at the passage of a navigable stream. This shows that the position cannot be sound, for it brings us to a *reductio ad absurdum*. It interposes an effectual barrier to the execution of a constitutional power vested in Congress. It overlooks the fundamental principle that the Constitution and all laws made in pursuance thereof are the supreme law of the land. For, if the consent of a State is necessary, such State may always, in pursuit of its own interests, refuse its consent, and thus thwart the plain objects and purposes of the Constitution.

One argument for the position is, that no part of the territory of one sovereign can be acquired by another except by conquest or cession, and, therefore, in a case like the present, where conquest is out of the question, it can only be acquired by cession. And this conclusion is supposed to be affirmed and provided for in our federal system, by the 17th paragraph of section 8, article 1, of the Constitution, which gives to Congress power to exercise exclusive legislation "over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings." It is argued that this is the only constitutional method by which the United States Government can obtain the possession and use of lands within a State, especially lands belonging to the State.

This argument, however, is directed to the acquisition of territory with exclusive jurisdiction over the same; and is entirely sound in that regard. But it does not touch the question as to the power of the United States to acquire the mere use of land without exclusive jurisdiction therein.

Nearly all the powers of government are exercised over territory in which the United States and the several States have concurrent jurisdiction. It is only in exceptional cases that the United States desires to have exclusive jurisdiction and a consequent cession of territory. It is very true that the consent of the State Legislature is required, in order to give this exclusive jurisdiction. But that is all. It is not required when exclusive jurisdiction is not sought; on the contrary, the government, if it sees fit, may condemn land for its purposes without the consent of the State. Thus, it was decided by the supreme court in the case of *Kohl v. United States*, 91 U.S. 867 [8k. 28, L. ed. 449], that the government of the United States may exercise the right of eminent domain within a State, for the purpose of condemning land for the use of a postoffice building; and may, for this purpose, resort to its own courts. In such

a case there cannot be a doubt that the postoffice building could be erected and used by the government without asking the consent of the State Legislature.

Such consent would, indeed, be necessary to vest in the United States exclusive jurisdiction over the postoffice building and grounds, but it would not be necessary to enable the government to use the property for the purposes for which it was acquired. So if any other property is wanted for a public purpose, the consent of the state Legislature is not necessary to its acquisition or to its use; but only to the exclusion of state jurisdiction over the place. That jurisdiction, if allowed to remain, will extend to the punishment of crimes, committed against state laws therein, and to the service of state process, but, of course, cannot interfere with the execution of the United States laws, nor with the performance, by United States officers and agents, of the duties devolved upon them.

In short, cession by a State is only necessary to extinguish its jurisdiction in whole or in part; and is not necessary to the use of land by the United States for public purposes, subject, like all lands within the limits of the Union, to the concurrent jurisdiction of both governments, that of the United States being supreme. The laws of the latter are supreme everywhere in the States as well as in the Territories of the United States; but have exclusive force within the States only in such places as have been ceded by them.

The argument based upon the doctrine that the States have the eminent domain or highest dominion in the lands comprised within their limits, and that the United States have no dominion in such lands, cannot avail to frustrate the supremacy given by the Constitution to the Government of the United States in all matters within the scope of its sovereignty.

This is not a matter of words but of things. If it is necessary that the United States Government should have an eminent domain still higher than that of the State, in order that it may fully carry out the objects and purposes of the Constitution, then it has it. Whatever may be the necessities or conclusions of theoretical law as to eminent domain or anything else, it must be received as a postulate of the Constitution that the Government of the United States is vested with full and complete power to execute and carry out its purposes.

And as one of these purposes is the regulation of commerce among the several States, and as that involves the needs and ways of intercommunication, it follows that Congress may provide for these necessities whether the States co-operate and concur therein or not.

But, secondly, it is contended that if the United States can constitutionally take the land of the State, as well as that of the citizen, for public purposes, without consent, it can only do so in the same manner and subject to the same conditions, namely: that of making just compensation. It is urged that the language of the Fifth Amendment of the Constitution is applicable to the case and is imperative.

This language is—"Nor shall private property be taken for public use without just compensation." It is insisted that the property of the State in lands under its navigable waters

is private property and comes strictly within the constitutional provision. It is significantly asked, Can the United States take the state house at Trenton and the surrounding grounds belonging to the State, and appropriate them to the purposes of a railroad depot, or to any other use of the general government without compensation? We do not apprehend that the decision of the present case involves or requires a serious answer to this question. The cases are clearly not parallel. The character of the title or ownership by which the State holds the state house, is quite different from that by which it holds the land under the navigable waters in and around its territory.

The information rightly states that, prior to the Revolution, the shores and lands under water of the navigable streams and waters of the province of New Jersey belonged to the King of Great Britain, as part of the *jura regalia* of the Crown, and devolved to the State by right of conquest. The information does not state, however, what is equally true, that after the conquest the said lands were held by the State, as they were by the King, *in trust* for the public uses of navigation and fishery, and the erection thereon of wharves, piers, light houses, beacons and other facilities of navigation and commerce. Being subject to this trust, they were *publici juris*; in other words, they were held for the use of the people at large. It is true that to utilize the fisheries, especially those of shellfish, it was necessary to parcel them out to particular operators, and employ the rent or consideration for the benefit of the whole people; but this did not alter the character of the title; the lands remained subject to all other public uses as before, especially to those of navigation and commerce, which are always paramount to those of the public fisheries. It is also true that portions of the submerged shoals and flats, which really interfere with navigation, and could better subserve the purposes of commerce by being filled up and reclaimed, were disposed of to individuals for that purpose. But neither did these dispositions of useless parts affect the character of the title to the remainder.

Such being the character of the State's ownership of the land under water—an ownership held, not for the purpose of emolument but for public use, especially the public use of navigation and commerce—the question arises whether it is a kind of property susceptible of pecuniary compensation, within the meaning of the Constitution. The Fifth Amendment provides only that *private property* shall not be taken without compensation, making no reference to public property. But if the phrase may have an application broad enough to include all property and ownership, the question would still arise whether the appropriation of a few square feet of the river bottom to the foundation of a bridge which is to be used for the transportation of an extensive commerce, in aid and relief of that afforded by the waterway, is at all a diversion of the property from its origi-

nal public use? It is not so considered when sea walls, piers, wing dams and other structures are erected for the purpose of aiding commerce by improving and preserving the navigation. Why should it be deemed such when, without injury to the navigation, erections are made for the purpose of aiding and enlarging commerce beyond the capacity of the navigable stream itself, and of all the navigable waters of the country? It is commerce and not navigation which is the great object of constitutional care.

The power to regulate commerce is the basis of the power to regulate navigation in navigable waters and streams; and these are so completely subject to the control of Congress, as subsidiary to commerce, that it has become usual to call the entire navigable waters of the country the navigable waters of the United States. It matters little whether the United States has or has not the theoretical ownership and dominion in the waters or the land under them; it has what is more, the regulation and control of them for the purposes of commerce. So wide and extensive is the operation of this power that no State can place any obstruction in or upon any navigable waters against the will of Congress, and Congress may summarily remove such obstructions at its pleasure. And all this power is derived from the power "to regulate commerce." Is this power stayed when it comes to the question of erecting a bridge for the purposes of commerce across a navigable stream? We think not.

We think that the power to regulate commerce between the States extends not only to the control of the navigable waters of the country and the lands under them for the purposes of navigation, but for the purpose of erecting piers, bridges and all other instrumentalities of commerce which in the judgment of Congress may be necessary or expedient. Entertaining these views with regard to the power of Congress over the whole subject of the regulation of commerce among the several States, including that of the navigable waters of the country and the lands under the same, as subsidiary to that end, we have no hesitation in declaring our opinion to be that the authority given by the Act of June 16, 1886, to build the bridge in question, and for that purpose to erect the necessary piers of such bridge upon the lands under the water of Arthur Kill, is valid and constitutional, and does not injuriously affect any property or other rights of the State of New Jersey. This conclusion resolves also the other questions remaining unanswered with regard to the true construction of the Act and the capacity of the defendant, the Staten Island Rapid Transit Railroad Company, to perform the said acts necessary to execute the authority given by Congress.

The information is dismissed with costs, and the injunction heretofore granted is dissolved.

Nixon, D. J., concurred.

UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DIST. OF N. Y.

David DECKER

v.

BALTIMORE & NEW YORK R. R. Co.

et al. *

1. Congress can lawfully confer upon a **private corporation** the capacity to occupy navigable waters within a State, and appropriate the soil under them, for the purposes of **interstate commerce**, without the consent of the State.
2. *Held*, that the Act of Congress of June 16, 1886, entitled "An Act to Authorize the Construction of a **Bridge across** the Staten Island Sound, known as **Arthur Kill**," etc., is within the power conferred upon Congress to regulate commerce among the States, and that if the corporation undertaking the erection of such bridge acquires the right of the owners of the land under the waters and on the shore, the Act gives such corporation lawful authority to build and maintain such bridge without the consent, and notwithstanding the inhibition, of the State of New Jersey.

(Decided April 27, 1887.)

IN equity. Bill for an injunction. *Demurrer to bill sustained and motion for injunction denied.*

The case is stated in the opinion.

Mr. P. B. McLennan, for complainant:

The material facts stated in the bill of complaint and which are conceded, are:

1. The defendants are railroad corporations, organized under the laws of the States of New Jersey and New York, respectively.
2. In about June, 1886, the defendants were authorized by an Act of Congress to build and maintain a bridge across the Staten Island Sound or Arthur Kill at the point mentioned.
3. Staten Island Sound or Arthur Kill is a navigable water way lying between the States of New Jersey and New York, forming the boundary line between said States, and is wholly within their borders, and is the principal and only practicable water way leading from New York, Brooklyn and Jersey City to the places on the westerly side of Staten Island, and on the New Jersey shore opposite to Princess Bay, Raritan Bay, and to the places on the Raritan River, and is, and has been extensively used by all kinds of vessels and crafts engaged in commerce between said points.
4. The defendants threaten immediately to commence the construction of a bridge, according to the plans and under the conditions specified in the Act of Congress; and if said bridge is constructed upon said plans or upon any similar plan, it will seriously interfere with commerce, and it will be impossible to safely navigate a vessel in or through said water way.

5. The complainant is, and for more than twenty years last past has been, engaged in navigating said water way, with vessels, sloops and steamers duly enrolled and licensed under the laws of the United States, and also under the laws of the States of New York and New Jersey, in carrying on and in the prosecution of his business; and if the bridge is constructed, it will prevent the complainant from carrying on the business in which he is engaged, and will prevent him and all others from safely navigating said water way, and will cause him irreparable damage and injury.

6. The Legislature of the State of New Jersey, by a concurrent resolution, protested and protests against the construction of said bridge, and by an Act of its Legislature, passed April 6, 1886, declared that no bridge should be erected over the navigable waters separating the State of New Jersey from other States, without the express permission of the Legislature given by statute for that purpose.

No such permission has been given by the State of New Jersey, and the State of New York has in no way assented or consented to the erection of the bridge in question, or any other bridge across Long Island Sound or Arthur Kill.

7. It will be conceded that the bridge in question was not authorized by Congress for the purpose of national defense, or for the purpose of establishing postoffices or post roads. It will also be conceded that the jurisdiction of the States of New Jersey and New York is as complete and comprehensive over the water way in question, as would be the jurisdiction of either State over such water way if it were located wholly within its boundaries.

Upon these facts and concessions, the question is presented, and it is the only question involved in this case: Has Congress the power under article 1, § 8, subd. 8 of the Constitution, which reads: "The Congress shall have power to regulate commerce with foreign Nations, among the several States and with the Indian Tribes," to authorize the construction of a bridge across a navigable water way, forming the division line between two States and wholly within their boundaries, in such manner as will practically prohibit its navigation, against the will of one State, expressed by statute and without the assent or consent of the other State?

1. Congress has no power under the commercial clause of the Constitution to authorize the obstruction of a navigable water way lying wholly within the boundaries of two States, against the will of such States.

1. Never until the passage of the Act in question, authorizing the construction of a bridge across Arthur Kill, has Congress attempted the exercise of such power. In every reported case which I have been able to find, action on the part of Congress was preceded by the action of the State or States interested.

In the opinions of the court in some of the cases, there may be found expressions to the effect that such power exists in Congress, but the precise question here presented was not in-

*See *Stockton v. Baltimore & New York R. R. Co.* ante, 411.

volved and its determination was not necessary to the decision of the case.

2. The case of the *People, Murphy, v. Kelly*, 76 N. Y. 475, is a direct authority upon the question at issue. At page 482 the court says (Earl, J., writing the opinion), "The East River is a public navigable water and to bridge it requires the concurrent authority of the State of New York and of the United States; of the former by reason of its rights in the lands on the shore, and under the water, and of its qualified sovereignty over the water; and of the latter by reason of the exclusive power of Congress to regulate commerce, and to determine, in its regulation thereof, to what extent navigation upon the water may be obstructed or interfered with."

The above action was brought to restrain the construction of the East River bridge. It was conceded that Congress, after the State of New York had acted, authorized its construction, and the principal question presented was, Was the Act of the Legislature of the State of New York purporting to authorize its construction constitutional and valid? That question having been answered in the affirmative, the court says, page 483: "Having thus the authority of Congress, and of the State Legislature, the bridge company proceeded with the construction of the bridge;" and again at page 490, the court says: "What is thus sanctioned, both by the State and National Legislatures, cannot be a nuisance, or otherwise unlawful."

3. The question here involved was also passed upon in the case of the *People v. Rennselaer etc. R. Co.* 15 Wend. 113, 131.

Chief Justice Savage, in delivering the opinion of the court, said: "I think I may safely say that a power exists somewhere to erect bridges over waters which are navigable, if the wants of society require them, provided such bridges do not essentially injure the navigation of the waters which they cross. Such power certainly did exist in the State Legislatures, before the delegation of power to the Federal Constitution. It is not pretended that such power has been delegated to the general government as is conveyed under the power to regulate commerce and navigation. It remains then in the State Legislature, or it exists nowhere. It does exist because it has not been surrendered any farther than such surrender may be qualifiedly implied; that is, the power to erect bridges over navigable streams must be considered so far surrendered as may be necessary for a free navigation upon those streams."

5. The case of the *Newport etc. Bridge Company v. United States*, 105 U. S. 470 (Bk. 26, L. ed. 1143), which is relied upon by the counsel for the defendant, decides no more than that where a bridge has been authorized to be constructed across a navigable stream lying between two States, by the Legislatures of those States, Congress has the power to cause such bridge to be removed or its plan of construction changed, notwithstanding the bridge as constructed does not impede or interfere with navigation.

In that case the General Assemblies of the States of Kentucky and Ohio passed an Act authorizing the construction of a bridge across the Ohio River between Newport and Cincinnati S.

nati in such manner as not to obstruct the navigation of the Ohio River.

It was not determined or deemed necessary to determine that the bridge so constructed did obstruct the navigation of the river; yet notwithstanding, it was held that Congress had the power to compel the bridge to be constructed upon another or different plan.

The question presented in that case was therefore very different from the one presented here; there the States interested had assumed to act and it was held that Congress had then the power to determine whether the States should be allowed to act at all in the premises, and if so, to determine absolutely in what manner.

In the opinion of the court, page 475, this language is used: "The paramount power regulating bridges that affect the navigation of the navigable waters of the United States is in Congress; it comes from the power of regulating commerce with foreign Nations and among the States." It is this expression, although not necessary to the decision of the case, that *Mr. Justice Field* in his dissenting opinion criticises; and at p. 489 he expressly says "That the power to authorize the construction of such bridges has not been conferred upon Congress by the commercial clause of the Constitution, and therefore does not exist."

His opinion when carefully considered, it seems to me, must be regarded as authority upon the question at issue in this case. The conclusion which he draws from the illustrations given at pages 490, 491, seems unanswerable; it at least demonstrates conclusively that Congress has no power to authorize the destruction of a navigable stream by the construction of a bridge in opposition to the will of the States interested.

At page 493 *Mr. Justice Field* further says: "Nor do I find in the previous decisions of this court any recognition of the power in Congress to authorize the construction of bridges over navigable streams, within or bordering upon the States, in the sense that its permission will justify their construction, and that without it such construction would be unlawful, excepting of course, bridges which are parts of work undertaken for national purposes."

In the *Pa. v. Wheeling etc. Bridge Co.* 18 How. 782 (59 U. S. bk. 15, L. ed. 449), referred to by *Judge Field*, *Mr. Justice McLean* says: "If under the commercial power, Congress may make bridges over navigable water it would be difficult to find any limitation of such a power. Turnpike roads, railroads and canals, might on the same principle be built by Congress; and if this be a constitutional power, it cannot be restricted or interfered with by any state regulation. So extravagant and absorbing a federal power as this has rarely, if ever been claimed by anyone. It would, in a great degree, supersede the state government by the tremendous authority and patronage it would exercise. But if the power be found in the Constitution, no principle is perceived by which it can be practically restricted; this dilemma leads us to the conclusion that it is not a constitutional power."

If Congress has the power to authorize the construction of the bridge in question across

Arthur Kill, in opposition to the will of the States of New Jersey and New York, equally it has the power to authorize the construction of a bridge across the East River between New York and Brooklyn or across the North River between New York and Jersey City in such manner as will absolutely prohibit the navigation of such water ways, regardless of the protest of the state authorities against such structures.

6. Mr. Gould in his work on Waters (p. 244) says: "The combined action of Congress and the State or States interested would legalize impediments to the right of passage over any navigable waters;" and he cites *Miller v. Mayor etc. of N. Y.* 13 Blatchf. 469; *People, Murphy, v. Kelly*, 5 Abb. N. C. 383, 440; *Baltimore etc. R. R. Co. v. Wheeling etc. Transportation Co.* 82 Ohio St. 116.

The cases cited decide that the structures involved in those cases are legal structures, not solely for the reason that they were authorized by the Acts of Congress, but also because, in each instance, such structures were authorized by the State or States interested.

7. Mr. Cooley in his work on Constitutional Limitations (p. 731) says: "States may authorize the construction of bridges over navigable waters and for railroads as well as every other species of highway, notwithstanding they may, to some extent, interfere with the right of navigation; if the stream is not one which is subject to the control of Congress, and it, while permitting the erection, cannot be questioned on any ground or public inconvenience. The Legislature must always have power to determine what public ways are needed, and to what extent the travel over one way must yield to the greater interest for another; but if the stream is one over which the regulations of Congress extend, the question is somewhat complicated, and it becomes necessary to consider whether such bridge will interfere with the regulations or not. * * * In general terms it may be said that the State may authorize such constructions, providing they do not constitute material obstructions to navigation; but whether they are to be regarded as material obstructions or not is to be determined in each case upon its own circumstances. * * * The decision of the State Legislature that the erection is not an obstruction is not conclusive; but the final determination will rest with the federal courts which have jurisdiction to cause the structure to be abated, if it be found to obstruct unnecessarily, the passage on the water."

"Parties constructing a bridge must be prepared to show not only the state authorities that the plan and construction are proper, but also that it accommodates more than impedes general commerce."

8. In the case of *Pound v. Turak*, 95 U. S. 459 (Bk. 24, L. ed. 525), the question was presented as to the validity of the Statute of Wisconsin, which authorized the construction of dams at a given point across the Chippewa River.

In delivering the opinion of the court Mr. Justice Miller says: "The principle established * * * is that, in regard to the powers conferred by the commerce clause of the Constitution, there are some which by their essential

nature are exclusive in Congress, and which the States can exercise under no circumstances; while there are others which from their nature may be exercised by the States until Congress shall see proper to cover the same ground by such legislation as that body may deem appropriate to the subject; of this class are pilotage and other port regulations * * * bridges across navigable streams * * * But to the Legislature of the State may be most appropriately confided the authority to authorize these structures where their use will do more good than harm, and to impose such regulations and limitations in their construction and use as will best reconcile and accommodate the interest of all concerned in the matter; and since the doctrine we have deduced from the cases recognizes the right of Congress to interfere and control the matter whenever it may deem it necessary to do so, the exercise of this limited power may all the more safely be confided to the local Legislatures."

9. In the case of *Gibbons v. Ogden*, decided in 1824, 9 Wheat. 203 (22 U. S. bk. 6, L. ed. 71), Chief Justice Marshall, in delivering the opinion of the court, says: "The inspection laws form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the general government; all of which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of the State and those respecting turnpike roads, ferries, etc., are component parts of this mass. No direct general power over these objects is granted to Congress; and, consequently, they remain subject to state legislation. If the legislative power of the Union can reach them, it must be for national purposes; it must be where the power is expressly given for the special purpose or is clearly incidental to some power which is expressly given."

It will not be seriously contended that ferries across navigable streams are not subject to state legislation; bridges across such streams must also be subject to state legislation; a ferry might be used for the transportation of mail across a navigable stream as well as a bridge, and upon principle it seems to me that no distinction can be made between the two; and if Congress has the power to authorize the construction of the bridge in question against the will of the States interested, it also has the power to authorize the maintenance and operation of ferries between Jersey City and New York in opposition to the will of such States; but the court in the case above cited holds distinctly that ferries so located are subject to state legislation, and as suggested above at no time previous to the passage of the Act in question has Congress attempted to authorize the construction of a bridge across a navigable stream in opposition to the will of the States interested.

II. The State has not the power to authorize the obstruction of a navigable stream where Congress has acted in respect to the subject matter, even by implication. This was decided in the case of *Pennsylvania v. Wheeling etc. Bridge Co.* 18 How. 518 (54 U. S. bk. 14, L. ed. 248); in that case the State of Virginia had an-

thorized by statute the construction of a bridge across the Ohio River. Congress had previously regulated navigation upon this river by licensing vessels, etc. It was shown that the bridge as constructed interfered with the navigation of the river; and it was declared to be a nuisance and beyond the power of the State to authorize it.

In the same case reported in 18 How. 436 (59 U. S. bk. 15, L. ed. 435), it was decided that notwithstanding the bridge had been declared a nuisance by the highest court, yet Congress had the power to make it a lawful structure, and that having passed an Act to that effect, the bridge authorized by the Legislature of the State of Virginia became a lawful and legal bridge. Those were the only questions involved or decided in that case.

III. The State has the power to authorize the construction of a bridge over a navigable stream in the absence of any action by Congress in execution of the power to regulate commerce.

This was the question and the only question passed upon in the case of *Wilson v. Black Bird Creek Marsh Co.* 2 Pet. 245 (27 U. S. bk. 7, L. ed. 412). This principle was also decided in *South Carolina v. Ga.* 93 U. S. 4 (Bk. 23, L. ed. 782). The same question and no other was presented in the case of *Gilman v. Philadelphia*, 3 Wall. 713 (70 U. S. bk. 18, L. ed. 96), where the State of Pennsylvania had authorized the construction of a bridge across the Schuylkill River at the City of Philadelphia. It was conceded in that case that the bridge obstructed the navigation of the river; but it was held that in the absence of any action on the part of Congress the bridge was a lawful structure.

IV. An examination of the authorities will show:

1. That the State or States interested may authorize the obstruction of a navigable stream within their boundaries, provided Congress has not acted in the premises.

2. That any structure obstructing or affecting a navigable stream, although authorized by a State or States, may be removed or changed by authority of Congress.

3. That a structure erected across a navigable stream by authority of the State interested, although a nuisance in fact, may be legalized and made lawful by Act of Congress.

4. That a structure authorized by the State or States interested, across a navigable stream, although in fact it does not obstruct or interfere with the navigation of the stream, may be removed or changed by authority of Congress.

5. That the combined action of the State or States interested and of Congress will legalize and make lawful any obstruction to a navigable stream.

These propositions in no way conflict with the principle contended for by the complainant in this case, viz.: that Congress has not the power to obstruct and destroy a navigable water way lying wholly within the boundaries of two States under the commercial clause of the Constitution, against the will of such States.

If this be not so, then Congress has the absolute power under the commercial clause of the Constitution to obstruct the Mississippi River

or any other water way within the United States, in such manner as to make it impossible to navigate such water ways, in opposition to the will of every State adjacent thereto. It is contended that no such power exists in Congress.

V. The demurrer should be overruled and the motion for an injunction during the pendency of the action, granted.

Mr. W. W. MacFarland, for defendants:

I. It is not necessary to go further back than the case of *Pa. v. Wheeling etc. Bridge Co.* 13 How. 518 (54 U. S. bk. 14, L. ed. 249). That case decided:

1. That a State had no power to authorize a bridge over a navigable river that would obstruct navigation in a case where Congress has expressly or by implication acted in the matter, and that such a bridge would be declared a nuisance, notwithstanding a statute of the State to the contrary. The proposition is thus stated in the head note. "The Ohio is a navigable stream subject to the controlling power of Congress, which has been exercised over it; and if the Act of Virginia authorized the structure of the bridge so as to obstruct navigation, it would afford no justification to the Bridge Co."

2. In the next place it decided that the power of Congress under the commercial clause in the Constitution was, in respect to bridging navigable waters, supreme and, when exercised, exclusive; and therefore, although the court had declared the bridge in that case to be a nuisance, and had ordered its abatement, a subsequent Act of Congress, declaring it to be a lawful structure, made it so and superseded the judgment and orders of the court. The court said: "The power of Congress to regulate commerce includes the regulation of intercourse and navigation, and consequently the power to determine what shall or what shall not be deemed in judgment of law an obstruction to navigation." And in respect to the paramount authority of Congress when legislating within the orbit of its constitutional powers, the court in its first opinion uses this language: "No state law can hinder or obstruct the free use of a license granted under an Act of Congress" 18 How. 566 (54 U. S. bk. 14, L. ed. 269).

In its opinion on the effect of the Act it further said: "The Act of Congress afforded full authority to reconstruct the bridge," 18 How. 436 (59 U. S. bk. 15, L. ed. 435). "Although it may be an obstruction in fact, it is not so in contemplation of law" (18 How. 430).

In the earlier case of *Wilson v. Black Bird Creek Marsh Co.* 2 Pet. 245 (27 U. S. bk. 7, L. ed. 412), involving the same general principle, the court, speaking by *Chief Justice Marshall*, said: "If Congress had passed any Act which bore upon the case, any Act in execution of the power to regulate commerce, * * * we should feel not much difficulty in saying that a state law coming in conflict with such Act would be void."

II. The case of the *Clinton Bridge*, 1 Woolw. 150; 10 Wall. 454 (77 U. S. bk. 19, L. ed. 969), was very similar to that of the *Wheeling Bridge*. A suit in chancery was pending and ready for hearing, the object of which was to have a bridge across the Mississippi River adjudged

to be an obstruction to navigation and abated as a nuisance. In the mean time Congress had passed an Act declaring the bridge to be a lawful structure, and on this ground a motion was made to dismiss the bill, and it was granted. The whole subject is very thoroughly discussed by Judge Miller who decided the case in the circuit court. The decision was affirmed on appeal in a short opinion by Judge Nelson reaffirming the exclusive power of Congress in the premises, and the efficacy of the Act in legalizing the bridge.

III. The principle was again affirmed in *South Carolina v. Ga.* 98 U. S. 4 (Bk. 23, L. ed. 782). The case concerned an alleged obstruction to the navigation of the Savannah River under authority of an Act of Congress. It was held that the obstruction was lawful. Among other things the court says: "The power to regulate commerce comprehends the control for that purpose, and to the extent necessary of all the navigable rivers of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the Nation and subject to all the requisite legislation by Congress."

IV. The case of the *Pensacola Tel. Co. v. West. U. Tel. Co.* 96 U. S. 1 (Bk. 24, L. ed. 708), brought in question the validity of a state statute conferring an exclusive right to build and maintain a telegraph line in a particular locality. It was decided that the State had no such power, and that the statute was void because in conflict with an Act of Congress on the same subject.

The court reaffirms the supremacy of Congress, saying, among other things:

"The Government of the United States within the scope of its powers operates upon every foot of territory under its jurisdiction. It legislates for the whole Nation and is not embarrassed by state lines. * * * The State has attempted to regulate commercial intercourse between its citizens and those of other States. * * * It is unnecessary to decide how far this might have been done if Congress had not acted upon the same subject, for it has acted."

V. In *Newport etc. Bridge Co. v. United States*, 105 U. S. 470 (Bk. 26, L. ed. 1143), the question is again thoroughly reviewed. The subject matter was a bridge over the Ohio River between Newport and Cincinnati. The court, among other things, say: "The paramount power of regulating bridges that effect the navigation of the navigable waters of the United States is in Congress. It comes from the power to regulate commerce with foreign Nations and among the States."

VI. It has been decided that a State may, in the absence of federal legislation, permit the bridging of navigable waters within its own jurisdiction (*Gilman v. Philadelphia*, 3 Wall. 781, 70 U. S. bk. 18, L. ed. 96), the court saying, however, that: "Congress may interpose, whenever it shall be deemed necessary, by either general or special laws. It may regulate all bridges over navigable waters, remove offending bridges and punish those who shall thereafter erect them. Within the sphere of their authority both the legislative and judicial power are supreme." *Pound v. Turck*, 95 U. S.

459 (Bk. 24, L. ed. 525), was a similar case. The court says, among other things: "In the absence of legislation by Congress a statute of a State which authorizes the erection of a dam across a navigable river which is wholly within her limits is not unconstitutional."

VII. The doctrines of constitutional law laid down in the foregoing cases were again reaffirmed in the case of *Miller v. Mayor of New York*, 109 U. S. 385 (Bk. 27, L. ed. 971), which was a suit brought to restrain the erection of the East River Bridge. The case was tried below before Judge Blatchford, who decided against the plaintiff. The decision was affirmed on appeal. It was held not to impair the efficacy of the Act, that certain incidental matters were left to the determination of the secretary of war. And it declared that the action of Congress was "paramount and conclusive." The court said that all the questions presented had been finally settled by a long line of decisions, and that what the court "say in this opinion will be little more than a condensation of what was there declared."

Authorities in the support of the supreme exclusive power of Congress in this and in analogous cases might be multiplied almost indefinitely, but it would be a waste of time; the question is no longer open for discussion. It follows that when Congress, acting within its powers, says a thing may be done, and a state statute says that it shall not be done, the latter is void. It was so declared in *Wilson v. Black Bird Creek Marsh Co.*, in the *Wheeling Bridge Case*, in *Gilman v. Philadelphia*, and in *Pensacola Tel. Co. v. Florida*; and the principle is necessarily involved in all the cases. Nowhere is there a suggestion that in the case of bridges or in any other case must there be concurrent action of the State Legislature.

For all purposes navigable waters and the land under them are the "public property of the Nation."

South Carolina v. Ga. supra. See also the opinion of Judge Miller, 1 Wall. 150 (68 U. S. bk. 17, L. ed. 578).

From supplemental brief for the defendants in answer to the brief for the complainant.

The able and ingenious brief for the plaintiff presents his case in the strongest and most plausible way possible. But the premises (not altogether without support in early decisions of state courts) have long since been decided to be unsound by the Supreme Court of the United States, whose decisions are conclusive upon all questions of constitutional law. Although not stated in so many words, the fundamental proposition of the brief is that the power of Congress extends only to saying that bridges may not be built over navigable waters, and that there is no power in Congress to say what bridges may be erected; that every federal statute on the subject, no matter how strong and definite in expression, must be held to express only that Congress would not object if the consent of the State or States interested could be obtained. That state courts were in the beginning so inclined to construe the constitutional provision in question is undoubtedly true; this clearly appears by the case of the *People v. Rensselaer etc. R. R. Co.* 15

Wend. 118, cited for the plaintiff. But in this case, as in many others, the tribunal having jurisdiction to finally determine all questions arising under the Constitution has disapproved of the interpretation which would limit the power of Congress merely to giving its assent subject to the approval of the State. The supreme court has asserted for Congress the sole power, and has over and over again declared that any state law obstructing the full and efficient operation of an Act of Congress is void. State courts have, of course, accepted this interpretation as conclusive. Indeed, the court of appeals, in the case of this very bridge, has declared the rule to be settled as above stated in the following words:

"It is also proper to say that the enactment by Congress during its last session of a bill authorizing the contracting parties hereinbefore referred to, to build a railroad bridge or viaduct across Arthur Kill, has apparently removed any legal objection to such a structure, and rendered it quite certain that the connections contracted for between such parties will be made and the property sought to be obtained by this proceeding devoted to the purposes alleged in the petition."

Nothing could be more explicit nor is the decision in the *People, Murphy, v. Kelly*, 76 N. Y. 475, in conflict with what the court here say; for in that case the court say, referring to the power of Congress:

"What it authorizes may be justified upon its authority; what it forbids is necessarily unlawful" (at p. 483).

In the case of the Brooklyn Bridge, it was necessary to take for its use a large amount of land, far within the limits of the two cities, and for that purpose, state legislation was, of course, necessary. An Act of Congress authorizing a bridge does not necessarily have anything to do with the acquisition of land on the shore, or of other property necessary for its construction; and it is quite conceivable that in the absence of any general law on the subject, state legislation might be necessary for its condemnation; but with that question we are not, at present, concerned. But if it were held that the right of the State to the land under water was superior to that of the United States, it would be equivalent to holding that no bridge could be built under an Act of Congress, and we have seen that the court of appeals has decided in the case of this very bridge that such an Act gives all the authority that is required. If it were not so, it is obvious that a State might wholly nullify the provision of the Federal Constitution in question.

If, for example, a state law is essential to the legality of the structure, a repeal of that law, under a power of repeal reserved as is usual, would make it unlawful; and so after all, everything would depend upon the pleasure of the State and the ever changing views of successive Legislatures as to the State's interest. This cannot be so.

The superior right of Congress over the land under water is a necessary incident of its constitutional supremacy, and essential to its efficient exercise. For all the purposes of that constitutional power, the State is regarded as having transferred to the Federal Government, for the benefit of the people of the United

States, the interest which it held in the land under water for the benefit of the people of the State; and that interest, for all the purposes of commerce, is now held by the United States upon a larger and more comprehensive trust. That is what the court says in *South Carolina v. Ga.* (brief, p. 4, pt. 3).

The dissenting opinion of Judge Field in *Bridge Co. v. U. S.* is cited. But while not altogether approving, he admits that the question is settled for, he says:

"Yet out of this assertion of a power to legalize a structure, which, without such sanction, would be deemed an obstruction to navigation, has grown up the doctrine of an independent power in Congress to authorize the construction of bridges over navigable streams, without the permission of the States, and to control them when constructed."

In the late case of *Cardwell v. American Bridge Co.* 113 U. S. 205 (Bk. 28, L. ed. 959), Judge Field delivered the opinion of the court, and the views expressed in his dissenting opinion in *Bridge Co. v. United States*, appear to have been modified, for he says, among other things, after referring to the cases in which the plenary and controlling power of Congress is asserted: "We are entirely satisfied with the soundness of the conclusions reached." Again, referring to the States, he says: "And as to bridges over navigable streams this power is subordinate to that of Congress, as an Act of the latter body is by the Constitution made the supreme law of the land."

The opinion of the court, it will be noticed, asserts the doctrine in the strongest way.

In *South Carolina v. Ga.* 93 U. S. 4 (Bk. 28, L. ed. 782), the court says:

"It is not, however, conceded that Congress has no power to order obstructions to be placed in the navigable waters of the United States. * * * If, as we have said, the United States have succeeded to the power and rights of the several States, so far as control over interstate and foreign commerce is concerned, this is not to be doubted" (at pp. 11, 12).

In the case of the *Newport etc. Bridge Co. v. U. S.* 105 U. S. 479 (Bk. 26, L. ed. 1147), Judge Miller, in his opinion below, commences his elaborate discussion of this question with the following sentence: "If the determination of the circumstances under which a bridge may be built over a navigable stream, or the presenting of general rules for its construction and maintenance, be a regulation of commerce either with foreign Nations or among the States, then the enactment under consideration falls within the power conferred on Congress by that clause." He then goes on to show that it has been definitely settled that Congress has this power.

1 Woolw. p. 156.

But it is said, on the other side, that in many of these cases there was also the authority of the State for doing that which was contemplated. This is true, but there is no case in which the existence of that authority was regarded as a factor of any importance in the decision. Some of the cases related to structures in waters wholly within one State, as in the case of the *East River Bridge*, and of the *Esplanade Co. v. Chicago*, 107 U. S. 678 (Bk. 27, L. ed. 442), and in the case of *Gilman v. Philadel-*

phia. In all these cases, rights of a different nature from those under consideration were essential both to create corporations with corporate power to do what was purposed, and to acquire property over which Congress had no control. For these subsidiary purposes, therefore, state legislation was essential. This is well illustrated in the case of the *Clinton Bridge*. In that instance, the respective State Legislatures professed to do nothing more than to create corporations capable of building the bridge, and then in express terms left it to Congress to decide whether they might build a bridge, and what sort of a bridge it should be. Another illustration of the same principle is to be found in the case of the *Pensacola Tel. Co. v. Western Union Tel. Co.* 96 U. S. 1 (Bk. 24, L. ed. 708).

In that case, as in the case before the court, the land required had been obtained by private purchase, and it was only necessary to find a law which authorized the work. That was found in an Act of Congress, and a state statute that stood in the way of that Act was swept out of the way and declared to be void. And we know that in the great leading case of the *Wheeling Bridge* no importance at all was attached to a statute of Virginia and no force allowed to it; for in spite of that statute, the bridge was, in the first instance, declared to be a nuisance, then, before that judgment was carried into execution, came the Act of Congress which at once made it a lawful structure, the bridge obtaining its status, so to speak, wholly from that Act.

Again; whatever plausibility an argument on the lines of the plaintiff's brief might once have had, or may now have, in respect to waters wholly interstate, disappears when applied to navigable waters constituting a boundary between two States. All constitutional law is, from its very nature, exclusive when brought into exercise. Indeed, volition which is in any wise dependent upon the will of another is not power; nor is there any case in which, under the Federal Constitution, co-operative legislation on the part of a State is necessary to communicate vitality and efficiency to an Act of Congress. And in a case where, in the absence of action on the part of Congress, the State is left free to legislate, the moment Congress does exercise its superior authority, the statute of the State ceases to be operative; it remains in abeyance or becomes a nullity. Therefore, it follows, of course, as laid down in all the authorities, that when Congress, acting within its powers, declares that a thing may be done, the state statute forbidding it to be done is simply void. It will be noticed that the Act of Congress makes this bridge part of a post road, and if it were at all necessary, this provision might well be referred to as strengthening the main position and argument for the defendant. But the efficiency of the Act upon the broad general principles already mentioned seems to be too clear to call for further discussion.

Wallace, C. J., delivered the following opinion:

The complainant is a vessel owner whose business of transportation makes it necessary for him to use the narrow navigable water-

way known as Arthur Kill, which constitutes one of the boundaries between the States of New York and New Jersey. He has brought this suit to restrain the defendants from constructing a railroad bridge across these navigable waters, which they propose to build and maintain under claim of authority conferred by the Act of Congress of June 16, 1886, entitled "An Act to Authorize the Construction of a Bridge across the Staten Island Sound, Known as Arthur Kill, and to Establish the Same as a Post Road." The case is now here upon the defendants' demurrer to the bill of complaint, and upon complainant's motion for an injunction *pendente lite*.

It is not disputed that the complainant has a sufficient standing in a court of equity to challenge the right of the defendants to build the bridge; and the single question to be decided is whether they have a legal right to build the bridge. If they have, it is solely by the efficacy of the Act of Congress as a constitutional exercise of the power to regulate commerce between the several States.

The Legislature of New Jersey, by an Act passed April 6, 1886, has forbidden the erection of any bridge or structure over any part of the navigable waters where the tide ebbs and flows, separating the State from other States, without express permission given by the Legislature by statute in that behalf. The Act was passed after the bill had been introduced in Congress authorizing the construction of this bridge, and before it became a law, and was preceded by the adoption of concurrent resolutions of the Senate and House of Assembly of New Jersey protesting against any action on the part of Congress intended to legalize the erection of such a bridge.

The case thus presents the constitutional question whether Congress can lawfully confer upon a private corporation the capacity to occupy navigable waters within a State, and appropriate the soil under them, for the purposes of interstate commerce, without the consent of the State.

Although the Act of Congress establishes the bridge, when constructed as a post road, this is wholly an incidental and an unnecessary feature of the legislation. The Act does not purport to authorize the bridge in order to provide an additional post road; and the provision establishing the bridge as a post road, when built, was unnecessary, because it would become such by force of pre-existing law. Sec. 3964, R. S. U. S.

Neither does it in terms purport to be an exercise of the power to regulate commerce between the States; but that this is its essential character is apparent from the recitals which show that it was designed to afford a connection between railroads already constructed, or to be constructed, on opposite sides of the Sound. Obviously, Congress intended to plant the rights conferred on the defendants upon the validity of the Act as a regulation of commerce.

Both the language and the history of the Act preclude the doubt whether it can be construed as intended to grant a privilege which is to become operative when concurrent authority to build the bridge is obtained from the States of New Jersey and New York. It

is silent as to any such condition, and this silence is emphatic, in view of the provisions contemplating the assent of the State which have been inserted in all previous Acts of a similar character when permission by the State had not been given in advance. As it was passed notwithstanding the protest of New Jersey, which was in effect a declaration that she would not consent, it must be assumed that Congress did not regard the consent of the State necessary.

The precise question to be decided has never been adjudicated; and the present Act is the first attempt on the part of Congress to grant such a right as is asserted by the defendants.

In the language of the Supreme Court of the United States in *Müller v. Mayor of New York*:

"The power vested in Congress to regulate commerce with foreign Nations, and among the several States, includes the control of the navigable waters of the United States so far as may be necessary to insure their free navigation; and by navigable waters of the United States are meant such as are navigable in fact, and which, by themselves, or by their connection with other waters, form a continuous channel for commerce with foreign countries or among the States." 109 U. S. 395 [Bk. 27, L. ed. 975].

Whether the waters are wholly within the boundaries of a State, or, as here, lie between two States, is not material. They are navigable waters of the United States if they form, by themselves or by uniting with others, a continuous highway for commerce with other States or countries. *The Daniel Ball*, 10 Wall. 557 [77 U. S. bk. 19, L. ed. 999]; *Escanaba etc. Transportation Co. v. Chicago*, 107 U. S. 632 [Bk. 27, L. ed. 444].

The power of control over such waters necessarily includes the power of deciding what structures are impediments to commerce; and, by an unbroken line of decisions, it is settled that the paramount authority regulating bridges that affect the navigation of the navigable waters of the United States is in Congress.

So long as this authority lies dormant, the States may authorize the erection of bridges over navigable waters within their limits, which may to some extent obstruct navigation, or, by concurrent action, may bridge the waters lying between them; but, so soon as Congress intervenes and exercises its power of regulation, what has been done by state authority must give way to the paramount authority of Congress. The power of the State ends where that of the Nation begins. *Wilson v. Black Bird Creek Marsh Co.* 2 Pet. 250 [27 U. S. bk. 7, L. ed. 414]; *Pa. v. Wheeling etc. Bridge Co.* 18 How. 421 [59 U. S. bk. 15, L. ed. 435]; *Gilman v. Philadelphia*, 3 Wall. 738 [70 U. S. bk. 18, L. ed. 100]; *Mobils Co. v. Kimball*, 102 U. S. 691 [Bk. 26, L. ed. 238]; *Pound v. Turck*, 95 U. S. 459 [Bk. 24, L. ed. 525].

These decisions, however, fall short of adjudicating the present case, because they do not decide in terms that the power of regulation extends further than is required to preserve the free and unobstructed navigation of the public waters. If the power ends there, the present Act is nugatory. That it does end there never has been authoritatively determined.

The lands under the water on the New Jersey side of Arthur Kill belong to the State of New Jersey, or to those who have derived title from the State. The shores of navigable waters, and the soil under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. *Potlard v. Hagan*, 3 How. 212 [44 U. S. bk. 11, L. ed. 565].

The right of eminent domain over such lands, for all municipal purposes, resides in the State within the boundaries of which they lie, and within the legitimate limitations of this right the power of the State to appropriate the shores of navigable waters, and the lands under them, is absolute. *Ormerod v. New York etc. R. Co.* 21 Blatchf. 106.

Expressions of opinions by learned jurists are found in several adjudged cases, to the effect that Congress cannot, under the power of regulating commerce, authorize the erection of bridges over navigable waters without the consent of the State, or sanction an obstruction of commerce.

In *People v. Rensselaer etc. R. R. Co.* 15 Wend. 113, Chief Justice Savage, after asserting that the power to erect bridges over such waters existed in the State Legislature before the adoption of the Federal Constitution, says:

"It is not pretended that such power has been delegated to the general government as is conveyed under the power to regulate commerce and navigation. It remains, then, in the State Legislature, or it exists nowhere. It does exist because it has not been surrendered any further than such surrender may be qualifiedly implied; that is, the power to erect bridges over navigable streams must be considered so far surrendered as may be necessary for a free navigation upon those streams."

In *People, Murphy, v. Kelly*, 76 N. Y. 475, Earl, J., says:

"The East River is a public navigable water, and to bridge it requires the concurrent authority of the State of New York and of the United States; of the former by reason of its rights in the lands on the shore, and under the water, and of its qualified sovereignty over the water; and of the latter by reason of the exclusive power of Congress to regulate commerce, and to determine in its regulation thereof to what extent navigation upon the water may be obstructed or interfered with."

In the *Wheeling Bridge Case*, Mr. Justice McLean, in considering whether Congress could legalize a bridge over navigable water within the jurisdiction of any State or States, uses this language:

"But this does not necessarily include the power to construct bridges which may obstruct commerce, but can never increase its facilities on a navigable water. Any power which Congress may have in regard to such a structure is indirect, and results from a commercial regulation. It may, under this power, declare that no bridge shall be built which shall be an obstruction to the use of a navigable water. And this, it would seem, is as far as the commercial power by Congress can be exercised. * * * If, under the commercial power, Congress may make bridges over navigable waters, it would be difficult to find any limitation of such a power. * * * So extravagant and absorbing

a federal power as this has rarely, if ever, been claimed by anyone."

In the more recent case of *Newport etc. Bridge Co. v. U. S.* 105 U. S. 496 [Bk. 26, L. ed. 1152], *Mr. Justice Field* uses this language:

"From the use of the word 'assent' to the erection of a bridge over a navigable river, or the declaring of one already erected a lawful structure, the transition has been easy and natural to the assumption of an affirmative power in Congress to authorize, independently of the action of the States, the construction of such bridges, and to control them. From the authorities cited, and the reasons assigned, it is evident that Congress possesses no such power. * * * If weight is to be given to these authorities, and to the reasons on which they rest, it must follow that the sovereignty and jurisdiction of the States over their navigable waters, which were as absolute upon the adoption of the Constitution as over their roads, still continue, except that they are to be so exercised as not to obstruct the free navigation of the waters, so far as such navigation may be required in the prosecution of interstate and foreign commerce."

It is to be remarked, however, of these observations, that what was said by *Mr. Chief Justice Savage* in the first case, and by *Mr. Justice Earl* in the second, was *obiter*, and that the views expressed by *Mr. Justice McLean* and by *Mr. Justice Field* were by way of argument in dissenting from the opinion of the court. It was not necessary in either of those cases to pass upon the point suggested.

The case of *South Carolina v. Georgia*, 93 U. S. 4 [Bk. 23, L. ed. 782], is an authority the other way. The supreme court there considered a case in which a bill was filed by the State of South Carolina against the secretary of war and other officers of the United States, to restrain them from obstructing or interrupting the navigation of the Savannah River under authority of an appropriation Act of Congress for the improvement of the harbor at Savannah. The court were of the opinion that the Acts sought to be restrained did not tend to the destruction of the navigation of the river, although, by obstructing the water way of one of its channels, navigation would be restricted to the other channel, and therefore were not in any just or legal sense a destruction or impediment of navigation. The court held that the appropriation Act conferred upon the secretary of war the discretion to determine the mode of improvement, and authorized the diversion of the water from one channel into another, if, in his judgment, such was the best mode.

Mr. Justice Strong, speaking for the court, used this language:

"It is not, however, to be conceded that Congress has no power to order obstructions to be placed in the navigable waters of the United States, either to assist navigation, or to change its direction by forcing it into one channel of a river rather than the other. It may build light houses in the bed of the stream. It may construct jetties. It may require all navigators to pass along a prescribed channel, and may close any other channel for their passage. If, as we have said, the United States have succeeded to the power and rights

of the several States, so far as control over interstate and foreign commerce is concerned, this is not to be doubted." And the *Wheeling Bridge Case* was cited as ruling that the power of Congress to regulate commerce includes the power to determine what shall or shall not be deemed, in the judgment of law, an obstruction of navigation.

This decision controls the present case. The State of South Carolina had not consented to the closing of one of the channels of her river by the authorities of the United States, and insisting that this could not be done against her consent, and asserted her rights to prevent it by a bill in equity. The question was necessarily involved whether, under the power to regulate commerce, Congress can close the channel of a river within a State against the consent of the State. The decision puts that question at rest, and is an unqualified affirmation that Congress can do so. If Congress can close a river, it can certainly bridge one. Applying the principle of that decision here, where, instead of a jetty or a light house, a bridge is the structure authorized, it follows that what Congress has sanctioned by the present Act is not an obstruction of navigation, that the judgment of Congress concludes controversy as to the fact, and that concurrent action on the part of New Jersey is not only not indispensable, but that her opposition is futile.

The argument that the rights of the State of New Jersey are ignored or invaded by permitting such a bridge to be built without her consent is purely a sentimental one. She has no control of the water way for the purposes of navigation which is not subordinate to the will of Congress. She can make no use of it against the will of Congress. The Act of Congress does not attempt to appropriate any of the property of her citizens, or to interfere with her power of eminent domain.

If the constitutional power of Congress over the navigable waters of the United States is confined to a mere negation of state authority over them, if Congress can only ratify and prohibit what the State proposes, if it has no faculty of independent action, and no vigor to originate, then, instead of being paramount, the power is practically subordinate to the power of the State. Yet it has never been doubted that, within the scope of its powers, the Government of the United States is supreme, or that its authority, when ascertained, is, to the extent asserted, of necessity exclusive.

The Constitution delegates to Congress the power to prescribe the conditions upon which commerce, in all its forms, shall be conducted between the citizens of the several States, and to adopt measures to promote its development and prosperity. Bridges over navigable waters are necessary to facilitate transportation and commercial intercourse. They are well recognized instrumentalities of commerce. The power to build them, or authorize them to be built, is an incident of the general power to regulate interstate commerce. If the national and state authorities disagree as to the expediency of bridging a river, and if, as is asserted, the power to act is partitioned between them, and can only be exercised concurrently, interstate commerce may be crippled. If Congress deems a railroad bridge necessary or useful as

an instrumentality of interstate commerce, there is no sound reason, aside from considerations of expediency, why it should not build one, or authorize a private corporation to do so. It seems idle to say that its power only extends to prohibiting the States from building such bridges, and that it can direct what bridges shall not be built, but not what shall be built. This would make the constitutional prerogative obstructive merely. Thus circumscribed, it would be ahorn of most of its value.

It is not intended to intimate that Congress can authorize the appropriation of private property for the purposes of such a bridge. It was at one time doubtful whether the Government of the United States, in order to obtain property required for its own purposes, could exercise the right of eminent domain within

the States. That question was settled in *Kohl v. U. S.* 91 U. S. 367 [Bk. 23, L. ed. 449], where it was held that the government, if such property cannot be obtained by purchase, may appropriate it upon making just compensation to the owner. It is not necessary to consider whether Congress could enable the defendants to condemn property in New Jersey for the purposes of their bridge. This has not been attempted by the Act under consideration. All that is now necessary to decide is that if the defendants acquire the right of the owners of the land under the waters and on the shores, the Act of Congress gives them lawful authority to build and maintain their bridge without the consent of the State of New Jersey.

The demurrer is sustained, and the motion for an injunction is denied.

THE INTERSTATE COMMERCE COMMISSION.

George RICE

v.

LOUISVILLE & NASHVILLE R. R. CO.*

(Answer filed August 15, 1887.)

THE answer of the Louisville & Nashville Railroad Company to the bill of complaint made by George Rice before the Interstate Commerce Commission.

The Louisville & Nashville Railroad Company, defendant in the above case, for answer to the bill of complaint filed therein, respectfully submits the following:

I. It admits that it is a corporation, incorporated and organized by and under the laws of Kentucky, and is a common carrier engaged in the business, among other things, of transportation for hire of persons and property, by a continuous shipment by means of lines of railroad, owned or operated by it (and by the South & North Alabama Railroad, between Decatur and Montgomery, which is owned and operated by the South Alabama Railroad Company), from and to the various towns and cities set out in complainant's bill of complaint except the Town of Selma, Alabama, which town is not reached thereby; and defendant further admits that one of its duties is the transportation of refined illuminating petroleum oil from Cincinnati, Ohio, and Louisville, Kentucky, to the aforesaid towns and cities; and it also admits that in the transportation of said oil to some, not all of aforesaid towns and cities, two methods are employed: one by means of box cars, carrying oil in barrel packages, the other by iron tank cars, generally holding, not 100, but sixty barrels, or over that amount.

II. Further answering defendant says it does not know, but believes that complainant, Rice, is engaged at Marietta, Ohio, or in that vicinity, in the business of producing, manufacturing and dealing in petroleum oils, and in shipping the same to various markets in the Southern and Western States of this country; but whether he has large capital or what amount of capital he has invested in said business, or whether he has extensive facilities or what facilities he has therefor, defendant does not know, nor can it speak from its belief or otherwise; but it denies that but for the alleged acts

of this defendant in complainant's said bill complained of, he would produce or sell many thousand more, or any more, barrels of such oil than he now produces and sells. Defendant admits that many of complainant's principal markets for his said manufactures are in the territory reached and traversed by this defendant's system of railway; that it is absolutely essential to the continued existence and success of his said business, that he should have rates and facilities, both reasonable in themselves and equally as favorable under similar circumstances and conditions as those accorded to his competitors for the transportation of said products to such markets; and defendant admits that many of them can only be reached by defendant's roads, but it denies that none of said markets can be as conveniently or cheaply reached by any other means, if complainant is accorded reasonable and just rates by this defendant. Defendant admits that the Standard Oil Company is a corporation, incorporated and organized under the laws of Kentucky, and that it is a very extensive dealer in and shipper of such petroleum oil; and defendant believes that said Standard Oil Company is the chief competitor of complainant for the sale thereof in the aforesaid markets.

III. For answer to the first charge made in complainant's bill and the specification thereunder, defendant says: 1. It is not true and it denies that it has been guilty of any violations of the provisions of the Act of Congress of the United States, entitled, "An Act to Regulate Commerce," approved February 4, 1887, either by making charges for services to be rendered by it as common carrier in the transportation of oil from Cincinnati, Ohio, or Louisville, Kentucky, to points on its railroad lines in States other than the States of Ohio or Kentucky, or in any other manner. 2. It admits that on May 9, 1887, and ever since that time, for services to be rendered by it in the transportation in barrel packages, in car load shipments, of petroleum oil from Louisville, aforesaid, to Mobile, Alabama, New Orleans, Louisiana, Montgomery, Alabama, Selma, Alabama, Birmingham, Alabama, Nashville, Tennessee, Memphis, Tennessee, and Clarksville, Tennessee, its charges were the respective prices set out in complainant's bill of complaint; and it also admits that each one of said towns is

*See Petition, ante, 374.

reached by its lines of road, and the South & North Alabama Railroad, except Selma, Alabama, which cannot be reached thereby; but defendant says it is not true and it denies that said rates or any of them, are unreasonably high or unjust. 3. Defendant denies that the rate or rates to all other points or to any point reached by its lines of railroad, located in any State other than Kentucky, fixed by it in its schedule, required by law to be and which has been filed with the honorable Commission, are or is unreasonable or unjust. 4. It admits that the following rates per 100 lbs. for shipment of petroleum oil in barrel packages, car load shipments, from Cincinnati, Ohio, to the following points in States other than Ohio, are the rates which appear on its tariff sheets furnished by it to complainant on May 9, 1887, as the rates then in force, and they are rates which are now in force, to wit:

Nashville, Tenn.	- - - -	25 cents
Decatur, Ala.	- - - -	50 "
Birmingham, Ala.	- - - -	59 "
Calera, Ala.	- - - -	59 "
Montgomery, Ala.	- - - -	59 "
Selma, Ala.	- - - -	59 "
Pensacola, Fla.	- - - -	45 "
Mobile, Ala.	- - - -	39 "
New Orleans, La.	- - - -	39 "

Except that the rates furnished for shipment to Nashville, Tennessee, was 28 3-4, instead of twenty-five cents, that to Pensacola was forty cents instead of forty-five cents; that to New Orleans and that to Mobile was thirty-four cents each, instead of thirty-nine cents; and defendant admits that all of said points are reached by its lines of road, except Selma, and except all points between Decatur and Montgomery, Alabama, which cannot be thus reached; but defendant says it is not true and it denies that said rates or any of them are unjust or unreasonably high.

IV. For answer to the second charge made in complainant's bill and the specifications thereunder, defendant, 1, denies that it has at any time since April 5, 1887, charged complainant for services to be rendered by this defendant in the transportation of such oils to points in States other than Ohio, reached by its lines of railroad or from Louisville, Kentucky, to points in States other than Kentucky, reached by said lines of railroad, a greater compensation than it charged said Standard Oil Company of Kentucky, for like and contemporaneous services rendered or to be rendered by this defendant for said company in the transportation of such oils for said company from said Cincinnati, Ohio, or from Louisville, Kentucky, to said points or any of them in States other than Kentucky, and denies that the shipments referred to by complainant in his said bill were made for him and for said Standard Oil Company under substantially similar circumstances or conditions.

2. It admits that the rate per 100 lbs. charged by it to complainant on May 9, 1887, and ever since, for the transportation of such oil from Louisville, Kentucky, to the respective destinations named in complainant's bill is the rate given therein, to wit:

To Montgomery, Alabama, 24 7-10 cents; Selma, Alabama, 45 7-10 cents; Birmingham,

Alabama, 45 7-10 cents; Nashville, Tennessee, 18 3-4 cents; Memphis, Tennessee, fifteen cents; and that on some oil shipped by it during that time for the Standard Oil Company, defendant charged from Louisville to said respective points per 100 lbs. the following rates, as stated in complainant's bill, to wit:

To Montgomery, thirty cents; to Selma, thirty cents; to Birmingham, thirty cents; to Nashville, fifteen cents; and to Memphis, 12 1-2 cents.

8. It further admits that its rate to complainant on May 9, 1887, and ever since for shipment of oil from Cincinnati, Ohio, to the following points, per 100 lbs. were the rates stated in complainant's bill, to wit:

To Decatur, Alabama, fifty cents; to Birmingham, Alabama, fifty-nine cents; Calera, Alabama, fifty-nine cents; Montgomery, Alabama, fifty-nine cents; Selma, Alabama, fifty-nine cents; to Pensacola, Florida, forty-five cents; to Mobile, Alabama, thirty-nine cents; and to New Orleans, Louisiana, thirty-nine cents, with the exception that the charge was and is from Cincinnati to Pensacola forty cents instead of forty-five cents, and to Mobile and to New Orleans each thirty-four cents, instead of thirty-nine cents.

And defendant further admits that during said time it was shipping some oil for the Standard Oil Company from Cincinnati, to aforesaid towns at the following rates per 100 lbs., to wit:

To Decatur, forty-six cents; to Birmingham, forty-seven cents; to Calera, forty-seven cents; to Montgomery, forty-seven cents; to Selma, forty-seven cents; to Pensacola, forty cents; to Mobile thirty-four cents; to New Orleans, thirty-four cents,—except that to Birmingham since May 11, 1887, the rates have been a little less than forty-seven cents per 100 lbs. But defendant denies that in its said rates for shipment for the Standard Oil Company and for complainant from Cincinnati and from Louisville, respectively, to aforesaid respective towns, or any of them, it discriminated in favor of the Standard Oil Company or against complainant, or that by said rates, shipped under the circumstances that said oils were respectively shipped, defendant charged complainant per 100 lbs. a greater compensation than it charged said Standard Oil Company.

3. Defendant says that all the rates for shipments for complainant made so as aforesaid from Cincinnati and from Louisville, respectively, to aforesaid respective towns, were made for shipment in barrel packages and car load shipments, and all of the rates for shipments for the Standard Oil Company so as aforesaid from Cincinnati and from Louisville, respectively, to said respective towns, were made for shipments in tank cars, cost of transportation of the shipment and risk of which is much less than the cost of transportation or shipment and the risk of the like quantity of oil in barrels; that the rate paid or to be paid as aforesaid by complainant for such shipments is the same rate per 100 lbs. neither greater nor less than was and is by defendant charged to and paid by the Standard Oil Company for shipments of oil in barrel packages and car load shipments, at the same time and from and to the same points that said shipments for complainant were made; and defendant also states

that at the same rates charged the Standard Oil Company for the shipments of its oil so as aforesaid in tank cars, from Cincinnati and from Louisville, respectively, to said several respective towns, complainant could have shipped, as he well knew, his oil in like kind of tank cars, at any time on or after the 9th day of May, 1887, and the same rates as aforesaid were offered him and published in defendant's schedules of rates furnished the honorable Interstate Commission.

4. Defendant admits that in its shipment of oil in barrels for complainant it has charged or intended to charge him for the actual weight of such oils, and has also charged or intended to charge in its shipments of oil in barrels for the Standard Oil Company for the actual weight of such oils; and it denied that it has in any shipment of oil in barrels made any difference in this respect between oil shipped for complainant and oil shipped for the Standard Oil Company.

Defendant says that as to the shipment of oil in tanks for the Standard Oil Company and everybody else, the same is not and never has been weighed, but the quantity contained in the tanks is estimated at a certain number of pounds; and it may be true that in some shipments for the Standard Oil Company that estimates were below the actual weight, but the same quantity of oil could have been shipped in the same manner at the same price by complainant.

5. Defendant denies that about May 1, 1887, it transported or contracted to transport, a car load containing sixty-six barrels of oil, and weighing 24,750 lbs., or any other weight, from Louisville, Kentucky, to Huntsville, Alabama, for the Standard Oil Company for \$68.07 or 27½ cents per 100 lbs., at least no record of such shipment can be found on defendant's books.

V. For answer to the third charge made in complainant's bill and the specification thereunder, defendant:

1. denies that in its rates charged by it for services rendered or to be rendered by it for the transportation of said oils for complainant and the said Standard Oil Company, from Cincinnati, Ohio, to points, or any point, reached by defendant's line of railroads in States other than Ohio and Kentucky it has since April 5, 1887, uniformly, or at all, made or given undue or unreasonable preferences or advantages to said Standard Oil Company, or to certain, or any, localities on its lines of railroad; nor has it subjected complainant or certain or any localities on its lines of railroad; to undue or unreasonable prejudices or disadvantages.

2. Defendant says in reference to the difference in rates to complainant and the Standard Oil Company, respectively, appearing in specifications No. 1 and No. 2, under the second charge in complainant's bill of complaint, it denies that said differences are not measured, but avers that they are, by the differences in circumstances surrounding these shipments respectively; and defendant denies that the difference to it in the cost, and expense and convenience of transportation of such oils for complainant and the Standard Oil Company, respectively, or that the difference between the circumstances under which complainant and said company respectively ship their oils

INTER 8.

do not; but it avers that they do justify the difference in rates made to said parties respectively; and it denies that they are either small or insignificant in comparison with the differences in the rates so charged; and defendant says that said rates so made for the shipment of the oils for the Standard Oil Company were made for shipment of oil to be made in large and regular shipments in iron tank cars, which tank cars were to be furnished and the cars kept in repair by said Standard Oil Company, free of expense to defendant, which oil was never on defendant's premises and there at its risk and by which cars defendant was furnished with return loads; while the rates thus made to complainant were made in reference to the shipment of oil in barrel packages in small quantities and irregular shipments, to be received and loaded by defendant at its expense, and held at its risk while on its premises, and the cars used for barrel shipments were thus greatly injured and rendered of less value to defendant for general purposes, and were returned usually empty, so that, as this defendant believes and charges, the circumstances and conditions under which the shipments of oil for the Standard Oil Company were made were so dissimilar from the circumstances and conditions under which the oil for complainant was shipped as to justify and authorize the difference in rates to said Standard Oil Company and to complainant, made so as aforesaid.

8. Defendant says it is not true and it denies that it owns or ever did own any tank cars, or that it ever furnished to said Standard Oil Company such cars, or that it refuses or ever refused to furnish such cars, to complainant, or that he ever applied for such; but defendant says if complainant had applied for such cars he would have been refused, for the reason that defendant did not and does not own or have such cars.

4. Defendant admits that it has, since April 5, 1887, in its freight rates, charged a higher rate per 100 lbs. for transportation of oil in barrels than for oil in tanks, except when the competition with water lines and railroads, or competition between markets or products has forced a reduction in rates on oil in barrels to the same, or nearly the same rates charged upon oil in tank cars; but it is not true and defendant denies that the difference between the cost, expenses and convenience of transportation of oil by the two methods has been out of proportion to the difference between the rates by the two methods, and denies that said difference in expenses, cost and convenience is slight or insignificant; but on the contrary defendant avers that they were so great as to justify, as it believes, the difference in rates charged.

5. Defendant admits that complainant ships in barrels all the oils he ships over this defendant's lines of railroad, but it is not true and it is denied that the Standard Oil Company, ships in tank cars almost all the oil which it ships over defendant's lines of railroad. Defendant says that said Standard Oil Company, since April 5, 1887, has shipped over its lines of railroad, in barrel packages, car load shipments, a much greater quantity of oil than complainant has, and at the same prices from and to the same points, and it has shipped over

its lines of railroad during that period about twice as much oil in barrels as it has shipped in tank cars.

6. Defendant admits that the rate of transportation of oil from Louisville to the following destinations are the same, whether the oil is carried in barrel packages or in tank cars, to wit: Mobile, Alabama; Meridian, Mississippi; Jackson, Tennessee; New Orleans, Louisiana; Jackson, Mississippi; Vicksburg, Mississippi; and that the rates are the same for shipments from Cincinnati to Nashville, Tennessee, and Mobile, Alabama; and such is true not as a matter of choice of this defendant, but because the competition with water lines, directly and indirectly at said points, or competition with railroad lines or between markets or products reduced the rates for shipment of oil in barrels to these points, to the regular rates for shipment of oil in tank cars.

7. Defendant admits that since April 5, 1887, it has charged for the transportation of oils from Cincinnati and from Louisville to Birmingham, Alabama; Montgomery, Alabama; Calera, Alabama; Selma, Alabama, the same freight rate in all cases to each of said points and that the distance from Cincinnati and Louisville by its road is to Calera thirty-three miles greater than to Birmingham, and to Montgomery is sixty-three miles greater than to Calera, and that oils transported over its lines of road from Cincinnati or Louisville, to Montgomery are carried through Birmingham and Calera, but not through Selma, nor is Selma on defendant's lines of railroad; but said rates were not made nor are they controlled by this defendant; the same are fixed and regulated by the competition with water and railroad lines over which defendant had and has no control, and are in and of themselves fair, just and reasonable.

VI. For answer to the fourth charge made in complainant's bill and the specifications thereunder, defendant:

1. Denies that it has since April 5, 1887, charged or received for the transportation by it of such oils from Cincinnati or from Louisville, to points reached by its lines of railroad, in States other than Ohio and Kentucky, a greater compensation in the aggregate for a shorter than a longer distance on the same line in the same direction, where the shorter was included within the longer distance, and whose transportation being under substantially the same or similar circumstances and conditions.

2. Defendant admits that the charges made by it for shipments of oil from Cincinnati and from Louisville to the various points set out in complainant's bill under this charge, and the distance to each of said points from Cincinnati and Louisville, respectively, is as given by complainant in its first and second specifications under the fourth charge in his bill, with the exception that the rate from Cincinnati to New Orleans should be thirty-four cents per 100 lbs. and to Mobile the same; and the distance from Louisville to Mobile is 670 miles, and the rates should be from Louisville to New Orleans, thirty cents per 100 lbs., to Birmingham, 45 7-10 and to Mobile, thirty cents; but defendant says that said respective shipments to said several points were made under the very dissimilar circumstances and condi-

tions as aforesaid, justifying and authorizing, as it believes, the different rates charged to the different places as aforesaid.

8. Defendant denies that any of the alleged discriminations against complainant, or the alleged unreasonably high and unjust charges against him, set out in his bill of complaint, have had any effect, or were designed to effect or to give to said Standard Oil Company a monopoly of the traffic in such oils, at the points, or at any points, reached by its lines of railroad, or to exclude complainant's products from nearly all, or any, of aforesaid points; and it denies that such alleged discriminations or charges, or both, have been made by defendant at the dictation of the Standard Oil Company; and it denies that by reason of such alleged discriminations or such alleged unjust and unreasonably high charges, or both, complainant has been injured in his business, or that thereby he has lost profits that he would otherwise have realized.

Whether complainant in all other respects than for said transportation during all or any of the time since April 5, 1887, has had ample facilities, or what facilities it has had for the transaction of a large or a profitable business in the sale of said oils in said markets, or that but for said alleged unjust and unreasonable charges, and alleged unjust discriminations, complainant would have prosecuted such with profit to himself, defendant does not know and cannot state from his belief or otherwise.

And this defendant denies that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and which is not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable Commission shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Baxter & Barnett, Noble & Barnett,
Solicitors.

PROCEDURE BEFORE THE COMMISSION.

LETTER of Chairman Cooley, in response to a communication expressing the desire that the Commission would come to Minnesota and there hear testimony in the case of the Boards of Trade Union against the Chicago, Milwaukee & St. Paul R. R. Co., now pending at issue, and such other cases as may have arisen in that State.

Interstate Commerce Commission,
Washington.

Ann Arbor, Aug. 16, 1887.

Dear Sir:

Your letter of the 4th inst. to the Secretary of the Interstate Commerce Commission is before me. You are doubtless right in your opinion that it would be desirable to hear the case of *The Boards of Trade Union against The Chicago, Milwaukee & St. Paul R. Co.* in the

territory where it arises. And I can see that there must be a great deal of testimony in the case. But I desire at this early day to impress upon counsel this fact: that if we are to be able to hear *at all* the cases brought before us, we must have the co-operation of counsel in saving time. We have cases now assigned for hearing which if heard on testimony taken in the ordinary way might well occupy us for six months, and these to be followed by numerous others already crowding along. In nearly every case, however, the major portion of the facts are not in dispute at all, and as to all such facts we are compelled to insist that counsel shall stipulate them in advance. We have more difficulty with this matter than with any other, counsel holding themselves aloof from each other, not trying to agree or not half trying, and then coming forward expecting to take time indefinitely in making proof of facts which are really not contested. If we had an indefinite amount of time at our disposal, they might be indulged; but as the case actually is, unnecessary indulgence to some is equivalent to denial of right to others awaiting a hearing.

In the *Boards of Trade Union Case*, the facts must be largely matters of public notoriety, and it would be altogether wrong to calculate upon taking up time to prove them by oral evidence. An agreement upon them should be all ready before we take up the case. Of course it would not be expected parties should agree upon the consequences flowing from the facts, but even as to these it is not generally necessary to go into proof as in a suit at law, for the Commission will apply its own judgment where all that is requisite in an application of ordinary common sense, and will not require or expect that evidence be adduced to show that usual results have followed.

With this letter before you I suggest that if you have charge of the case for the complainant you proceed as speedily as possible to put the facts as you understand them, and so far as you think they are indisputable, in writing, and make with the counsel for the railroad company a diligent effort to bring within the smallest possible compass the necessity for oral evidence. You can show this letter to him, and you can both understand that the Commission insists that this matter be entered upon in a spirit of mutual accommodation, as a necessity of the public service. Hitherto we have found counsel ready to act in this spirit in most cases, and in the exceptional cases nothing has been gained for any body but annoyance.

Very Respectfully Yours,
T. M. Cooley.

NEW YORK, PHILADELPHIA & NORFOLK R. R. CO.

ATLANTIC COAST LINE *et al.*

PETITION based upon allegations of violations of section 8 of the Interstate Commerce Act.

Norfolk, Va. August 10, 1887.

To the Honorable, the Interstate Commerce Commission:

The petition of the New York, Philadelphia & Norfolk Railroad Company, by R. B. Cooke, its General Passenger and Freight Agent, which road extends from Delmar, in the State of Delaware, to Cape Charles, in the State of Virginia, thence by ferry service to Norfolk and Portsmouth, in the said State of Virginia, and by traffic arrangements with the Pennsylvania Railroad Line north of Delmar to the principal cities in the East and West, respectfully represents and complains that the "Atlantic Coast Line" comprised of the Seaboard & Roanoke Railroad, Wilmington & Weldon Railroad, Wilmington, Columbia & Augusta Railroad, etc., and the "Seaboard Air Line" made up of the Seaboard & Roanoke Railroad, Raleigh & Gaston Railroad, Raleigh & Augusta Air Line Railroad, and Carolina Central Railroad, in their intercourse with the New York, Philadelphia & Norfolk Railroad Company, are violating section 3 of the Interstate Commerce Act, which reads as follows:

"That it shall be unlawful for any common carrier, subject to the provisions of this Act, to make or to give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage, in any respect whatsoever.

"Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

Your petitioner avers that the New York, Philadelphia & Norfolk Railroad Company is carrying out in good faith all of the provisions of the Law referred to, and is affording all reasonable, proper and equal facilities for the interchange of traffic between its line and those of the "Atlantic Coast Line" and the "Seaboard Air Line," and is ready to receive and forward freight and passengers to and from the lines of the "Atlantic Coast Line" and the "Seaboard Air Line" without discriminating in rates and charges between said lines. The New York, Philadelphia & Norfolk Railroad Company being ready and willing to accept traffic to given points and ship it direct and protect advance charges as usual between railroad companies, accepting the same pro rate as the present connections and lines via which the traffic to and from the "Atlantic Coast Line" and the "Seaboard Air Line" is transported, which will fully appear from a copy of a telegram from F. W. Clark, General Freight Agent of the "Seaboard Air Line" and reply of your petitioner and also from rate orders issued by the "Seaboard Air Line" for traffic originating on its lines, and destined for points off and on the line of your petitioner, which traffic said lines cannot do to advantage or profitably by their water line connections, which copy and order are hereto attached, marked exhibit "A."

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the point that the Company is not liable to the provisions of the said sixth section.

Respectfully Yours,
The Southern Express Company,
G. H. Tilley, Secretary."

The Southern Express Company now has the honor to submit for your consideration the following argument why it has not complied, and why it is not legally bound to comply with the provisions of the said sixth section of the Act of Congress, approved February 4, 1887, entitled An Act to Regulate Commerce:

The Southern Express Company is a corporation, duly established and existing under the laws of the State of Georgia. By the terms of its original charter it was created:

"For the purpose of carrying on the business of express forwarding from, between and to any places, all manner of parcels, goods, specie, bullion and other articles, and property animate and inanimate (except such as may be prohibited by law) and bills, notes and securities, and for the collection thereof, and of all claims and demands, and the remittance of the proceeds thereof by anticipation or otherwise, and all business similar in kind or incidental to that above described or indicated, and for conducting the business of telegraphing by means of their own telegraph lines, or those of other parties leased or otherwise possessed and occupied by them for that purpose, and for the transaction of custom house brokerage."

The charter of the Company was recently amended by an Act of the Legislature of the State of Georgia, approved December 21, 1886, the sixth section of which is as follows:

"That all the rights, privileges and franchises now possessed and enjoyed by said corporation be and the same are hereby continued of force for the said term of thirty years."

And the second section is as follows:

"That this corporation is created for the purpose and object of enabling the aforesaid incorporators, their associates and successors by the aforesaid corporate name, to engage in and carry on in the State of Georgia, and in any and all of the States and Territories of the United States and in foreign countries, where permitted, the business of carrying, and transporting and forwarding by railroads, steamboats, ships, canals, stages and other means of transportation, of goods, wares, merchandise, money, bills, notes, bullion, packages, parcels and movable valuables of any description, for delivery, collection, exchange or otherwise, over and upon such lines and routes as they may from time to time establish, and between the geographical points, places or stations at which they may from time to time establish and continue agencies; and the said Corporation is hereby invested with the powers necessary and proper for said purpose, as well as the powers incident to and appropriate to express carriers."

The Southern Express Company, as a corporation, with the powers and franchises conferred by its charter, has been doing business since 1861, and using wagons, railroads, steamboats, steamships and other vehicles of conveyance. It has always owned its own horses and wagons, but has depended to a very great extent upon railroads, steamships and steamboats owned, managed or controlled by others. It has used its own horses, wagons and

agents for receiving, collecting and delivering its traffic, and has used other companies for its transportation from points and places on their respective lines. The use of these lines has always been the subject matter of special contracts, and these contracts have been and are now different in their terms and conditions; and many of them are subject to change or complete abrogation at the will of the railroad companies. The rates and charges therefore, of this Company, are made up of an estimated reasonable allowance for the use of its own property and for the use of other lines; but the latter estimate is dependent entirely upon the terms and conditions of the special contracts respectively.

It often happens that in the forwarding and handling of this Company's business, its messengers and the property intrusted to them, will pass over several different railroads, each with a separate and distinct management, ownership and control. And it also happens that each will have a different kind of a contract with this Company for express business. One railroad company may have a contract for car space, another a contract for tonnage, and a third a contract for a percentage of the revenue from the business.

In reference to these contracts, *Mr. Chief Justice Waite*, delivering the opinion of the Supreme Court of the United States, in the case of *Express Cases*, reported in 117 U. S. 23 (Bk. 29, L. ed. 801), said: "The reason is obvious why special contracts in reference to this business are necessary. The transportation required is of a kind which must, if possible, be had for the most part on passenger trains. It requires not only speed but reasonable certainty as to the quantity that will be carried at any one time. As the things carried are to be kept in the personal custody of the messenger or other employee of the express company, it is important that a certain amount of car space should be specially set apart for the business, and that this should as far as practicable be put in the exclusive possession of the expressman in charge. As the business to be done is 'express' it implies access to the train for loading at the latest, and for unloading at the earliest, convenient moment. All this is entirely inconsistent with the idea of an express business on passenger trains free to all express carriers."

"Railroad companies are by law carriers of both persons and property. Passenger trains have from the beginning been provided for the transportation primarily of passengers and their baggage. This must be done with reasonable promptness and reasonable comfort to the passengers. The express business on passenger trains is in a degree subordinate to the passenger business; and it is consequently the duty of a railroad company in arranging for the express to see that there is as little interference as possible with the wants of the passengers."

"This implies a special understanding and agreement as to the amount of car space that will be afforded, and the conditions on which it is to be occupied, the particular trains that can be used, the places at which they shall stop, the price to be paid, and all the varying details of a business which is to be adjusted

large type of at least the size of ordinary picas; and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected."

The language here is very plain; the schedules to be printed and kept for public inspection are those which any common carrier subject to the provisions of the Act has "established and which are in force at the time upon its railroad, as defined by the first section," to wit:

Sec. 1, par. 2. "The term 'railroad' as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease."

The schedule referred to is one which is made by a railroad company or a continuous line composed of several railroads owned or operated as a solid line.

It is a schedule which is entirely under the control of the management. It must plainly state the places upon the railroad under that management and contain the classification of freight in force upon the same, and copies for the use of the public must be kept in every depot or station upon the said railroad.

This Company does not own or operate any one of the railroads over which it does business. It has no control over their schedules or the classification of their freights, and has no offices or agents at many of their depots or stations. This Company is an employer of the railroads. By the rulings of the supreme court it has been excepted from the general class of the public and is permitted to make special contracts with the railroads for the transaction of its business.

The sixth section no more requires of this Company a publication of schedules of rates, fares and charges, and the classification of freight in force upon the railroads than it does of any other customer.

The only other portion of section 6 which it is deemed proper to quote, refers to joint tariffs, and it may be denominated as paragraph 6.

Sec. 6, par. 5. "And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs or rates, or fares, or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published; but no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier, party thereto, to observe and adhere to the rates, fares or charges thus made and published."

INTER S.

This part of the Act clearly refers to railroads as defined in section 1, par. 2 of the Act already cited. It refers to lines where the tracks unite; but the management, ownership or control is separate. These continuous lines of rail, although they may be separate in operation, may make joint tariffs; and if they do, then the tariffs must be submitted to the Commission. It should be particularly noted "that no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares or charges thus made and published."

How would it be practicable for this Company to make a joint tariff between any two such railroads over which it may do its business? With one line it may have a percentage contract and with the connecting line a tonnage or a space agreement.

With one line its special contract may be in writing for a term of years, and with the other it may be verbal and liable to termination on a moment's notice.

This Company, besides, often carries traffic over several lines which do not do business with each other and do not establish between themselves joint tariffs.

And what would be the condition of the Company if it were forced to make joint tariffs over any such lines as had established them for their own operation, and one of the lines observed the tariffs and the other did not? The statute makes provisions for the protection of the innocent railroad line in such a case; but no provision is made for the protection of the express company doing business with both.

In conclusion, it is respectfully submitted that section 6 of the Act refers entirely to the rates, fares and charges of and on railroads as defined by the first section of the Act, and that this Company is not subject to its provisions.

W. S. Chisholm.

General Counsel Southern Express Company.

Re EXPRESS COMPANIES.

IN THE MATTER OF THE NATIONAL EXPRESS COMPANY.

ANSWER of the National Express Company to the demand of the Interstate Commerce Commissioners, that said Company comply with the provisions of section 6 of the Law known as the Interstate Commerce Act:

First. The "express business," transacted by the National Express Company, was not within the intent of the "Interstate Commerce Act."

The Act of Congress known as the "Interstate Commerce Act" is the first exercise of the power of legislation under subdivision 3, § 8, art. 1, of the Federal Constitution. That this Act of legislation was intended to be special, and confined to a limited field of such commerce, appears from the Act itself.

The Act in question had its inception in a resolution adopted by the Senate of the United States on the 17th day of March, 1885, as follows:

"Resolved, That a select committee of five Senators be appointed to investigate and report upon the subject of the regulation of the trans-

portation by railroad, and water routes in connection or in competition with said railroads, of freights and passengers between the several States, with authority to sit during the recess of Congress, and with power to summon witnesses and to do whatever is necessary for a full examination of the subject, and report to the Senate on or before the second Monday of December next."

In the resolution the methods of transportation to be investigated are clearly stated as those by railroad and water routes in connection or in competition with said railroads, and all other methods are necessarily excluded. The subjects of transportation are also equally clearly stated as "freights and passengers" between the several States. At that time and from the commencement of railroad transportation until now, there have at all times been four separate and distinct kinds of traffic over all the railroads and water routes of the United States, each equally well known to the whole public, and each by itself technically, individually and specifically recognized as a specialty by the public, and by numerous Acts of legislation as passenger, freight, express and mail traffic. No words in the English language are better defined than these; and the mere mention of either of them in legislative enactments has been deemed sufficient for public comprehension and judicial recognition.

Under this resolution the committee caused to be prepared, and addressed in immense numbers to all parties supposed by them to be interested in the scope of the investigation, a series of questions, so as to direct attention to the salient points under inquiry, a copy of which will be found at pages 2 and 3 of the report of the committee. Testimony (report 46, part 2), submitted to the Senate January 18, 1886, such report containing over 1,400 octavo pages of printed testimony. The foregoing report of testimony accompanied the report proper of the committee. Report (46, part 1), submitted at the same time, and containing nearly 350 printed octavo pages.

It does not appear from the reports of the committee that a single series of such questions was sent to an officer of any express company, or that the thought was entertained by the committee, that the business of such companies was within the scope of its inquiry. Hundreds of railroad men and shippers of freight were examined as to every possible subject of investigation respecting the organization, capitalization, and construction of railroads; concerning passenger and freight trains; concerning the connection and competition of railroad and water routes, and of railroads with each other; concerning every department of such competition in grain, cattle, manufactures, merchandise, minerals, etc.; concerning discriminations in rates, pools, long and short haul, rebates, commissions, the car load unit, etc., etc., but in the whole range of inquiry, and in the whole mass of testimony, not a complaint is made respecting the express traffic, not an inquiry is predicated upon it, and the attention of no witness is directed to it. In the whole report of the committee, both parts 1 and 2, the very name is not mentioned, but the undivided attention of complainants, committee and witnesses, for a period of many

months, and at sittings held at many different commercial centers, embracing the principal offices of all the Express Companies, was entirely confined to what was technically and legally known as the freight and passenger business of the railroads and water routes as conducted by railroad and water route companies.

See specially the report of the committee, part 1, pp. 2 and 3, under heads "Plan of Work Adopted," and "Importance of the Question," and a further cursory glance over the first sixteen pages of the report will show that railroads, as the method, and the passenger and freight transportation by railroads, as the subject matter of inquiry, were the sole matters intended to be embraced in their report, as they finally became the sole subjects of the Law under consideration. Of the hundreds of parties called before the committee, or from whom information was sought by the committee, all are of two classes: either 1, persons connected with and representing the railroad companies, and directing and controlling the transportation of the roads, in other words the railroad companies themselves, subsequently in the Interstate Commerce Act, designated as "Common Carriers by Railroad;" or 2, shippers by railroad of freights as generally and technically understood in railroad business.

The relation of the National Express Company being to the railroad company simply that of a forwarder as to the property in its charge, and of a passenger as to the messenger having such property personally in charge, and it having no interest as a shipper in the question of transportation of freight, and no relation to the railroad as a common carrier by it, it stood entirely outside the investigation, and neither advice nor information as to its organization or business was sought by the committee nor volunteered by it.

The debates in Congress during the pendency of the bill presented by the committee through the various stages of its progress, to its final passage, are entirely confined to the matters embraced in the report of the committee.

Nothing can be clearer, therefore, than that there were in contemplation of the Interstate Commerce Act these three things, and these only: 1, transportation of passengers and railroad freights, as a subject matter; 2, transportation by railroad, as a method; 3, transportation of such passengers and railroad freights by a railroad company, as the "common carrier by railroad" upon which, as a person, the Act was to become operative.

Second. The "express business" transacted by the National Express Company is not, in fact, embraced within the provisions of the "Interstate Commerce Act."

The Law, while covering the same subjects of transportation only as the original resolution, to wit: passenger and freight traffic, is a limitation of the original resolution, inasmuch as the methods are confined in the Law to railroads, or partly railroad and partly water, when both are used under a common control, etc.; and exclusively water lines and all other methods of transportation are excluded from the operation of the Law, and the word *prop-*

erty is occasionally used interchangeably with the word *freight*, which latter word was used in the original resolution, and exclusively throughout the whole course of the investigation of the committee. In other words, water lines, bridges and ferries connected with railroads, are considered by the Law as embraced in them, and the term "railroad" is made to cover the whole method of transportation embraced in the Law.

As the term "railroad," as defined by the Law, is made to cover the whole method of transportation affected by it, so but one class of common carrier, is embraced in the entire Law, and that a common carrier to which every provision of the Law applies. There is nowhere any discrimination that certain provisions shall apply to one class and others to another, but in every section of the Act is treated as an entirety.

Section 2 reads "That if any common carrier subject to the provisions of this Act."

Sec. 3. "That it shall be unlawful for any common carrier subject to the provisions of this Act."

Sec. 4. Same as section 3.

Sec. 5. Same as section 3.

Sec. 6. "That every common carrier subject to the provisions of this Act."

Sec. 7. "That it shall be unlawful for any common carrier subject to the provisions of this Act."

Sec. 8. "That in case any common carrier subject to the provisions of this Act."

Sec. 9. "That any person or persons claiming to be damaged by any common carrier, subject to the provisions of this Act."

Sec. 10. Same as section 6.

These are all the sections of the Act which are at all declaratory, or mandatory, or prohibitive, except possibly section 16, which also begins: "That whenever any common carrier, as defined in and subject to the provisions of this Act, shall violate or refuse or neglect to obey," etc., and they all relate to the same one class of common carrier subject to the Act as an entirety.

Now section 1 defines exactly what this common carrier is, and is as follows:

"The provisions of this Act (that is, all of its provisions) shall apply to any common carrier or carriers engaged in the transportation of persons or property wholly by railroad or partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or shipment," etc.

Were there any doubt that the words "control, management or arrangement" refer to the railroad and water lines themselves as a method of transportation, it is entirely set at rest by the definition of the word "railroad," as used in the last paragraph but one of the section, as follows: The term "railroad," as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease.

As thus defined, the section reads: "The provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of persons or property, * * * by

railroad, * * * in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease."

This definition is neither an enlargement nor restriction, nor even a definition of the term "railroad" as used in the opening paragraph of this section, so far as the method of transportation "by railroad" is concerned. It is, however, as all the subsequent sections of the Act show it to be, a complete definition of the terms "common carrier by railroad." That common carrier is to be a common carrier "by a railroad in use by a corporation operating a railroad." The preposition "by" in this connection, is not synonymous with "on," or "over," but with "through the control of." The railroad company making use of the road of another as a mere shipper, to continue or complete its transportation, or even making use of it under an arrangement for a continuous carriage with agreed division of charges, would not become liable under the Act for any act of omission or commission on a railroad, over which it hired or arranged for transportation, although as between itself and the forwarder by it, the relation of common carrier would continue from point of receipt to point of destination of property. It is not the making use of a railroad, but the having it in use, that creates the liability. To such "common carrier" owning or operating a railroad all of the sections of the Law are applicable, and to no other. Nor can they be made applicable as an entirety to any other.

The National Express Company is not a corporation. It is a simple partnership with unlimited liability of each of its members for all of its obligations; with no rights to a common seal; existing purely under the rights recognized by the common law and without statutory authority, and having no rights under statute law different from those possessed by all partnerships, except such as are given by the laws of the State of New York from considerations of public policy alike to all partnerships having seven or more members. It neither owns nor operates any railroad. As between itself and any railroad doing business with it, it is a mere shipper like the general public, and the railroad company is the common carrier. As between it and its patrons the Law justly imposes upon it the liabilities of a common carrier; but in no sense in which passengers and freight are considered in the Interstate Commerce Law, it is neither a common carrier of passengers nor freight. While it carries no passengers as such, its business is wholly done (when done at all upon a railroad) upon passenger trains, and while transporting freight in a limited sense, as a portion of its business by whatever instrumentalities it can command which will furnish the greatest dispatch, it does no business by freight trains.

The business of this Company, as defined in its articles of association ready to be produced as the Commission may require, embraced the various objects, affairs, business and undertakings of a general express business, including the purchasing, receiving, selling, insuring and forwarding on commission and for hire and otherwise of money, bullion, gold and silver coin, bank bills, drafts, bills of exchange or other property, things or freight not by law

prohibited, and such other express forwarding, commission, exchange, money and agency business as is usually done by express companies, or brokers or commission merchants.

It will be seen that a large proportion of its business is neither passenger business nor property in the sense of "freight," nor business capable of being regulated by rules simply adapted to the question of transportation; and an attempt to regulate its business by rules or regulations common with railroads, or to have a system of accounts uniform with them would be as incongruous as would be the attempt to bring the business of the postoffice into such uniformity.

If the National Express Company is embraced within this Law as a "common carrier subject to the provisions of this Act," there is not an injunction with which it can comply, to which it is not already held by the common law; not a prohibition that can be made applicable to it, that does not exist at common law. There is not a reason for enacting any of these requirements or prohibitions into statute law, that does not exist as to all persons, partnerships, companies, or corporations rendering service of any kind for hire; and there is not a new obligation or prohibition created as to it in common with railroads with which it can comply. Take for instance the last paragraph of section 8 which is perfectly intelligible when applied to a common carrier owning or operating a railroad, as follows:

"Every common carrier subject to the provisions of this Act, shall according to their respective powers afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding and delivery of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

Can anything be any more incongruous than this, as applied to the National Express Company, unless it be section 5, as follows:

Sec. 5. "That it shall be unlawful for any common carrier subject to the provisions of this Act, to enter into any contract, agreement or combination with any common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof," etc.

Considering the Act therefore simply as a civil statute to regulate the transportation of passengers and freights by railroad, no sensible interpretation can be given to it by which the one common carrier, common to every section of the Act, can be other than the common carrier directing the business of the railroad proper, in other words the railroad organization operating the railroad; and we are driven irresistibly to the conclusion that there are only three things embraced within it, viz.:

1, transportation of passengers and railroad freights as a subject matter; 2, transportation by railroad as a method; 3, transportation of

such passengers and railroad freights by a railroad company as the "common carrier by railroad" upon which, as a person, the Act is, in fact, operative.

Third. By section 10 of the Act, a violation of any provision of it, whether of commission or omission is declared a misdemeanor, punishable by fine, which may be \$5,000 for each offense. The Act therefore is to be construed as a penal statute strictly and literally, and nothing can be assumed nor taken by way of intendment. The principle of the construction of penal statutes is too well defined to need the quotation of authorities.

1. The Act can therefore only apply to corporations (see section 1) and the National Express Company is not a corporation.

2. The Act can only apply to a party operating a railroad. See section 1.

To operate is in the language of Webster's Dictionary, "to put into or to continue in operation or activity; to work, as to operate a machine."

Who is it that has put into activity and that continues in operation and works and operates as a machine the New York Central & Hudson River Railroad?

Is it not the corporation of the New York Central & Hudson River Railroad Company, which has built the road bed and its bridges, and owns its connecting ferries, and its locomotives and all of its rolling stock, and hires all engineers and conductors and other employees and which by its own sole expenditures continues it in operation, and works and operates it as a machine, and from which as a common carrier the National Express Company hires transportation in the same manner as any other private forwarder of property?

It is too absurd for argument that anybody other than the corporation of the New York Central & Hudson River Railroad Company operates its railroad, or can by any possibility comply with the requirements of the Interstate Commerce Law applicable to the transportation of passengers and freight by such road; or that under the provisions of that Law construed as a penal statute, any other party can be construed to be the "common carrier by railroad" as to such road.

3. If the National Express Company is a common carrier within the provisions of this Act, then by penal statute it is required as now demanded by the Interstate Commerce Commission "to print and keep for public inspection schedules showing the rates, and fares and charges for the transportation of passengers and property which it has established, and which are in force at the time upon its railroad as defined by the first section of this Act."

By the rules of the construction of penal statutes the party liable at all under this provision must be liable in every particular. No party but the railroad company operating the railroad can be so liable. It is not too much to say of the National Express Company by the strict construction applicable to a penal statute that it is liable in no particular of this provision.

But if it shall be held that this paragraph although evidently intended to apply to a rail-

road company, and using language embracing the passenger and freight business of a railroad, solely applicable to such company, can by legal intentment be held to embrace an independent express company which is a mere forwarder over such road (and whose business is neither passenger nor freight) and to require a compliance also with this section by such express company; let us hold such claim up to the light of the next paragraph of section 6, as follows:

"The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad, between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad; and shall also state separately the terminal charges, and any rules or regulations which in any wise change, affect or determine any part of the aggregate of such aforesaid rates, and fares and charges." Every particular of this paragraph is precisely and technically applicable to a railroad company.

The whole section, including these two paragraphs, is to be construed as one; and all the requirements therein contained must by the principles of law governing penal statutes be complied with in every particular by every party liable at all under it. If the express company is liable at all, it is to comply with all the requirements which a strict construction requires of the railroad company in addition to any which may be attributed to it by any liberality of construction. Whatever schedule is required upon any railroad must be the same schedule by whomsoever furnished, as every common carrier, subject to the provisions of the Act, is to furnish the same. If the railroad company doing business by any road and the express company upon it are each to furnish schedules, they must, necessarily, be duplicated in every particular and under the same provision of the Law.

It is impossible to see how any one of these requirements can be complied with, in the letter of the Law, by the National Express Company or by any other shipper over the lines of a railroad. It can only be done by that common carrier which the railroad itself represents. Every part of the section is clear, direct, and technical, as applied to a railroad company doing business as a common carrier by its railroad and is exhausted by such application, and no liberality of construction (were liberality allowed in the construction of a penal statute) could be broad enough to embrace any common carrier disconnected from the operating of the railroad itself.

4. But the National Express Company transacts business over many lines of railroad operated by separate railroad companies and its charge is but a single charge, including collecting, transportation, expense of accompanying messenger, delivering, and all the incidental charges attending such service from any point upon all these continuous lines to any other point. How are the requirements of section 6 to be applied in common to these separate railroad companies and to the express company?

5. The same objections heretofore made to the application to the National Express Company, of the first two paragraphs of section 6,

tion 6 apply to all the other provisions of that section and also to sections 7, 8 and 9 and in fact to all provisions of the Act where the National Express Company can by any implication be held liable in common with any railroad company over whose road its business is conducted, for any act of omission or commission applicable to such railroad.

6. Any attempt therefore to make section 6 of the Act applicable to the National Express Company, must be through a construction by the Commission by which they shall seek to require from the Express Company so far as in their judgment the nature of its business will permit a schedule conforming as nearly as practicable in principle to that required by the section from the railroad company, but such breadth of construction would be practical legislation, even as applied to a civil statute and certainly will not be entertained in the application of a penal statute. The National Express Company must comply with the provisions of the section and with each and all of them under a strict construction or not at all.

Fourth. The preparation of a tariff or schedule (such as contemplated by section 6 in its application to railroad companies), defining the charges for railroad transportation as between the National Express Company and its customers, as to whom alone the Express Company has any relation as common carrier, is an impossibility. Transportation on railroads or otherwise is but an incident in the business of the National Express Company. The payment to the railroad company is in gross for the entire business of the Express Company over its road, and is easy of calculation as between them, but it is impossible of distribution to the individual customers of the Express Company throughout the diversified business, as to some of which the charge for service is principally on account of transportation, on others principally on account of value, on others principally for commission, on others charges for collection, etc. In fact the National Express Company has nothing to do with the transportation of passengers nor freight. The messengers of the company bear about the same relation to the passenger business of the railroad, both as to number and classification as passengers, that the property carried by it does to the freight business as to volume and to its classification as freight. The messengers are not in the sense of the Law passengers, nor the packages, valuables, collections, and the various matters of brokerage and commission in their charge, freight.

If Henry Wells traveling from Albany to Detroit in the inception of the express business, with a valise in his personal care, containing the entire express business of his day between these localities, was a common carrier of passengers and freight by railroad or by steamboat, or by stage, whatever conveyance he may have availed himself of, then it may be claimed that the express company which is the outgrowth from him is in the same sense such common carrier. The business in its nature and essence remains unchanged. The same elements enter into the charge for service now as then. It is the personal care, the despatch necessary in matters of banking and business generally, the valuable

letter of inquiry, ver, that the real y be stated thus: clude those doing ves common car- having the attri- rers of those car- n, exclusively, the

the belief of those er in a negative or incapable of such ssion, as appears y, deems the mat- deserving serious

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bitory and penal. ictness and rigor id disabling enact- d this rule of con- much latitude per- s of other kinds. urpose, and also it can be ascer- in every case of

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ow in question, in- itself, was before of three years be- d underwent very ng shall be found consideration in- within the scope s an industry so distinct from or- withal so alien to d of railways and as the express busi- idication must be t merely negative, entertained.

es, and the express en established in and—the existence elations to the peo- : as extensive, and t Congress as mag- itoffice. The Gov- had for years been panies throughout he Adams Express and arrangements the nature of the

business, and also of its relationship to the lines of transportation with which it bargained.

Various Acts of Congress, some of them years ago, had recognized express companies and their peculiar species of service—"so distinct and marked in its character," in the words of *Mr. Justice Miller*.

Nearly a year before the Interstate Commerce Act was adopted, the radical distinction and antagonism between railroads and express companies came before the Supreme Court of the United States in a broad and searching inquiry. A number of cases were elaborately argued and decided; and in these cases, not collaterally, but directly, as the point in judgment, were involved provisions both of constitutions and of statutes wherein are found near equivalents, *mutatis mutandis*, of those now in question, in respect of the application to express companies and to the express business of language descriptive of railroad rates, freight, transportation, etc.

The court emphasized in various forms the wide distinction, in law and in fact, between railroad companies and companies or individuals doing express business; and also clearly distinguished between those carrying on express business and shippers or freighters in general.

These cases, and the judgments pronounced in them, attracted wide attention; and one leading member of the Senate had part in their argument in the supreme court, as he had at the circuit, and afterwards participated as senator in the discussions which preceded the enactment of the Interstate Commerce Act.

In the presence of these facts, if the Congress did not use apt or sufficient terms to embrace express companies—if, on the other hand, language was used which, read by the light of these then recent and conspicuous judicial discussions, would plainly fail to embrace express companies, it would seem hardly possible to ascribe to the law making power an intention to deal with them. Such a conclusion will be even more difficult, if substantial and effective provisions of the Act, and the scheme of the Act itself, are found incapable of certain, practical or intelligent adaption to those who have no ownership or control of any railroad or line of transportation, or of any boat or vehicle by which it is traversed, or of the time, speed, frequency or circumstance of the movement, of its management, or of the rates of fare or freights established for it.

The Adams Express Company is thus destitute of ownership, power and control; and it may also be safely said that no express company whatever, as such, owns or operates a railroad.

Looking at the statute without the aid of these considerations, or of any canon of construction, it is obvious that express companies are nowhere named, or in terms referred to. If they are included at all among those whom the Act visits, it must be because, and solely because, they belong to the class of carriers described and referred to in so many words in several sections.

Whether they do so belong depends wholly upon who they are, what they are, in fact and in law, and how they stand related to or di-

vorced from the instrumentalities, transactions and powers which the Act regulates.

In the *Express Cases* as reported (117 U. S. 1, Bk. 29, L. ed. 791), and still more fully in the records of those cases, appears the nature of the express business, and also the relations, legal and actual, which those who conduct it hold to railroads and to other common carriers, and also to the public. (It is proper to resort to these records, and it will be proper to lay them before the Commission, should there be occasion to do so, and to explain them orally if required.)

The Adams Express Company has no charter, franchise or right to take tolls, or to run or operate any railroad or transportation route. It is not the creature of the State, nor is it the recipient of any grant or other thing from the State. It is a mere firm of individuals. There are a few isolated instances elsewhere in the United States of incorporated express companies. If, however, any effect be deducible from this distinction, the company in hand must be treated by itself and as it is.

It owns no railroad, or line, or link of transportation. It has no more power over the fares, or freights or charges, or management of any line of freight or travel, than any other mercantile firm, or shipper or passenger.

It is not even a shipper or passenger in the legal sense, as the supreme court has decided.

It is a contractor with railroads, and steamboats and steamships in this country and in other countries, for the carriage of its messengers, and, in the custody of its messengers, of money, valuables and securities, and also of property usually of small bulk and incapable of enduring the handling and risks of freight. The packages thus treated are not received or transported by railroads on account of or in virtue of their obligations as common carriers. Railroads are free, as the supreme court has declared, to refuse the service; and when performed it is at the mere volition of the railroads, and under stipulations exempting them from all risks, and binding them to nothing beyond hospitality in their cars for the express messenger with his packages in his charge.

The haul or transportation of express parcels over the railroad or by the ship performing that service does not constitute the business, nor even the chief factor of the business of the express company.

This is only one of the elements of its service; and for even so much it is, as already stated, a mere suitor of the railroads. So special, and unlike freighting or shipping, is the thing it does, that except by voluntary and previously obtained consent, and under charges previously agreed upon, it cannot enter a railroad car or put a parcel into it.

Under these agreements in proof before the supreme court, how much is paid by the express company for the railroad carriage of any parcel, or of all the parcels despatched, on any train or on any day, is wholly matter of accident. A certain cubic space, or a certain number of pounds is paid for absolutely, whether there be more or less, or anything to be carried. If on a particular day the express has many commissions, or parcels, or bonds, or large sums of money committed to it, then the sum

actual distance which packages or parcels are carried, is not the same, except by accident, in the case of any two parcels.

It also appeared that even the charges paid by the express company to railroads, are not based, as in case of freight, on bulk and weight, but largely on the values handled; and that the handling of money itself—a species of property not covered by the bailment of a common carrier—makes up a large proportion of the express business. In this connection the fact is also significant that express parcels are frequently sent by trains not stopping at the destination and are sent back by way trains—thus requiring duplicate transmission.

The varied offices done and covered by the rates and charges of the express company, were somewhat fully displayed before the supreme court.

The following examples of the nature of the business done were put in evidence:

First. It includes making affidavits and giving bonds to clear goods at custom houses, both on the frontier and at seaports. These duties can not lawfully be performed by a railway corporation "for a corporation aggregate cannot take upon itself an oath" nor otherwise fulfill the requirements of the customs Acts, as it is not authorized so to do.

Alabama v. Oaks, 37 Ala. N. S. 694; 10 Coke, 326; 1 Bl. Com. 477.

Second. It includes the carriage of property from the custom houses and places of business and residences of consignors to a railway station, and transferring them from a railway station and delivering them at the residences and places of business of the consignees, and guarantying the owner against loss or damage while so in transit off the lines of railway. This intermediate service cannot lawfully be required from or performed by a railway company, nor can it lawfully give such continuing guaranties.

American etc. Express Co. v. Wolf, 79 Ill. 430; *American etc. Exp. Co. v. Robinson*, 72 Pa. 274; *Thomas v. Boston etc. R. R. Corp.* 10 Met. 477; *Witbeck v. Holland*, 45 N. Y. 17; 55 Barb. 443; *Hoagland v. Hannibal etc. R. R. Co.* 39 Mo. 451; *St. Joseph v. Saville*, 39 Mo. 460; *People v. Chicago etc. R. R. Co.* 55 Ill. 95.

This point was illustrated in *Mayor v. Macon etc. R. R. Co.* 7 Ga. 221, in which it was held that a railroad company having the exclusive right to transport goods, wares and merchandise from Atlanta to Macon had no right to engage in the business of transporting produce through the City of Macon, across the Ocmulgee Bridge, from its own railroad depot to another railroad depot, for the accommodation of its customers.

See also *Abbott v. Baltimore*, 1 Md. Ch. 542.

Third. It includes the receipt at the treasury, the subtreasuries, and the mints, of millions of money, and conveying the same to the railways and subsequently conveying the same to other subtreasuries and guarantying the safety thereof, both on and off the railway lines, which guaranty a railway company cannot lawfully give.

Fourth. It includes the indorsement of negotiable commercial paper, and the consequent assumption of all the liabilities of an indorser, INTER 8.

which liabilities a railway company, certainly outside of paper connected with its own internal affairs, cannot lawfully assume.

Byles, Bills, 62; *Bateman v. Mid Wales R. Co.* L. R. 1 C. P. 499.

Fifth. It includes the transportation of such paper and of its proceeds, which transportation a railroad company is under no obligation to perform, has no lawful right to perform, or no lawful right to monopolize, if it has a right to perform.

Citizens Bank v. Nantucket Steamboat Co. 3 Story, 51.

Sixth. It includes the collection of indebtedness of every kind, and the safe remission of the proceeds—a service which a railway company has no lawful right to perform.

Collender v. Dinsmore, 55 N. Y. 200.

In *Bland v. So. E. Co.* 1 Hughes, 345, the court said:

"It is not the custom of railroad companies to receive drafts or bills of exchange for collection at all, nor even drafts for the value of the particular shipments on which they are drawn, or to hold the goods or produce until these drafts are paid. Such a proceeding would be foreign to the business of railroad companies; is never allowed by them; is generally impracticable in itself, and is wholly unknown in practice. There are many reasons why this proceeding could not obtain. * * * It would have been vain, idle, and preposterous to have endeavored to induce the railroad company to agree to hold their produce until the drafts for its value were paid. That would have been foreign to the usage of the railway company, probably impracticable in itself, and a sort of engagement which the company could not consistently with its modes of transportation, its interests and its principles of business, make with any customer."

Seventh. It includes the protesting of negotiable paper at the proper time, and the giving of notice to the proper parties, a service which a railway company has no legal right to perform.

Knapp v. U. S. etc. Express Co. 55 N. H. 348; *Whitney v. Merchants etc. Express Co.* 104 Mass. 152; *Palmer v. Holland*, 51 N. Y. 416; *American Express Co. v. Haire*, 21 Ind. 4.

Eighth. It includes the payment of negotiable paper by telegraphic order, the transportation thereof to the owner, and the return of the money to the place of payment, a service which a railroad company is not legally competent to perform.

Ninth. It includes the receipt and transmission of moneys for investment in designated articles and the return of the articles when purchased, a service which a railway company has no lawful right to perform.

Tenth. It includes the giving of a through bill of lading by a responsible carrier, covering connecting steamboat and railway lines, which through bill a railway company cannot lawfully give as against its bondholders and stockholders having prior rights and contesting the legality of such bills.

An incident of the business of the Adams Company—and only an incident, though large and indispensable—is the employment of vari-

of such aforesaid rates and fares and charges." It is because "such schedules shall be kept in every depot or station upon any such railroad"—which is to say kept by the Adams Express Company on its railroad.

Contemplating the doing of such violence to such language with its context is certainly calculated to remove the caution and hesitation with which this examination of the subject was undertaken. These provisions are fundamental, essential and central. They are inwrought with the entire framework. The whole scheme of the Act depends largely upon them. Unlike some of the prior sections, this one cannot be discarded or held inapplicable, and still leave substantive parts of the Act to operate upon the express company as itself a common carrier with whom the Act deals.

It seems too plain for argument that neither in letter nor in spirit can such requirements be legally construed as having any relation whatever to a copartnership hiring transmission by rail of its own messengers and of money and special packages, having no other connection with any railroad, and as destitute of right or power to control any railroad or its doings as a spectator on the shore is destitute of commandment over the tides.

Possessed of no such schedules, or of information enabling it to make them; having no such rates, fares or charges; in possession or management of no railroad or train; having no such "places upon its railroad" or upon any railroad or highway; being naked of faculty to classify freight upon any railroad, or to meddle with terminal charges; a mere passenger or visitor in any railroad depot, and having no such thing of its own the express company would seem to be, if any individual firm or association can be, a person to or of whom such mandates do not and cannot speak.

Manifestly, the schedules required are the schedules of the railroad—not the schedules of anybody else—especially not of the customers of the road.

Manifestly, too, the schedules are not to be dual, diverse or various, but the schedules,—the only ones, the authentic exhibit of the prescribed items, as a time table is such an exhibit, however many copies of it may be issued or posted up.

It is expressly declared that the rates, fares and charges established and published by the required schedule, shall be absolutely the whole compensation demanded or received "for the transportation of passengers or property, or for any service in connection therewith." That this does not and cannot include or admit any charges for services done off the line or road is certain; and thus the schedule exacted and prescribed is one on which there is no place for 60 per cent of the actual business and transactions of the express company.

Indeed, it is not too much to say that if section 6 applies to the express company it lays the express business under a ban, and virtually prohibits and destroys it. It does so by confining the rates and charges to be paid exclusively to railroad transportation, and then positively prohibiting, and, in connection with subsequent sections, punishing all other charges "for any service in connection" with the property transported. This, of course, is

tantamount of saying that it shall be unlawful to charge for gathering parcels beforehand, or delivering them at the scattered places beyond the railroad terminus to which they are addressed, or for any of the numberless varieties of other services incident to the business.

No such chance medley of incongruities can be imputed to this provision. It is relieved of all challenge of its intelligence and foresight by being left to operate upon those whom its requirements fit, and to whom they were adapted.

In most of the subsequent sections are found persuasive indications that express companies are utter strangers to the object and purpose of the Act. Section 7 relates to matters wholly within the province of railroad corporations, and wholly beyond and alien to the province of express companies.

Other sections contain regulations touching reports to be made relative, among other things, to "franchises;" others authorize prescribing for the carriers intended "a uniform system of accounts, and the manner in which such accounts shall be kept." These and various other provisions consist with the idea that they relate to railroads—so understood they are reasonable; but stretched to cover express companies, they become impracticable and irrational.

From all this, and much else that might be added, the conclusion appears irresistible that the object as well as the meaning of the Law is to visit those primarily engaged in transportation of persons and property; and that it is not intended, after "regulating" them, to reach beyond and regulate their customers and employers.

Any other theory affords no test or limit to the scope or measure of the Law's operation. If it extends to employers of railroad corporations, does it not encompass all such employers? If not all, how many, and what kind and classes of employers does it reach? What is the criterion of its province in this regard?

Those described in the Act are corporations created or authorized by positive law—they have been endowed with the power to exercise the right of eminent domain, the right to exact tolls, and the like. Without these grants and franchises, they could not legally build or operate their highways, or demand compensation for their use.

Not so the express company.

It is an individual, or association of individuals. Each constituent has, and all the constituents have, the right, inherent in every unit of society under our institutions, to select and pursue his or their occupation, provided it be lawful, at pleasure.

The express company, as may again be repeated, is not created by law. It receives nothing from the State. It neither owns nor operates a highway. It is not sustained by statutory toll, or empowered to take toll. Its existence depends on contracts with others, and its compensation depends on contracts, and not as in the case of railroads on charter right to fix and exact compensation.

Regulating corporate tolls is regulating the exercise of corporate power, against which, unless so regulated, the public is helpless.

Regulating express charges is regulating a

portation by railroad, and water routes in connection or in competition with said railroads, of freights and passengers between the several States, with authority to sit during the recess of Congress, and with power to summon witnesses and to do whatever is necessary for a full examination of the subject, and report to the Senate on or before the second Monday of December next."

In the resolution the methods of transportation to be investigated are clearly stated as those by railroad and water routes in connection or in competition with said railroads, and all other methods are necessarily excluded. The subjects of transportation are also equally clearly stated as "freights and passengers" between the several States. At that time and from the commencement of railroad transportation until now, there have at all times been four separate and distinct kinds of traffic over all the railroads and water routes of the United States, each equally well known to the whole public, and each by itself technically, individually and specifically recognized as a specialty by the public, and by numerous Acts of legislation as passenger, freight, express and mail traffic. No words in the English language are better defined than these; and the mere mention of either of them in legislative enactments has been deemed sufficient for public comprehension and judicial recognition.

Under this resolution the committee caused to be prepared, and addressed in immense numbers to all parties supposed by them to be interested in the scope of the investigation, a series of questions, so as to direct attention to the salient points under inquiry, a copy of which will be found at pages 2 and 3 of the report of the committee. Testimony (report 46, part 2), submitted to the Senate January 18, 1886, such report containing over 1,400 octavo pages of printed testimony. The foregoing report of testimony accompanied the report proper of the committee. Report (46, part 1), submitted at the same time, and containing nearly 250 printed octavo pages.

It does not appear from the reports of the committee that a single series of such questions was sent to an officer of any express company, or that the thought was entertained by the committee, that the business of such companies was within the scope of its inquiry. Hundreds of railroad men and shippers of freight were examined as to every possible subject of investigation respecting the organization, capitalization, and construction of railroads; concerning passenger and freight trains; concerning the connection and competition of railroad and water routes, and of railroads with each other; concerning every department of such competition in grain, cattle, manufactures, merchandise, minerals, etc.; concerning discriminations in rates, pools, long and short haul, rebates, commissions, the car load unit, etc., etc., but in the whole range of inquiry, and in the whole mass of testimony, not a complaint is made respecting the express traffic, not an inquiry is predicated upon it, and the attention of no witness is directed to it. In the whole report of the committee, both parts 1 and 2, the very name is not mentioned, but the undivided attention of complainants, committee and witnesses, for a period of many

months, and at sittings held at many different commercial centers, embracing the principal offices of all the Express Companies, was entirely confined to what was technically and legally known as the freight and passenger business of the railroads and water routes as conducted by railroad and water route companies.

See specially the report of the committee, part 1, pp. 2 and 8, under heads "Plan of Work Adopted," and "Importance of the Question," and a further cursory glance over the first sixteen pages of the report will show that railroads, as the method, and the passenger and freight transportation by railroads, as the subject matter of inquiry, were the sole matters intended to be embraced in their report, as they finally became the sole subjects of the Law under consideration. Of the hundreds of parties called before the committee, or from whom information was sought by the committee, all are of two classes: either 1, persons connected with and representing the railroad companies, and directing and controlling the transportation of the roads, in other words the railroad companies themselves, subsequently in the Interstate Commerce Act, designated as "Common Carriers by Railroad;" or 2, shippers by railroad of freights as generally and technically understood in railroad business.

The relation of the National Express Company being to the railroad company simply that of a forwarder as to the property in its charge, and of a passenger as to the messenger having such property personally in charge, and it having no interest as a shipper in the question of transportation of freight, and no relation to the railroad as a common carrier by it, it stood entirely outside the investigation, and neither advice nor information as to its organization or business was sought by the committee nor volunteered by it.

The debates in Congress during the pendency of the bill presented by the committee through the various stages of its progress, to its final passage, are entirely confined to the matters embraced in the report of the committee.

Nothing can be clearer, therefore, than that there were in contemplation of the Interstate Commerce Act these three things, and these only: 1, transportation of passengers and railroad freights, as a subject matter; 2, transportation by railroad, as a method; 3, transportation of such passengers and railroad freights by a railroad company, as the "common carrier by railroad" upon which, as a person, the Act was to become operative.

Second. The "express business" transacted by the National Express Company is not, in fact, embraced within the provisions of the "Interstate Commerce Act."

The Law, while covering the same subjects of transportation only as the original resolution, to wit: passenger and freight traffic, is a limitation of the original resolution, inasmuch as the methods are confined in the Law to railroads, or partly railroad and partly water, when both are used under a common control, etc.; and exclusively water lines and all other methods of transportation are excluded from the operation of the Law, and the word prop-

erty is occasionally used interchangeably with the word *freight*, which latter word was used in the original resolution, and exclusively throughout the whole course of the investigation of the committee. In other words, water lines, bridges and ferries connected with railroads, are considered by the Law as embraced in them, and the term "railroad" is made to cover the whole method of transportation embraced in the Law.

As the term "railroad," as defined by the Law, is made to cover the whole method of transportation affected by it, so but one class of common carrier, is embraced in the entire Law, and that a common carrier to which every provision of the Law applies. There is nowhere any discrimination that certain provisions shall apply to one class and others to another, but in every section of the Act is treated as an entirety.

Section 2 reads "That if any common carrier subject to the provisions of this Act."

Sec. 3. "That it shall be unlawful for any common carrier subject to the provisions of this Act."

Sec. 4. Same as section 3.

Sec. 5. Same as section 3.

Sec. 6. "That every common carrier subject to the provisions of this Act."

Sec. 7. "That it shall be unlawful for any common carrier subject to the provisions of this Act."

Sec. 8. "That in case any common carrier subject to the provisions of this Act."

Sec. 9. "That any person or persons claiming to be damaged by any common carrier, subject to the provisions of this Act."

Sec. 10. Same as section 6.

These are all the sections of the Act which are at all declaratory, or mandatory, or prohibitive, except possibly section 16, which also begins: "That whenever any common carrier, as defined in and subject to the provisions of this Act, shall violate or refuse or neglect to obey," etc., and they all relate to the same one class of common carrier subject to the Act as an entirety.

Now section 1 defines exactly what this common carrier is, and is as follows:

"The provisions of this Act (that is, all of its provisions) shall apply to any common carrier or carriers engaged in the transportation of persons or property wholly by railroad or partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or shipment," etc.

Were there any doubt that the words "control, management or arrangement" refer to the railroad and water lines themselves as a method of transportation, it is entirely set at rest by the definition of the word "railroad," as used in the last paragraph but one of the section, as follows: The term "railroad," as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease.

As thus defined, the section reads: "The provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of persons or property, * * * by

railroad, * * * in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease."

This definition is neither an enlargement nor restriction, nor even a definition of the term "railroad" as used in the opening paragraph of this section, so far as the method of transportation "by railroad" is concerned. It is, however, as all the subsequent sections of the Act show it to be, a complete definition of the terms "common carrier by railroad." That common carrier is to be a common carrier "by a railroad in use by a corporation operating a railroad." The preposition "by" in this connection, is not synonymous with "on," or "over," but with "through the control of." The railroad company making use of the road of another as a mere shipper, to continue or complete its transportation, or even making use of it under an arrangement for a continuous carriage with agreed division of charges, would not become liable under the Act for any act of omission or commission on a railroad, over which it hired or arranged for transportation, although as between itself and the forwarder by it, the relation of common carrier would continue from point of receipt to point of destination of property. It is not the making use of a railroad, but the having it in use, that creates the liability. To such "common carrier" owning or operating a railroad all of the sections of the Law are applicable, and to no other. Nor can they be made applicable as an entirety to any other.

The National Express Company is not a corporation. It is a simple partnership with unlimited liability of each of its members for all of its obligations; with no rights to a common seal; existing purely under the rights recognized by the common law and without statutory authority, and having no rights under statute law different from those possessed by all partnerships, except such as are given by the laws of the State of New York from considerations of public policy alike to all partnerships having seven or more members. It neither owns nor operates any railroad. As between itself and any railroad doing business with it, it is a mere shipper like the general public, and the railroad company is the common carrier. As between it and its patrons the Law justly imposes upon it the liabilities of a common carrier; but in no sense in which passengers and freight are considered in the Interstate Commerce Law, it is neither a common carrier of passengers nor freight. While it carries no passengers as such, its business is wholly done (when done at all upon a railroad) upon passenger-trains, and while transporting freight in a limited sense, as a portion of its business by whatever instrumentalities it can command which will furnish the greatest dispatch, it does no business by freight trains.

The business of this Company, as defined in its articles of association ready to be produced as the Commission may require, embraced the various objects, affairs, business and undertakings of a general express business, including the purchasing, receiving, selling, insuring and forwarding on commission and for hire and otherwise of money, bullion, gold and silver coin, bank bills, drafts, bills of exchange or other property, things or freight not by law

cars is only about 20,000 to 28,000 lbs., or only about one half of that of the other cars.

The fresh meat shipments require special despatch, while the cured meats can be transported as ordinary freight, and when unloaded the refrigerator cars have to be returned promptly, and frequently without return load.

The refrigerator cars in which the fresh meat is carried belong to the petitioners and other shippers; and for their use the Railroad Company pays three fourths of one cent per mile run, which rate is onerous and burdensome on the Railroad Company, and is very profitable to the owner of the car.

The Railroad Company is a common carrier, not only of the contents of the car, the value of which per pound is in excess of that of meat provisions per pound, but also of the car, which is worth twice as much as an ordinary freight car. The Railroad Company's risk as a common carrier is, therefore, much greater on this class of shipments, and the release referred to in the petition relieves the Railroad Company only from responsibility for the refrigeration of the contents of the car.

5. Respondent neither admits nor denies the correctness of the tables contained in paragraph 7 of the petition, showing the rates charged on southern and southeastern roads; but leaves the petitioners to proof of their correctness, if the facts therein contained are deemed material. The respondent, however, denies that the rates charged by those roads have any bearing upon the question at issue, or that they can be considered in deciding the question whether the rate charged by the respondent from Chicago to Baltimore is a just and reasonable rate.

Respondent denies the correctness of the inference sought to be drawn by the petitioners from the rate of sixty cents per 100 pounds on dressed hogs in common cars established by special joint tariff No. 50 issued February 1, 1887. That rate was established as a just and reasonable one, in view of the fact that the capacity of a common car loaded with dressed hogs is only about 20,000 pounds. When, however, after that rate was established it became necessary to fix a rate for dressed hogs in refrigerator cars, it was thought unjust to charge more for dressed hogs than the rate already established for dressed beef and sheep in refrigerator cars, which was sixty-five cents per 100 pounds. So far, therefore, from showing that five cents per 100 pounds has been established by the published tariffs as the reasonable advance for transporting meat in refrigerator cars, over the rate for transporting the same meat in common cars, this instance cited in the petition shows rather that the rate of sixty-five cents per 100 pounds on dressed beef, sheep and hogs in refrigerator cars is too low, in comparison with the rates charged on other meat products, fresh and cured.

6. The respondent denies the existence of any such practice as that stated and alleged in paragraph 8 of the petition; and denies any knowledge that the shipments therein alleged of meat provisions and other products in refrigerator cars at the rate of thirty cents per 100 pounds were ever made over its railroad; and the respondent states, upon information and belief, that if such shipments were ever

made over any railroad between Chicago and the eastern seaboard, they were made as a special and exceptional accommodation to the petitioners, in order that their refrigerator cars might not lie idle.

This respondent again denies that it has ever carried any shipment of dressed meat, sheep and hogs for the petitioners between the City of Chicago, or the Union Stock Yards, and the City of New York.

7. The respondent denies that the present rates demanded by it for the transportation of dressed beef, sheep and hogs, subject that particular description of traffic to an unjust and unreasonable disadvantage, or that any of the facts set forth in the petition go to show the existence of any such unjust and unreasonable disadvantage. There is no competitive relation between dressed beef, sheep and hogs, and meat provisions; and the market price of the petitioners' dressed beef, sheep and hogs is in no way affected by the transportation rate on meat provisions. So far from the traffic of the petitioners suffering from an unjust and unreasonable disadvantage, respondent states that, although, as is shown by the table in paragraph 4 of the petition, the transportation charge on dressed beef, sheep and hogs has frequently, for months at a time, been much lower than the present rate; yet at no time has any corresponding reduction been made in the price of their dressed beef, sheep and hogs to the consumer or retail dealer on account of such reduction in the transportation charge.

On the contrary, the transportation charge has not, and does not, affect the market price of those articles, as it certainly would do if it were, as the petitioners allege, an unjust and oppressive charge.

Wherefore, respondent prays that the petition in this matter be dismissed.

The Baltimore & Ohio Railroad Company, by

Samuel Spencer, Vice President.

John K. Cowen,

Counsel for respondent, Baltimore & Ohio Central Building, Baltimore, Maryland.

State of Maryland, } ss.
County of Garrett,

Samuel Spencer, being duly sworn, on oath says that he is the Vice President of the Baltimore & Ohio Railroad Company, the above named respondent; that he has read the foregoing answer and knows the contents thereof, and that the same are true.

Subscribed and sworn to before me this fifth day of July, A. D. 1887.

Emil F. Droege,

Justice of the Peace of the State of Maryland, in and for Garrett County.

State of Maryland, Garrett County, to wit:

I, E. Z. Tower, Clerk of the Circuit Court for Garrett County, the same being a court of law and of record, do hereby certify that Emil F. Droege, Esquire, before whom the foregoing affidavit was made, and who has thereto subscribed his name, was at the time of so doing a justice of the peace in and for the County and State aforesaid, duly

[Seal]

road company, and using language embracing the passenger and freight business of a railroad, solely applicable to such company, can by legal intentment be held to embrace an independent express company which is a mere forwarder over such road (and whose business is neither passenger nor freight) and to require a compliance also with this section by such express company; let us hold such claim up to the light of the next paragraph of section 6, as follows:

"The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad, between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad; and shall also state separately the terminal charges, and any rules or regulations which in any wise change, affect or determine any part of the aggregate of such aforesaid rates, and fares and charges." Every particular of this paragraph is precisely and technically applicable to a railroad company.

The whole section, including these two paragraphs, is to be construed as one; and all the requirements therein contained must by the principles of law governing penal statutes be complied with in every particular by every party liable at all under it. If the express company is liable at all, it is to comply with all the requirements which a strict construction requires of the railroad company in addition to any which may be attributed to it by any liberality of construction. Whatever schedule is required upon any railroad must be the same schedule by whomsoever furnished, as every common carrier, subject to the provisions of the Act, is to furnish the same. If the railroad company doing business by any road and the express company upon it are each to furnish schedules, they must, necessarily, be duplicated in every particular and under the same provision of the Law.

It is impossible to see how any one of these requirements can be complied with, in the letter of the Law, by the National Express Company or by any other shipper over the lines of a railroad. It can only be done by that common carrier which the railroad itself represents. Every part of the section is clear, direct, and technical, as applied to a railroad company doing business as a common carrier by its railroad and is exhausted by such application, and no liberality of construction (were liberality allowed in the construction of a penal statute) could be broad enough to embrace any common carrier disconnected from the operating of the railroad itself.

4. But the National Express Company transacts business over many lines of railroad operated by separate railroad companies and its charge is but a single charge, including collecting, transportation, expense of accompanying messenger, delivering, and all the incidental charges attending such service from any point upon all these continuous lines to any other point. How are the requirements of section 6 to be applied in common to these separate railroad companies and to the express company?

5. The same objections heretofore made to the application to the National Express Company, of the first two paragraphs of section 6,

tion 6 apply to all the other provisions of that section and also to sections 7, 8 and 9 and in fact to all provisions of the Act where the National Express Company can by any implication be held liable in common with any railroad company over whose road its business is conducted, for any act of omission or commission applicable to such railroad.

6. Any attempt therefore to make section 6 of the Act applicable to the National Express Company, must be through a construction by the Commission by which they shall seek to require from the Express Company so far as in their judgment the nature of its business will permit a schedule conforming as nearly as practicable in principle to that required by the section from the railroad company, but such breadth of construction would be practical legislation, even as applied to a civil statute and certainly will not be entertained in the application of a penal statute. The National Express Company must comply with the provisions of the section and with each and all of them under a strict construction or not at all.

Fourth. The preparation of a tariff or schedule (such as contemplated by section 6 in its application to railroad companies), defining the charges for railroad transportation as between the National Express Company and its customers, as to whom alone the Express Company has any relation as common carrier, is an impossibility. Transportation on railroads or otherwise is but an incident in the business of the National Express Company. The payment to the railroad company is in gross for the entire business of the Express Company over its road, and is easy of calculation as between them, but it is impossible of distribution to the individual customers of the Express Company throughout the diversified business, as to some of which the charge for service is principally on account of transportation, on others principally on account of value, on others principally for commission, on others charges for collection, etc. In fact the National Express Company has nothing to do with the transportation of passengers nor freight. The messengers of the company bear about the same relation to the passenger business of the railroad, both as to number and classification as passengers, that the property carried by it does to the freight business as to volume and to its classification as freight. The messengers are not in the sense of the Law passengers, nor the packages, valuables, collections, and the various matters of brokerage and commission in their charge, freight.

If Henry Wells traveling from Albany to Detroit in the inception of the express business, with a valise in his personal care, containing the entire express business of his day between these localities, was a common carrier of passengers and freight by railroad or by steamboat, or by stage, whatever conveyance he may have availed himself of, then it may be claimed that the express company which is the outgrowth from him is in the same sense such common carrier. The business in its nature and essence remains unchanged. The same elements enter into the charge for service now as then. It is the personal care, the despatch necessary in matters of banking and business generally, the valuable

petitioners as shall, in the estimation of your honorable body, be deemed proper.

And your petitioners will ever pray, etc.,

(Signed) Nat. W. Howell, C. B. Wood,
H. A. Pooler, Chas. M. Thompson,
A. T. Moshier.

State of New York, } ss.
County of Orange. }

Nathaniel W. Howell, Hiram A. Pooler, Cornelius B. Wood, Charles M. Thompson and A. T. Moshier of said county being sworn say, and each for himself says, that they have read the foregoing petition, that the facts therein stated of their own knowledge are true, and that the facts therein stated to be alleged on information and belief they believe to be true. (Signed) Charles L. Mead, Notary Public.

[L. a.]

Sworn to before me, this
19th day of April, 1887.

ANSWER OF NEW YORK, LAKE ERIE & WESTERN R. R. CO.

The New York, Lake Erie & Western Railroad Company, for an answer to the complaint in the above entitled matter, respectfully shows:

First: It admits that it is a duly incorporated railroad company, whose lines of railroad extend into the States of New York, New Jersey and Pennsylvania, and that about fifty miles of the main stem thereof are in the County of Orange, in said State of New York.

Second: It denies that all of the petitioners herein transport daily over its line large quantities of milk from various points in said county to the City of Jersey City, in the State of New Jersey, as they have alleged in their petition; and upon information and belief it also denies that the said petitioners are duly commissioned to represent the farmers and milk producers of the said County of Orange, as is further alleged in said petition.

Third: The said Railroad Company denies the allegations contained in the fourth paragraph of said petition to the effect that the rate charged by it for transporting milk from points in said county to the said City of Jersey City, a mean distance of about fifty miles, is unreasonable and unjust; but on the contrary it avers that said charges are reasonable and just, as will fully appear from the facts hereinafter stated.

Fourth: And it also denies that said charges are unreasonable and unjust as is alleged in the fifth paragraph of said petition; and it further avers that the reasons stated by the petitioners in support of their allegations are not in accordance with the facts, because it avers that the rate which the said Company charges is not 85 per cent of the value of said product, but on the contrary is only thirty-five cents per can, of forty quarts each, which weigh about 100 pounds, and that the said charge of thirty-five cents per can, as above stated, includes the expense of returning the empty cans from Jersey City to the points from which the milk was shipped, for which service no additional charge is made, although the empty cans require the same service in handling as full cans do. And said Company further avers that it

does not receive the five cents per can ferry charges, as is alleged in said petition.

It also denies that it transports milk at any less rate for any one person, company, firm or corporation, than for another, or that it subjects any particular person, company, firm, corporation or locality, to any undue prejudice or disadvantage in any respect whatsoever, or that it gives any special rate to any shipper of milk.

Fifth: And the said Railroad Company further denies that its charges are unreasonable and unjust, and that the continuance thereof by it would be contrary to, and in violation of, the latter clause of section 1 of the Interstate Commerce Law, as is alleged in the sixth paragraph of the petition.

Sixth: The said Railroad Company admits that it charges for transporting milk from Summit, in the State of New York, to Jersey City, in the State of New Jersey, a distance of about 184 miles, the same rates that it charges from points in Orange County, New York, to said Jersey City, New Jersey, a mean distance of about fifty miles. But said Company avers that said rates which it charges as aforesaid are not unreasonable and unjust for the following reasons:

That milk is a perishable commodity, and must reach its market within a few hours after it is made ready for shipment by the producer; that all the milk carried on said road is sold in the Cities of New York and Brooklyn, and is delivered by the dealers or peddlers to consumers in those cities early in the morning, and that it must, therefore, arrive at Jersey City not later than midnight, so that it may be taken away by the consignees, and distributed before the early hour at which it must be delivered to the consumer.

That in order to insure the arrival of the milk in proper condition, and in time to reach its market, said Company is obliged to run two trains each way daily, consisting of about thirteen cars each, especially for the transportation of this traffic; that during the winter, to prevent the milk from freezing, said Company is obliged to heat the cars by stoves, that the trains have to be run at a high rate of speed, equal to that of an ordinary passenger train, for which are required cars, equipped with Miller platforms and Westinghouse airbrakes, and much more expensively constructed than the cars in the ordinary freight service; that the milk is shipped in various lots ranging from one can to 200 cans, and more frequent stops are necessary than with other trains, intermediate milk stations being established solely for the accommodation of milk shippers; that the fast time necessary to be made by the trains increases the risk of accidents, and requires the employment of larger crews in order to handle the cans, and arrange them convenient for quick delivery, and also entails greater expense for fuel and maintenance of equipment; that the consignees of the milk who take it away in wagons from Jersey City, assemble there so as to meet the trains, about the time of their arrival, and are so numerous and require so much room for their accommodation that extra men have to be employed to make the delivery, and separate delivery sheds and grounds have to be provided and maintained; that the

dealers or consignees who come for the milk at Jersey City, cross from New York or Brooklyn, and ferries have to be run for several hours during the night for their accomodation, at large expense, there being during those hours very little, or none other, business passing from one side of the river to the other and the fares paid by the milkmen being insufficient to meet the cost of operating the ferries.

That milk is time freight and delay of a few hours in arrival, by accident, or otherwise, would render the whole cargo comparatively worthless, because even if the milk were not spoiled, the demand for the day would have passed, and that for the next day would be met by the following shipment.

That the trains coming in at night have to go out early in the following morning to carry back to the shipper the cans brought in by the trains on the previous day, and returned empty, so that he may receive them before night, and in time to use them on the following day; that it requires the same number of cars to return the empty cans that it does to bring them down loaded, and the equipment used in the milk traffic can therefore be used for no other purpose, consequently, the return trip of the cars employed in such traffic brings no revenue whatever to the Company (the carriage of the empty cans being included in the charge of thirty-five cents, as already stated).

Said Company further shows and alleges that having regard to the cost and character of the service, and the facilities and accomodations afforded, the rate on milk is lower comparatively than that made on any other class of freight.

Seventh: The said Railroad Company further avers that ever since the establishment of the business of transporting milk from remote points to the Cities of New York and Brooklyn (about forty years ago), it has been the custom of all the common carriers engaged in that business to charge a uniform fixed rate per quart or gallon for the milk so transported, irrespective altogether of the length of the haul; and that the same custom now prevails among all the common carriers engaged in transporting milk to the Cities of New York and Brooklyn. This custom owes its origin, and long continuance, to the fact that milk is sold to all consumers in the cities aforesaid at a uniform price for the quantity sold; and it was therefore deemed better and more satisfactory for all parties interested to have one uniform charge made for transporting milk, irrespective of distance, instead of prorating for the same according to the length of the haul.

And it is averred that up to, or about, the time of filing this petition, the establishment and observance of the custom aforesaid regulating the charge for transporting milk gave a general, if not universal, satisfaction, and that there is not now any legal or just ground for complaint against the same.

Eighth: And the said Railroad Company further avers that it is of the greatest importance to the citizens of New York and Brooklyn, as well as to the other consumers of milk, to have the area for the production thereof enlarged as much as possible, instead of having the same

narrowed and circumscribed, which would be the effect of granting the prayer of the petitioners; because the practical effect of so doing would be to enable the petitioners to establish a monopoly in the milk business by preventing the establishment of dairy farms and creameries at a greater distance than fifty miles from New York City.

The business of producing milk is a peculiar one, confined to few localities in comparison with the raising of other farm products, and requires therefore all lawful and reasonable encouragement for the establishment and successful working of dairy farms and creameries.

Ninth: And this Railroad Company avers, upon information and belief, that quite a number of persons relying upon the custom hereinbefore mentioned of making the same charge for the transportation of milk irrespective of the length of the haul, have established dairy farms and creameries at or near Summit, and at various points between there and the points in Orange County, New York, mentioned in the petition; and the said Railroad Company further avers that to make any change in the rates heretofore charged for the transportation of milk would cause great loss and damage to the parties who have established such dairy farms and creameries, as aforesaid.

Tenth: And the said Railroad Company denies that by conducting the milk business in the manner, and for the rates and charges hereinbefore stated, it has done anything unlawful, or improper, or in violation of the second and fourth sections of the Interstate Commerce Law, or any other section or provision thereof.

Eleventh: And this Railroad Company finally says that having answered fully and particularly each and all of the allegations of said petition, it prays that the same may be dismissed.

The New York, Lake Erie & Western Railroad Company.

By J. A. Buchanan, Attorney.

State of New York,
City and County of New York. } ss.

John S. Hammond, being duly sworn, says that he is the General Freight Agent of the New York, Lake Erie & Western Railroad Company, the defendant named in the foregoing answer, and that he has read the same and knows the contents thereof, and that the same is true, of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Sworn to before me this }
26th day of May, 1887. }

(Signed) J. S. Hammond,

Geo. E. Grant & Co. Notary Public,
[L. s.] N. Y. City.

ANSWER OF NEW YORK, ONTARIO & WESTERN R. Co.

The New York, Ontario & Western Railway Company answering the complaint in the above entitled matter:

First. Demands that the said complaint be dismissed, because it contains no statement of facts as against said Company, showing any

violation by said Company of any provision of the Act of Congress, approved February 4, 1887, entitled "An Act to Regulate Commerce," nor any omission on the part of said Company to do anything that by the provisions of said Act it is required to do.

1. By the ninth paragraph of the complaint, the said Company is expressly excepted from the allegations of said complaint.

2. The allegations as against the New York, Lake Erie & Western Railway Company, which the complainants allege show a violation of the provisions of the said Act by that Company, do not apply to the New York, Ontario & Western Railway Company for the reasons (which appear upon the complaint) that the said New York, Lake Erie & Western Railway Company is alleged to charge a certain rate for the transportation of milk from various points upon its road in the County of Orange, to the City of Jersey City, in the State of New Jersey, with 5 per cent additional for ferriage from Jersey City to New York City, which rates the complaint alleges are unreasonable and unjust: Whereas, it appears by the said complaint that milk transported by this Company is carried upon its own road; that such road does not terminate in Jersey City, and that the milk carried upon its road is not carried between the same points as to which it is alleged that the Erie Company make an unreasonable or unjust charge.

3. That the complaint as against this Company is too vague and indefinite and insufficient to base any proceeding under the said Act, and would not furnish the Commission with any facts upon which it could formulate or make any judgment or order.

Without waiving the foregoing objections to the insufficiency of the complaint, the said Company for a further and separate answer admits that it is a corporation doing a general freight and passenger business, and that its railroad runs through a portion of Orange County, in the State of New York, with a terminus in the State of New Jersey, but denies that it transports milk from Summit or any other point in the County of Orange or in the State of New York to Jersey City, or makes any charges or rate for transportation of milk, between Summit or any other point and Jersey City.

It also denies that it charges for the transportation of milk 35 per cent of the value thereof, or at the rate of thirty-five cents per 100 pounds; and it also denies that the rates charged by it for transporting milk upon its railroad, are unreasonable and unjust.

It also denies that it transports milk at any less rate for any one person, company, firm or corporation than for another, or that it subjects any particular person, company, firm, corporation or locality to any undue prejudice or disadvantage in any respect whatsoever, or that it gives any special rate to any shipper of milk.

It also denies that it transports any freight or produce, under similar circumstances and conditions, at a less rate than that charged for the transportation of milk.

Said Company further answering, shows and alleges that the terminus of its road in the State of New Jersey, is at Weehawken on the

west bank of the Hudson River; that its railroad passes through a portion of the County of Orange, in the State of New York, and that it charges for the transportation of milk in cans from points in said county to Weehawken, and the return of the can empty to the point of original shipment, thirty-five cents per can; that the can weighs twenty pounds, and contains forty quarts of milk, weighing eighty pounds; that the average distance of transportation of milk from points in Orange County to Weehawken is seventy-seven miles, and that the rate charged by said Company for such transportation of the milk, and return of the can, is at the rate of twenty-nine cents per 100 pounds; that the full load per car of milk in cans is ten tons, while the load per car returning with the empties is but two tons.

That the milk is a perishable commodity and must reach its market within a few hours after it is made ready for shipment by the producer; that all the milk carried on said road is sold in the Cities of New York and Brooklyn, and is delivered by the dealers or peddlers to consumers in those cities early in the morning, and that it must, therefore, arrive at Weehawken not later than midnight, so that it may be taken away by the consignees, and distributed before the early hour at which it must be delivered to the consumer.

That in order to insure the arrival of the milk in proper condition, and in time to reach its market, said Company is obliged to run trains especially for the transportation of this traffic; that during warm weather, to preserve the milk, the Company is obliged to cool the cars with ice, placed in refrigerators in the cars, and during winter, to prevent it from freezing, is obliged to heat the cars by stoves; that the trains have to be run at a high rate of speed, equal to that of an ordinary passenger train, for which are required cars, equipped with Miller platforms and Westinghouse air-brakes, and more expensively constructed than the cars in the ordinary freight service; that the milk is shipped in small lots ranging from five to forty cans, and more frequent stops are necessary than with other trains, intermediate milk stations being established solely for the accommodation of milk shippers; that the fast time necessary to be made by the train increases the risk of accidents, and requires the employment of larger crews in order to handle the cans, and arrange them convenient for quick delivery, and also entails greater expense for fuel and maintenance of equipment; that consignees of the milk who take it away in wagons from Weehawken, assemble there so as to meet the train, about the time of its arrival, and are so numerous and require so much room for their accommodation that extra men have to be employed to make the delivery, and separate and costly delivery sheds and grounds have to be provided and maintained, which cannot be used for general delivery of other classes of freight; that the dealers or consignees who come for the milk at Weehawken, cross from New York or Brooklyn, and ferries have to be run for several hours during the night for their accommodation at large expense, there being during those hours very little, or none other, business passing from one side of the river to

the other, and the fares paid by the milkmen being insufficient to meet the cost of operating the ferries.

That milk is time freight and a delay of a few hours in arrival by accident or otherwise, would render the whole cargo worthless, because even if the milk were not spoiled, the demand for the day would have passed, and that for the next day would be met by the following shipment.

That the train coming in at midnight has to go out early in the following morning to carry back to the shipper the cans brought in by the train on the previous day, and returned empty, so that he may receive them before night, and in time to use them on the following day; that it requires the same number of cars to return the empty cans that it does to bring them down loaded, and the equipment used in the milk traffic can therefore be used for no other purpose; consequently the return trip of the train brings no revenue whatever to the Company from other sources than the milk traffic (the carriage of the empty cans being included in the charge of thirty-five cents as already stated).

Said Company further shows and alleges that having regard to the cost and character of the service, and the facilities and accommodations afforded, the rate on milk is lower comparatively than that made on any other class of freight.

Said Company further shows that to the best of its knowledge, information and belief, none of the complainants are shippers of milk upon the road of said Company.

Dated, New York, May 28, 1887.

New York, Ontario & Western Railway Company,

By John Burton, Secretary.

John B. Kerr,

Attorney for said Company,

16 & 18 Exchange Place, New York.

State of New York, City } ss.
and County of New York. }

John Burton being duly sworn deposes and says: that he is the Secretary and Treasurer of the New York, Ontario & Western Railway Company above named; that the foregoing answer is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Sworn to before me, this 28th day of May, 1887, John Burton.

[Seal] George Marsden, Notary Public,
Westchester County.

Certificate filed in New York County.

ANSWER OF NEW YORK, SUSQUEHANNA & WESTERN R. R. Co.

The New York, Susquehanna & Western Railroad Company, one of the corporations complained against in and by the above mentioned petition, answering so much and such parts thereof as relate to this respondent, says:

1. It admits that it is a corporation (formed under and by virtue of the laws of New Jersey and Pennsylvania) doing a general freight and passenger business, as in the eighth paragraph of said petition alleged; but it denies it to

be true as in said paragraph alleged, that its road passes "through the State of New York," and says that its main line extends from Marion, in Jersey City, in the State of New Jersey, to Gravel Place, in the State of Pennsylvania, with a branch (called the "Unionville Branch") extending from the Two Bridges on its main line, to the boundary line between the States of New Jersey and New York, at Unionville, in the last named State; together with a railroad (known as the "Middletown, Unionville & Water Gap Railroad") operated by it under a traffic arrangement, in connection with said branch, and extending from said state line at Unionville, to Middletown, in the County of Orange, a distance of 13 9-10 miles; which last mentioned road is the only road operated by this respondent in the State of New York.

2. It denies it to be true (as in the ninth paragraph of said petition alleged), that the allegations of the petition "are equally applicable" to this respondent, "as to the New York, Lake Erie & Western Railroad Company"; and further answering, severally, the allegations of said petition alleged to be applicable to this respondent.

3. It denies the allegation that its railroad runs "through the County of Orange aforesaid, a distance of about fifty miles," contained in the second paragraph of said petition; and it says that it runs only 13 9-10 miles in said County, as hereinbefore stated.

4. It admits that considerable (though not very large) quantities of milk are daily transported from various points in said county, to Jersey City, in the State of New Jersey; but it denies that the same is transported by said petitioners and those by them represented; and it says that, as it has been informed and believes, the milk so transported over its road, as aforesaid, is transported largely (if not entirely) by or for other persons, who purchase the same before transportation, of the said petitioners and others.

5. It denies that the rate charged for such transportation is unreasonable or unjust, as alleged in the fourth paragraph of said petition.

6. It says that the rate charged by it amounts to only thirty-five cents per can, containing about 100 pounds of milk, for the transportation of filled cans from different points on its said New York line of 13 9-10 miles in extent to Jersey City aforesaid, and the return transportation of the empty cans from said city to said points on said New York line; and it denies that such charge is simply for the transportation of the filled cans to Jersey City aforesaid, or that this respondent has anything to do with the ferrage thereof to or from the City of New York, or that it charges or receives anything therefor or on account thereof,—as alleged or insinuated in said petition; and while it may be true, as indefinitely alleged in the last mentioned paragraph, that "other classes of freight and produce of equal value, are transported from and to the same points for a less rate and with no greater risk attached"; yet such "other classes of freight and produce," transported at a less rate, are not in fact, and are not alleged to be, of a like kind or description, nor is the service in the transportation thereof of a like and contemporaneous service under substantially similar circum-

stances and conditions, with that performed in the transportation of milk as aforesaid; nor is the charge in question (as this respondent submits) a violation of the law.

7. It denies that the allegations of the seventh paragraph of said petition are true in respect to this respondent, or that they are at all applicable to it.

8. It submits that the "estimation," inference, or conclusion of the said petitioners, following the allegations of facts, herein before answered, and characterizing them as violations of the Act of Congress entitled "An Act to Regulate Commerce"—are unfounded, unwarranted, and unjust.

And this respondent prays to be hence dismissed.

John W. Taylor, F. A. Potts,
Solicitor for Respondent. President,
State of New York, }
County and City of New York. } ss.

The foregoing answer of the New York, Susquehanna & Western Railroad Company, was taken before me, this thirteenth day of May, A. D. 1887, under the common seal of the said corporation, as by their seal thereto affixed, appears.

R. C. Shimeall.

[Seal] Notary Public for Kings County.
Certificate filed in New York County.

ANSWER OF LEHIGH & HUDSON RIVER R. CO.

The Lehigh & Hudson River Railway Company answering the petition of Nathaniel W. Howell and others heretofore filed with the Interstate Commerce Commission against said Company,

1. Admits that said Company is a corporation doing a general freight and passenger business upon their line of railway passing through the State of New Jersey and a portion of Orange County, in the State of New York.

2. Denies each and every other allegation and statement in said petition contained, so far as such allegations and statements refer to or are sought to be alleged against the said Lehigh & Hudson River Railway Company.

8. And for a further and separate answer and defense to said petition the said Lehigh & Hudson River Railway Company avers that its charges for the transportation of milk over the line of said railway or for the receiving, delivering, storage or handling of such property are and have been reasonable and just; that in the transportation of said property the said Company has not in the past and does not now violate any of the provisions of the Act of Congress entitled "An Act to Regulate Commerce" and known as the Interstate Commerce Act.

4. And for a further and separate answer and defense to said petition the said Company avers that in the transportation of milk over the said Railway for the shippers thereof the said Company, as a common carrier, does not do for any other person or persons a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar conditions and circumstances; that such transportation of milk is by a different and separate service from that of any other traffic over said Railway and is carried under

wholly dissimilar circumstances and conditions, in that among other things such milk is transported by special train service at greater expense for equipment, maintenance and carriage, and that the cans returned as freight to the shipper require the same service and car room as the original shipment, and no additional charge or charges are made for such return and transportation.

Wherefore, the said Lehigh & Hudson River Railway Company demands that the said petition be dismissed as against said Company.

Dated the 31st day of May, 1887.

(Signed) John J. Beattie,
Attorney for the Lehigh & Hudson River Railway Company.

Warwick, Orange County, N. Y.

State of New York, }
County of Orange. } ss.

Grinnell Burt, being duly sworn, says that he has heard read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

And deponent further says that the reason why this verification is not made by the party is that the said party is a corporation and that this deponent is an officer thereof to wit: the President, and that all of the allegations in said answer are within the personal knowledge of this deponent.

Sworn to before me this } Grinnell Burt.
31st day of May, 1887. }
F. A. Sanford, Notary Public.

Leverett LEONARD

v.

UNION PACIFIC R. CO.

(No. 10.)

PLEADINGS in case now pending before the Commission, based upon allegations of the exaction of an unreasonable and discriminating rate for the transportation of cattle in a Burton stock car.*

COMPLAINT.

(Filed May 21, 1887.)

Mount Leonard, Mo., April —, 1887.

To the Honorable Chairman, Interstate Commerce Commission, Washington, D. C.
Dear Sir:

Be it known to your honorable board that I, Leverett Leonard, of Mount Leonard, Saline County, and State of Missouri, am a breeder and shipper of pure bred stock. That on the 14th day of April, A. D. 1887, I did deliver to the Union Pacific Railroad Company, at their station at Kansas City, Missouri, to their authorized employees, twenty-six long yearling, pure bred stock cattle, in the Burton feeding and watering stock car, No. 47, said car being owned and operated by the Burton Stock Car Company (Incorporated), Boston,

*See Burton Stock Car Co. v. Chicago, Burlington & Quincy R. R. Co., ante, 222.

Mass., said stock being consigned by and to myself, to Pueblo, Colorado, on sale. The said employees of the Union Pacific Railroad Company charged me a rate of freight, for transportation of said stock from Kansas City, Missouri, to Pueblo, Colorado, 38 per cent in excess of the regular rate of transportation of same stock, from Kansas City to Pueblo, in the common stock cars owned and operated by the Union Pacific Railroad Company. (See expense vouchers attached).

I protested against said excess charge for transportation, the same being wholly in defiance of the letter and the spirit of the Interstate Commerce Law; the employees of the said Union Pacific Railroad Company then referred me to a copy of the western classification (revised to April 1, 1887), page 23, relating to "The transportation of live stock in special or palace cars" (copy of said western classification being herewith attached). I then demanded of said employees that the said Union Pacific Railroad Company supply me with an improved feeding and watering stock car, suitable for the safe and prompt transportation of the above mentioned pure bred stock, and was informed that the Union Pacific Railroad Company did not own any such stock cars, and that it supplied only the common stock car.

Be it further known to your honorable board that the common stock cars supplied by the said Union Pacific Railroad Company are wholly inadequate for the comfortable and safe transportation of valuable and pure bred stock, being common rack cars, exposing animals transported therein to draughts of air, dust, and locomotive cinders, and having no appliances for feeding and watering pure bred animals on the cars, which is very important to their comfort and safety on long hauls.

Therefore, I, Leverett Leonard, respectfully petition your honorable board to cause the Union Pacific Railroad Company to refund to me the aforementioned excess charge of 38 per cent above the regular rates; and further, I petition, in the interest of breeders and shippers of live stock, that all railroads operating under the aforesaid western classification, or any other classification, be required to supply suitable improved live stock cars, provided with adequate appliances for properly feeding and watering horses and cattle on the cars while in transit; or in the event of failing to supply such improved stock cars, said railroad companies shall be required to receive live stock, loaded in improved feeding and watering stock cars, when offered to them, and transport said stock, in said improved cars, at the same rates of freight as they receive for transporting a like number or weight of live stock, in their own cars, the same distance, without charging any excess whatever for the use of said improved cars; all of which your petitioner respectfully prays;

Leverett Leonard.

Done at Denver, Colorado, this 12th day of April, 1887.

State of Missouri, }
County of Saline. }

Personally appeared Leverett Leonard, who is personally known to the undersigned notary public, and he states upon his oath that the above statements are true, for the uses and purposes therein set forth.

INTER S.

Witness my hand and seal in Mt. Leonard, Saline Co., Missouri, this eleventh day of May, 1887.

John Cherry, Notary Public.

Term of office expires 5-12, 1889.

(Seal)

ANSWER.

(Filed June 9, 1887.)

The answer of the Union Pacific Railway Company, to the complaint of Leverett Leonard made to the Interstate Commerce Commission and filed May 21, 1887, alleging overcharge in the transportation of twenty-six head of cattle loaded in Burton stock car No. 47 from Kansas City to Denver:

For answer to said complaint respondent, the Union Pacific Railway Company, says that it is true that about the 14th day of April, 1887, application was made to the Union Pacific Railway Company at Kansas City for the transportation of a Burton stock car, said to be loaded with twenty-six head of cattle, from that place to Pueblo, Colorado, via Denver, Colorado. That at the date of said application the assistant general freight agent of respondent located at Kansas City explained to said Leonard the rate of freight upon said car so loaded as aforesaid from Kansas City to Denver. That said stock car was represented to said agent, and was a Burton palace stock car of the ordinary size, and thirty-six feet in length, internal measurement. That the rate of freight upon an ordinary stock car thirty feet in length as used by railways generally was \$72.50, and was so explained to said Leverett Leonard. That under the rules adopted for the transportation of live stock in the general western classification, as adopted and used by agreement of western roads, through the western classification committee,—so called,—as existing at the date of said shipment, the rate established by said association on live stock palace cars, thirty-six feet in length, internal measurement, was 138 per cent of the regular tariff rate; which said regular tariff rate was \$72.50 as stated and explained to said Leonard at the time of his application for such transportation. That said Leonard at that time made no objection to said rate, and that the only difference which arose between said Leonard and said freight agent, at that interview or at any other interview prior to said shipment, was in relation to the issue of a free pass to said Leonard by said Union Pacific Railway Company from Kansas City to Denver. That said assistant general freight agent having, as he was advised and believed, no authority under the Act of Congress to Regulate Commerce, to issue such free transportation to said Leonard from Kansas City to Denver, refused the request of said Leonard for the same. To this refusal the said Leonard objected; but no other or further complaint was made by him in respect to said shipment, nor were said assistant general freight agent or any general officer of the company advised of any dissatisfaction in respect to said shipment until the filing of his complaint with the Interstate Commerce Commission. That he made no complaint or claim for the refunding of any alleged excess in the rate to any department or officer of respondent, and that the first knowledge said Railway Company had of said claim was re-

cars is only about 20,000 to 23,000 lbs., or only about one half of that of the other cars.

The fresh meat shipments require special despatch, while the cured meats can be transported as ordinary freight, and when unloaded the refrigerator cars have to be returned promptly, and frequently without return load.

The refrigerator cars in which the fresh meat is carried belong to the petitioners and other shippers; and for their use the Railroad Company pays three fourths of one cent per mile run, which rate is onerous and burdensome on the Railroad Company, and is very profitable to the owner of the car.

The Railroad Company is a common carrier, not only of the contents of the car, the value of which per pound is in excess of that of meat provisions per pound, but also of the car, which is worth twice as much as an ordinary freight car. The Railroad Company's risk as a common carrier is, therefore, much greater on this class of shipments, and the release referred to in the petition relieves the Railroad Company only from responsibility for the refrigeration of the contents of the car.

5. Respondent neither admits nor denies the correctness of the tables contained in paragraph 7 of the petition, showing the rates charged on southern and southeastern roads; but leaves the petitioners to proof of their correctness, if the facts therein contained are deemed material. The respondent, however, denies that the rates charged by those roads have any bearing upon the question at issue, or that they can be considered in deciding the question whether the rate charged by the respondent from Chicago to Baltimore is a just and reasonable rate.

Respondent denies the correctness of the inference sought to be drawn by the petitioners from the rate of sixty cents per 100 pounds on dressed hogs in common cars established by special joint tariff No. 50 issued February 1, 1887. That rate was established as a just and reasonable one, in view of the fact that the capacity of a common car loaded with dressed hogs is only about 20,000 pounds. When, however, after that rate was established it became necessary to fix a rate for dressed hogs in refrigerator cars, it was thought unjust to charge more for dressed hogs than the rate already established for dressed beef and sheep in refrigerator cars, which was sixty-five cents per 100 pounds. So far, therefore, from showing that five cents per 100 pounds has been established by the published tariffs as the reasonable advance for transporting meat in refrigerator cars, over the rate for transporting the same meat in common cars, this instance cited in the petition shows rather that the rate of sixty-five cents per 100 pounds on dressed beef, sheep and hogs in refrigerator cars is too low, in comparison with the rates charged on other meat products, fresh and cured.

6. The respondent denies the existence of any such practice as that stated and alleged in paragraph 8 of the petition; and denies any knowledge that the shipments therein alleged of meat provisions and other products in refrigerator cars at the rate of thirty cents per 100 pounds were ever made over its railroad; and the respondent states, upon information and belief, that if such shipments were ever

made over any railroad between Chicago and the eastern seaboard, they were made as a special and exceptional accommodation to the petitioners, in order that their refrigerator cars might not lie idle.

This respondent again denies that it has ever carried any shipment of dressed meat, sheep and hogs for the petitioners between the City of Chicago, or the Union Stock Yards, and the City of New York.

7. The respondent denies that the present rates demanded by it for the transportation of dressed beef, sheep and hogs, subject that particular description of traffic to an unjust and unreasonable disadvantage, or that any of the facts set forth in the petition go to show the existence of any such unjust and unreasonable disadvantage. There is no competitive relation between dressed beef, sheep and hogs, and meat provisions; and the market price of the petitioners' dressed beef, sheep and hogs is in no way affected by the transportation rate on meat provisions. So far from the traffic of the petitioners suffering from an unjust and unreasonable disadvantage, respondent states that, although, as is shown by the table in paragraph 4 of the petition, the transportation charge on dressed beef, sheep and hogs has frequently, for months at a time, been much lower than the present rate; yet at no time has any corresponding reduction been made in the price of their dressed beef, sheep and hogs to the consumer or retail dealer on account of such reduction in the transportation charge.

On the contrary, the transportation charge has not, and does not, affect the market price of those articles, as it certainly would do if it were, as the petitioners allege, an unjust and oppressive charge.

Wherefore, respondent prays that the petition in this matter be dismissed.

The Baltimore & Ohio Railroad Company, by

Samuel Spencer, Vice President.

John K. Cowen,

Counsel for respondent, Baltimore & Ohio Central Building, Baltimore, Maryland.

State of Maryland, }
County of Garrett, } ss.

Samuel Spencer, being duly sworn, on oath says that he is the Vice President of the Baltimore & Ohio Railroad Company, the above named respondent; that he has read the foregoing answer and knows the contents thereof, and that the same are true.

Subscribed and sworn to before me this fifth day of July, A. D. 1887.

Emil F. Droege,

Justice of the Peace of the State of Maryland, in and for Garrett County.

State of Maryland, Garrett County, to wit:

I, E. Z. Tower, Clerk of the Circuit Court for Garrett County, the same being a court of law and of record, do hereby certify that Emil F. Droege, Esquire, before whom the foregoing affidavit was made, and who has thereto subscribed his name, was at the time of so doing a justice of the peace in and for the County and State aforesaid, duly

[Seal]

appointed, commissioned and qualified, and authorized by law to administer oaths and take acknowledgments.

In testimony whereof I hereunto set my hand and affix the seal of the said Circuit Court for said Garrett County, this fifth day of July, A. D. 1887.

E. Z. Tower, Clerk.

Nathaniel W. HOWELL *et al.*,
v.

NEW YORK, LAKE ERIE & WESTERN
R. R. CO., New York, Ontario & Western R. Co., New York, Susquehanna & Western R. R. Co., and Lehigh & Hudson River R. R. Co.*

(No. 4 on Docket.)

PLEADINGS in a proceeding based upon allegations of the exaction of unreasonable and unjust charges for the transportation of milk, now pending before the Commission.

The hearing of the case was entered upon on July 13, 1887, but not being then concluded it was postponed to a day to be agreed upon.

COMPLAINT.

To the honorable body of Interstate Railroad Commissioners of the United States:

Gentlemen:

The petition of Nathaniel W. Howell, Hiram A. Pooler, Charles M. Thompson, Cornelius B. Wood and A. T. Moshier, residents and taxpayers of Orange County, in the State of New York, and duly commissioned to represent the farmers and milk producers of said county show:

First: That the New York, Lake Erie & Western Railroad Company is a duly incorporated Railroad Company running through the States of New York, New Jersey & Pennsylvania.

Second: That said Railroad Company runs in and through the County of Orange aforesaid a distance of about fifty miles.

Third: That your petitioners and those by them represented, transport daily over the line of said Railroad Company large quantities of milk from various points in said county to the City of Jersey City, in the State of New Jersey.

Fourth: That in the estimation of your petitioners and those by them represented, the rate charged by said Railroad Company for transporting milk from points in said county to the City of Jersey City, in the State of New Jersey, a mean distance of about fifty miles is unreasonable and unjust.

Fifth: That said charges are unreasonable and unjust for the following reasons:

That the rate charged by said Railroad Company from and to the points aforesaid amounts to the 85 per cent of the value of said product,

or at the rate of thirty-five cents per 100 pounds with 5 per cent additional for ferrage, from Jersey City to New York City; whereas, other classes of freight and produce of equal value are transported by said Railroad Company from and to the points aforesaid and generally delivered in the City of New York for a less rate, and with no greater risk attached.

Sixth: That in the estimation of your petitioners such charges being unreasonable and unjust, the continuance thereof by said Railroad Company is contrary to and in violation of the latter clause of section 1 of the Interstate Commerce Law.

Seventh: And your petitioners further show that the said New York, Lake Erie & Western Railroad Company charge for transporting milk to the City of Jersey City from Summit in the State of New York a distance of 184 miles from Jersey City, the same rate for a like service from points in Orange County, a mean distance of fifty miles.

That in the estimation of your petitioners said Railroad Company, by such rates and charges and discriminations, demands, collects and receives from other persons (by special rate), for doing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions a less compensation for such service contrary to and in violation of section 2 of the Interstate Commerce Law.

That in the estimation of your petitioners the rates charged by said Company for transporting milk, being no greater for a longer than a shorter distance, is an undue and unjust preference and advantage to particular persons and localities, and subjects your petitioners and the persons by them represented, and the locality in which they reside, and their particular description of traffic to an unjust and unreasonable prejudice as against other persons and localities contrary to and in violation of section 3, of the Interstate Commerce Law.

Eighth: And your petitioners further show that the New York, Ontario & Western Railroad, and the New York, Susquehanna & Western Railroad and the Lehigh & Hudson River Railroad, are corporations doing a general freight and passenger business, the former running through a portion of Orange County, N. Y., with a terminus in the State of New Jersey, and the two latter passing through the States of New York and New Jersey and a portion of Orange County aforesaid.

Ninth: With the exception of the New York, Ontario & Western Railroad Company which charges an advanced rate of three cents per 100 pounds for transporting milk from points west of Bloomingburgh, in the County of Sullivan, the allegations of your petitioners are equally applicable to the last named corporations as to the New York, Lake Erie & Western Railroad Company, and are to be so regarded.

Wherefore, by reason of the allegations aforesaid your petitioners pray that your honorable body will take such immediate action in the premises as shall seem just and equitable, to the end that the said corporations complained of may be restrained from a further continuance of the acts complained of, and that such other and further relief may be afforded your

*See *Re Milk Traffic*, ante, 24, 202, 315.

petitioners as shall, in the estimation of your honorable body, be deemed proper.

And your petitioners will ever pray, etc.,

(Signed) Nat. W. Howell, C. B. Wood,
H. A. Pooler, Chas. M. Thompson,
A. T. Moshier.

State of New York, }
County of Orange. } ss.

Nathaniel W. Howell, Hiram A. Pooler, Cornelius B. Wood, Charles M. Thompson and A. T. Moshier of said county being sworn say, and each for himself says, that they have read the foregoing petition, that the facts therein stated of their own knowledge are true, and that the facts therein stated to be alleged on information and belief they believe to be true. (Signed) Charles L. Mead, Notary Public.

[L. a.]

Sworn to before me, this
19th day of April, 1887.

ANSWER OF NEW YORK, LAKE ERIE & WESTERN R. R. CO.

The New York, Lake Erie & Western Railroad Company, for an answer to the complaint in the above entitled matter, respectfully shows:

First: It admits that it is a duly incorporated railroad company, whose lines of railroad extend into the States of New York, New Jersey and Pennsylvania, and that about fifty miles of the main stem thereof are in the County of Orange, in said State of New York.

Second: It denies that all of the petitioners herein transport daily over its line large quantities of milk from various points in said county to the City of Jersey City, in the State of New Jersey, as they have alleged in their petition; and upon information and belief it also denies that the said petitioners are duly commissioned to represent the farmers and milk producers of the said County of Orange, as is further alleged in said petition.

Third: The said Railroad Company denies the allegations contained in the fourth paragraph of said petition to the effect that the rate charged by it for transporting milk from points in said county to the said City of Jersey City, a mean distance of about fifty miles, is unreasonable and unjust; but on the contrary it avers that said charges are reasonable and just, as will fully appear from the facts hereinafter stated.

Fourth: And it also denies that said charges are unreasonable and unjust as is alleged in the fifth paragraph of said petition; and it further avers that the reasons stated by the petitioners in support of their allegations are not in accordance with the facts, because it avers that the rate which the said Company charges is not 85 per cent of the value of said product, but on the contrary is only thirty-five cents per can, of forty quarts each, which weigh about 100 pounds, and that the said charge of thirty-five cents per can, as above stated, includes the expense of returning the empty cans from Jersey City to the points from which the milk was shipped, for which service no additional charge is made, although the empty cans require the same service in handling as full cans do. And said Company further avers that it

does not receive the five cents per can ferry charges, as is alleged in said petition.

It also denies that it transports milk at any less rate for any one person, company, firm or corporation, than for another, or that it subjects any particular person, company, firm, corporation or locality, to any undue prejudice or disadvantage in any respect whatsoever, or that it gives any special rate to any shipper of milk.

Fifth: And the said Railroad Company further denies that its charges are unreasonable and unjust, and that the continuance thereof by it would be contrary to, and in violation of, the latter clause of section 1 of the Interstate Commerce Law, as is alleged in the sixth paragraph of the petition.

Sixth: The said Railroad Company admits that it charges for transporting milk from Summit, in the State of New York, to Jersey City, in the State of New Jersey, a distance of about 184 miles, the same rates that it charges from points in Orange County, New York, to said Jersey City, New Jersey, a mean distance of about fifty miles. But said Company avers that said rates which it charges as aforesaid are not unreasonable and unjust for the following reasons:

That milk is a perishable commodity, and must reach its market within a few hours after it is made ready for shipment by the producer; that all the milk carried on said road is sold in the Cities of New York and Brooklyn, and is delivered by the dealers or peddlers to consumers in those cities early in the morning, and that it must, therefore, arrive at Jersey City not later than midnight, so that it may be taken away by the consignees, and distributed before the early hour at which it must be delivered to the consumer.

That in order to insure the arrival of the milk in proper condition, and in time to reach its market, said Company is obliged to run two trains each way daily, consisting of about thirteen cars each, especially for the transportation of this traffic; that during the winter, to prevent the milk from freezing, said Company is obliged to heat the cars by stoves, that the trains have to be run at a high rate of speed, equal to that of an ordinary passenger train, for which are required cars, equipped with Miller platforms and Westinghouse airbrakes, and much more expensively constructed than the cars in the ordinary freight service; that the milk is shipped in various lots ranging from one can to 200 cans, and more frequent stops are necessary than with other trains, intermediate milk stations being established solely for the accommodation of milk shippers; that the fast time necessary to be made by the trains increases the risk of accidents, and requires the employment of larger crews in order to handle the cans, and arrange them convenient for quick delivery, and also entails greater expense for fuel and maintenance of equipment; that the consignees of the milk who take it away in wagons from Jersey City, assemble there so as to meet the trains, about the time of their arrival, and are so numerous and require so much room for their accommodation that extra men have to be employed to make the delivery, and separate delivery sheds and grounds have to be provided and maintained; that the

dealers or consignees who come for the milk at Jersey City, cross from New York or Brooklyn, and ferries have to be run for several hours during the night for their accomodation, at large expense, there being during those hours very little, or none other, business passing from one side of the river to the other and the fares paid by the milkmen being insufficient to meet the cost of operating the ferries.

That milk is time freight and delay of a few hours in arrival, by accident, or otherwise, would render the whole cargo comparatively worthless, because even if the milk were not spoiled, the demand for the day would have passed, and that for the next day would be met by the following shipment.

That the trains coming in at night have to go out early in the following morning to carry back to the shipper the cans brought in by the trains on the previous day, and returned empty, so that he may receive them before night, and in time to use them on the following day; that it requires the same number of cars to return the empty cans that it does to bring them down loaded, and the equipment used in the milk traffic can therefore be used for no other purpose, consequently, the return trip of the cars employed in such traffic brings no revenue whatever to the Company (the carriage of the empty cans being included in the charge of thirty-five cents, as already stated).

Said Company further shows and alleges that having regard to the cost and character of the service, and the facilities and accomodations afforded, the rate on milk is lower comparatively than that made on any other class of freight.

Seventh: The said Railroad Company further avers that ever since the establishment of the business of transporting milk from remote points to the Cities of New York and Brooklyn (about forty years ago), it has been the custom of all the common carriers engaged in that business to charge a uniform fixed rate per quart or gallon for the milk so transported, irrespective altogether of the length of the haul; and that the same custom now prevails among all the common carriers engaged in transporting milk to the Cities of New York and Brooklyn. This custom owes its origin, and long continuance, to the fact that milk is sold to all consumers in the cities aforesaid at a uniform price for the quantity sold; and it was therefore deemed better and more satisfactory for all parties interested to have one uniform charge made for transporting milk, irrespective of distance, instead of prorating for the same according to the length of the haul.

And it is averred that up to, or about, the time of filing this petition, the establishment and observance of the custom aforesaid regulating the charge for transporting milk gave a general, if not universal, satisfaction, and that there is not now any legal or just ground for complaint against the same.

Eighth: And the said Railroad Company further avers that it is of the greatest importance to the citizens of New York and Brooklyn, as well as to the other consumers of milk, to have the area for the production thereof enlarged as much as possible, instead of having the same

narrowed and circumscribed, which would be the effect of granting the prayer of the petitioners; because the practical effect of so doing would be to enable the petitioners to establish a monopoly in the milk business by preventing the establishment of dairy farms and creameries at a greater distance than fifty miles from New York City.

The business of producing milk is a peculiar one, confined to few localities in comparison with the raising of other farm products, and requires therefore all lawful and reasonable encouragement for the establishment and successful working of dairy farms and creameries.

Ninth: And this Railroad Company avers, upon information and belief, that quite a number of persons relying upon the custom hereinbefore mentioned of making the same charge for the transportation of milk irrespective of the length of the haul, have established dairy farms and creameries at or near Summit, and at various points between there and the points in Orange County, New York, mentioned in the petition; and the said Railroad Company further avers that to make any change in the rates heretofore charged for the transportation of milk would cause great loss and damage to the parties who have established such dairy farms and creameries, as aforesaid.

Tenth: And the said Railroad Company denies that by conducting the milk business in the manner, and for the rates and charges hereinbefore stated, it has done anything unlawful, or improper, or in violation of the second and fourth sections of the Interstate Commerce Law, or any other section or provision thereof.

Eleventh: And this Railroad Company finally says that having answered fully and particularly each and all of the allegations of said petition, it prays that the same may be dismissed.

The New York, Lake Erie & Western Railroad Company.

By J. A. Buchanan, Attorney.

State of New York,
City and County of New York. } ss.

John S. Hammond, being duly sworn, says that he is the General Freight Agent of the New York, Lake Erie & Western Railroad Company, the defendant named in the foregoing answer, and that he has read the same and knows the contents thereof, and that the same is true, of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Sworn to before me this }

26th day of May, 1887. }

(Signed)

J. S. Hammond,

Geo. E. Grant & Co. Notary Public,

[L. s.]

N. Y. City.

ANSWER OF NEW YORK, ONTARIO & WESTERN R. Co.

The New York, Ontario & Western Railway Company answering the complaint in the above entitled matter:

First. Demands that the said complaint be dismissed, because it contains no statement of facts as against said Company, showing any

violation by said Company of any provision of the Act of Congress, approved February 4, 1887, entitled "An Act to Regulate Commerce," nor any omission on the part of said Company to do anything that by the provisions of said Act it is required to do.

1. By the ninth paragraph of the complaint, the said Company is expressly excepted from the allegations of said complaint.

2. The allegations as against the New York, Lake Erie & Western Railway Company, which the complainants allege show a violation of the provisions of the said Act by that Company, do not apply to the New York, Ontario & Western Railway Company for the reasons (which appear upon the complaint) that the said New York, Lake Erie & Western Railway Company is alleged to charge a certain rate for the transportation of milk from various points upon its road in the County of Orange, to the City of Jersey City, in the State of New Jersey, with 5 per cent additional for ferrage from Jersey City to New York City, which rates the complaint alleges are unreasonable and unjust: Whereas, it appears by the said complaint that milk transported by this Company is carried upon its own road; that such road does not terminate in Jersey City, and that the milk carried upon its road is not carried between the same points as to which it is alleged that the Erie Company make an unreasonable or unjust charge.

8. That the complaint as against this Company is too vague and indefinite and insufficient to base any proceeding under the said Act, and would not furnish the Commission with any facts upon which it could formulate or make any judgment or order.

Without waiving the foregoing objections to the insufficiency of the complaint, the said Company for a further and separate answer admits that it is a corporation doing a general freight and passenger business, and that its railroad runs through a portion of Orange County, in the State of New York, with a terminus in the State of New Jersey, but denies that it transports milk from Summit or any other point in the County of Orange or in the State of New York to Jersey City, or makes any charges or rate for transportation of milk, between Summit or any other point and Jersey City.

It also denies that it charges for the transportation of milk 85 per cent of the value thereof, or at the rate of thirty-five cents per 100 pounds; and it also denies that the rates charged by it for transporting milk upon its railroad, are unreasonable and unjust.

It also denies that it transports milk at any less rate for any one person, company, firm or corporation than for another, or that it subjects any particular person, company, firm, corporation or locality to any undue prejudice or disadvantage in any respect whatsoever, or that it gives any special rate to any shipper of milk.

It also denies that it transports any freight or produce, under similar circumstances and conditions, at a less rate than that charged for the transportation of milk.

Said Company further answering, shows and alleges that the terminus of its road in the State of New Jersey, is at Weehawken on the

west bank of the Hudson River; that its railroad passes through a portion of the County of Orange, in the State of New York, and that it charges for the transportation of milk in cans from points in said county to Weehawken, and the return of the can empty to the point of original shipment, thirty-five cents per can; that the can weighs twenty pounds, and contains forty quarts of milk, weighing eighty pounds; that the average distance of transportation of milk from points in Orange County to Weehawken is seventy-seven miles, and that the rate charged by said Company for such transportation of the milk, and return of the can, is at the rate of twenty-nine cents per 100 pounds; that the full load per car of milk in cans is ten tons, while the load per car returning with the empties is but two tons.

That the milk is a perishable commodity and must reach its market within a few hours after it is made ready for shipment by the producer; that all the milk carried on said road is sold in the Cities of New York and Brooklyn, and is delivered by the dealers or peddlers to consumers in those cities early in the morning, and that it must, therefore, arrive at Weehawken not later than midnight, so that it may be taken away by the consignees, and distributed before the early hour at which it must be delivered to the consumer.

That in order to insure the arrival of the milk in proper condition, and in time to reach its market, said Company is obliged to run trains especially for the transportation of this traffic; that during warm weather, to preserve the milk, the Company is obliged to cool the cars with ice, placed in refrigerators in the cars, and during winter, to prevent it from freezing, is obliged to heat the cars by stoves; that the trains have to be run at a high rate of speed, equal to that of an ordinary passenger train, for which are required cars, equipped with Miller platforms and Westinghouse air-brakes, and more expensively constructed than the cars in the ordinary freight service; that the milk is shipped in small lots ranging from five to forty cans, and more frequent stops are necessary than with other trains, intermediate milk stations being established solely for the accommodation of milk shippers; that the fast time necessary to be made by the train increases the risk of accidents, and requires the employment of larger crews in order to handle the cans, and arrange them convenient for quick delivery, and also entails greater expense for fuel and maintenance of equipment; that consignees of the milk who take it away in wagons from Weehawken, assemble there so as to meet the train, about the time of its arrival, and are so numerous and require so much room for their accommodation that extra men have to be employed to make the delivery, and separate and costly delivery sheds and grounds have to be provided and maintained, which cannot be used for general delivery of other classes of freight; that the dealers or consignees who come for the milk at Weehawken, cross from New York or Brooklyn, and ferries have to be run for several hours during the night for their accommodation at large expense, there being during those hours very little, or none other, business passing from one side of the river to

the other, and the fares paid by the milkmen being insufficient to meet the cost of operating the ferries.

That milk is time freight and a delay of a few hours in arrival by accident or otherwise, would render the whole cargo worthless, because even if the milk were not spoiled, the demand for the day would have passed, and that for the next day would be met by the following shipment.

That the train coming in at midnight has to go out early in the following morning to carry back to the shipper the cans brought in by the train on the previous day, and returned empty, so that he may receive them before night, and in time to use them on the following day; that it requires the same number of cars to return the empty cans that it does to bring them down loaded, and the equipment used in the milk traffic can therefore be used for no other purpose; consequently the return trip of the train brings no revenue whatever to the Company from other sources than the milk traffic (the carriage of the empty cans being included in the charge of thirty-five cents as already stated).

Said Company further shows and alleges that having regard to the cost and character of the service, and the facilities and accommodations afforded, the rate on milk is lower comparatively than that made on any other class of freight.

Said Company further shows that to the best of its knowledge, information and belief, none of the complainants are shippers of milk upon the road of said Company.

Dated, New York, May 28, 1887.

New York, Ontario & Western Railway Company,

By John Burton, Secretary.

John B. Kerr,

Attorney for said Company,

16 & 18 Exchange Place, New York.
State of New York, City } ss.
and County of New York. }

John Burton being duly sworn deposes and says: that he is the Secretary and Treasurer of the New York, Ontario & Western Railway Company above named; that the foregoing answer is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Sworn to before me, this 28th day of May, 1887, John Burton.

[Seal] George Marsden, Notary Public,
Westchester County.

Certificate filed in New York County.

ANSWER OF NEW YORK, SUSQUEHANNA & WESTERN R. R. Co.

The New York, Susquehanna & Western Railroad Company, one of the corporations complained against in and by the above mentioned petition, answering so much and such parts thereof as relate to this respondent, says:

1. It admits that it is a corporation (formed under and by virtue of the laws of New Jersey and Pennsylvania) doing a general freight and passenger business, as in the eighth paragraph of said petition alleged; but it denies it to

be true as in said paragraph alleged, that its road passes "through the State of New York," and says that its main line extends from Marion, in Jersey City, in the State of New Jersey, to Gravel Place, in the State of Pennsylvania, with a branch (called the "Unionville Branch") extending from the Two Bridges on its main line, to the boundary line between the States of New Jersey and New York, at Unionville, in the last named State; together with a railroad (known as the "Middletown, Unionville & Water Gap Railroad") operated by it under a traffic arrangement, in connection with said branch, and extending from said state line at Unionville, to Middletown, in the County of Orange, a distance of 13 9-10 miles; which last mentioned road is the only road operated by this respondent in the State of New York.

2. It denies it to be true (as in the ninth paragraph of said petition alleged), that the allegations of the petition "are equally applicable" to this respondent, "as to the New York, Lake Erie & Western Railroad Company"; and further answering, severally, the allegations of said petition alleged to be applicable to this respondent.

3. It denies the allegation that its railroad runs "through the County of Orange aforesaid, a distance of about fifty miles," contained in the second paragraph of said petition; and it says that it runs only 13 9-10 miles in said County, as hereinbefore stated.

4. It admits that considerable (though not very large) quantities of milk are daily transported from various points in said county, to Jersey City, in the State of New Jersey; but it denies that the same is transported by said petitioners and those by them represented; and it says that, as it has been informed and believes, the milk so transported over its road, as aforesaid, is transported largely (if not entirely) by or for other persons, who purchase the same before transportation, of the said petitioners and others.

5. It denies that the rate charged for such transportation is unreasonable or unjust, as alleged in the fourth paragraph of said petition.

6. It says that the rate charged by it amounts to only thirty-five cents per can, containing about 100 pounds of milk, for the transportation of filled cans from different points on its said New York line of 13 9-10 miles in extent to Jersey City aforesaid, and the return transportation of the empty cans from said city to said points on said New York line; and it denies that such charge is simply for the transportation of the filled cans to Jersey City aforesaid, or that this respondent has anything to do with the ferriage thereof to or from the City of New York, or that it charges or receives anything therefor or on account thereof,—as alleged or insinuated in said petition; and while it may be true, as indefinitely alleged in the last mentioned paragraph, that "other classes of freight and produce of equal value, are transported from and to the same points for a less rate and with no greater risk attached"; yet such "other classes of freight and produce," transported at a less rate, are not in fact, and are not alleged to be, of a like kind or description, nor is the service in the transportation thereof of a like and contemporaneous service under substantially similar circum-

stances and conditions, with that performed in the transportation of milk as aforesaid; nor is the charge in question (as this respondent submits) a violation of the law.

7. It denies that the allegations of the seventh paragraph of said petition are true in respect to this respondent, or that they are at all applicable to it.

8. It submits that the "estimation," inference, or conclusion of the said petitioners, following the allegations of facts, herein before answered, and characterizing them as violations of the Act of Congress entitled "An Act to Regulate Commerce"—are unfounded, unwarranted, and unjust.

And this respondent prays to be hence dismissed.

John W. Taylor, F. A. Potts,
Solicitor for Respondent. President,
State of New York, } ss.
County and City of New York. }

The foregoing answer of the New York, Susquehanna & Western Railroad Company, was taken before me, this thirteenth day of May, A. D. 1887, under the common seal of the said corporation, as by their seal thereto affixed, appears.

R. C. Shimeall.
[Seal] Notary Public for Kings County.
Certificate filed in New York County.

ANSWER OF LEHIGH & HUDSON RIVER R. CO.

The Lehigh & Hudson River Railway Company answering the petition of Nathaniel W. Howell and others heretofore filed with the Interstate Commerce Commission against said Company,

1. Admits that said Company is a corporation doing a general freight and passenger business upon their line of railway passing through the State of New Jersey and a portion of Orange County, in the State of New York.

2. Denies each and every other allegation and statement in said petition contained, so far as such allegations and statements refer to or are sought to be alleged against the said Lehigh & Hudson River Railway Company.

3. And for a further and separate answer and defense to said petition the said Lehigh & Hudson River Railway Company avers that its charges for the transportation of milk over the line of said railway or for the receiving, delivering, storage or handling of such property are and have been reasonable and just; that in the transportation of said property the said Company has not in the past and does not now violate any of the provisions of the Act of Congress entitled "An Act to Regulate Commerce" and known as the Interstate Commerce Act.

4. And for a further and separate answer and defense to said petition the said Company avers that in the transportation of milk over the said Railway for the shippers thereof the said Company, as a common carrier, does not do for any other person or persons a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar conditions and circumstances; that such transportation of milk is by a different and separate service from that of any other traffic over said Railway and is carried under

wholly dissimilar circumstances and conditions, in that among other things such milk is transported by special train service at greater expense for equipment, maintenance and carriage, and that the cans returned as freight to the shipper require the same service and car room as the original shipment, and no additional charge or charges are made for such return and transportation.

Wherefore, the said Lehigh & Hudson River Railway Company demands that the said petition be dismissed as against said Company.

Dated the 31st day of May, 1887.

(Signed) John J. Beattie,
Attorney for the Lehigh & Hudson River Railway Company.

Warwick, Orange County, N. Y.
State of New York, } ss.
County of Orange. }

Grinnell Burt, being duly sworn, says that he has heard read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

And deponent further says that the reason why this verification is not made by the party is that the said party is a corporation and that this deponent is an officer thereof to wit: the President, and that all of the allegations in said answer are within the personal knowledge of this deponent.

Sworn to before me this } Grinnell Burt.
31st day of May, 1887.
F. A. Sanford, Notary Public.

Leverett LEONARD

UNION PACIFIC R. CO.
(No. 10.)

PLEADINGS in case now pending before the Commission, based upon allegations of the exaction of an unreasonable and discriminating rate for the transportation of cattle in a Burton stock car.*

COMPLAINT.

(Filed May 21, 1887.)

Mount Leonard, Mo., April —, 1887.

To the Honorable Chairman, Interstate Commerce Commission, Washington, D. C.

Dear Sir:

Be it known to your honorable board that I, Leverett Leonard, of Mount Leonard, Saline County, and State of Missouri, am a breeder and shipper of pure bred stock. That on the 14th day of April, A. D. 1887, I did deliver to the Union Pacific Railroad Company, at their station at Kansas City, Missouri, to their authorized employees, twenty-six long yearling, pure bred stock cattle, in the Burton feeding and watering stock car, No. 47, said car being owned and operated by the Burton Stock Car Company (incorporated), Boston,

*See Burton Stock Car Co. v. Chicago, Burlington & Quincy R. R. Co., ante, 288.

Mass., said stock being consigned by and to myself, to Pueblo, Colorado, on sale. The said employees of the Union Pacific Railroad Company charged me a rate of freight, for transportation of said stock from Kansas City, Missouri, to Pueblo, Colorado, 88 per cent in excess of the regular rate of transportation of same stock, from Kansas City to Pueblo, in the common stock cars owned and operated by the Union Pacific Railroad Company. (See expense vouchers attached).

I protested against said excess charge for transportation, the same being wholly in defiance of the letter and the spirit of the Interstate Commerce Law; the employees of the said Union Pacific Railroad Company then referred me to a copy of the western classification (revised to April 1, 1887), page 23, relating to "The transportation of live stock in special or palace cars" (copy of said western classification being herewith attached). I then demanded of said employees that the said Union Pacific Railroad Company supply me with an improved feeding and watering stock car, suitable for the safe and prompt transportation of the above mentioned pure bred stock, and was informed that the Union Pacific Railroad Company did not own any such stock cars, and that it supplied only the common stock car.

Be it further known to your honorable board that the common stock cars supplied by the said Union Pacific Railroad Company are wholly inadequate for the comfortable and safe transportation of valuable and pure bred stock, being common rack cars, exposing animals transported therein to draughts of air, dust, and locomotive cinders, and having no appliances for feeding and watering pure bred animals on the cars, which is very important to their comfort and safety on long hauls.

Therefore, I, Leverett Leonard, respectfully petition your honorable board to cause the Union Pacific Railroad Company to refund to me the aforementioned excess charge of 88 per cent above the regular rates; and further, I petition, in the interest of breeders and shippers of live stock, that all railroads operating under the aforesaid western classification, or any other classification, be required to supply suitable improved live stock cars, provided with adequate appliances for properly feeding and watering horses and cattle on the cars while in transit; or in the event of failing to supply such improved stock cars, said railroad companies shall be required to receive live stock, loaded in improved feeding and watering stock cars, when offered to them, and transport said stock, in said improved cars, at the same rates of freight as they receive for transporting a like number or weight of live stock, in their own cars, the same distance, without charging any excess whatever for the use of said improved cars; all of which your petitioner respectfully prays;

Leverett Leonard.

Done at Denver, Colorado, this 12th day of April, 1887.

State of Missouri, }
County of Saline. }

Personally appeared Leverett Leonard, who is personally known to the undersigned notary public, and he states upon his oath that the above statements are true, for the uses and purposes therein set forth.

INTER 8.

Witness my hand and seal in Mt. Leonard, Saline Co., Missouri, this eleventh day of May, 1887.

John Cherry, Notary Public.

Term of office expires 5-12, 1889.

(Seal)

ANSWER.

(Filed June 9, 1887.)

The answer of the Union Pacific Railway Company, to the complaint of Leverett Leonard made to the Interstate Commerce Commission and filed May 21, 1887, alleging overcharge in the transportation of twenty-six head of cattle loaded in Burton stock car No. 47 from Kansas City to Denver:

For answer to said complaint respondent, the Union Pacific Railway Company, says that it is true that about the 14th day of April, 1887, application was made to the Union Pacific Railway Company at Kansas City for the transportation of a Burton stock car, said to be loaded with twenty-six head of cattle, from that place to Pueblo, Colorado, via Denver, Colorado. That at the date of said application the assistant general freight agent of respondent located at Kansas City explained to said Leonard the rate of freight upon said car so loaded as aforesaid from Kansas City to Denver. That said stock car was represented to said agent, and was a Burton palace stock car of the ordinary size, and thirty-six feet in length, internal measurement. That the rate of freight upon an ordinary stock car thirty feet in length as used by railways generally was \$72.50, and was so explained to said Leverett Leonard. That under the rules adopted for the transportation of live stock in the general western classification, as adopted and used by agreement of western roads, through the western classification committee,—so called,—as existing at the date of said shipment, the rate established by said association on live stock palace cars, thirty-six feet in length, internal measurement, was 188 per cent of the regular tariff rate; which said regular tariff rate was \$72.50 as stated and explained to said Leonard at the time of his application for such transportation. That said Leonard at that time made no objection to said rate, and that the only difference which arose between said Leonard and said freight agent, at that interview or at any other interview prior to said shipment, was in relation to the issue of a free pass to said Leonard by said Union Pacific Railway Company from Kansas City to Denver. That said assistant general freight agent having, as he was advised and believed, no authority under the Act of Congress to Regulate Commerce, to issue such free transportation to said Leonard from Kansas City to Denver, refused the request of said Leonard for the same. To this refusal the said Leonard objected; but no other or further complaint was made by him in respect to said shipment, nor were said assistant general freight agent or any general officer of the company advised of any dissatisfaction in respect to said shipment until the filing of his complaint with the Interstate Commerce Commission. That he made no complaint or claim for the refunding of any alleged excess in the rate to any department or officer of respondent, and that the first knowledge said Railway Company had of said claim was re-

ceived through his complaint filed with the Interstate Commerce Commission.

Respondent further answering says that it denies that said charge or any part thereof is imposed wholly in defiance of the letter and spirit of the Act of Congress to Regulate Commerce; and further denies that any demand was made upon said Railway Company to furnish said Leonard with an improved feeding and watering stock car suitable for the safe and prompt transportation of high bred stock; or that said complainant was informed that the Railway Company did not own such cars; and says that the statements of the complainant in that particular are untrue in fact.

Respondent further answering says that the stock cars of the Union Pacific Railway Company in ordinary use are well built, substantial and in every respect fit for the transportation of live stock, as such business is ordinarily conducted by western roads; and that the same are managed, run and operated with due care and prudence, and in accordance with the laws of the respective States and Territories through which the same are operated, and of the United States.

Respondent further answering says that the said Burton stock car in which said cattle were loaded, and which the respondent was requested to transport, is a species of palace stock car. That it is not owned by any railroad company, but by a private corporation or partnership known as the Burton Stock Car Company, whose business it is to provide cars for shippers of live stock at a fee and expense for such shipment to be paid to said Burton Stock Car Company wholly separate and apart from any payment for the transportation of said car and its contents. That said corporation is a private pecuniary corporation, building and owning cars to be hired at and for their own profit to stock shippers, and for which said Burton Stock Car Company demands and receives a separate compensation wholly distinct from, and in addition to the compensation paid to railway companies for the transportation of cars. That the tendency and effect of such private ownership and private profit upon cars transported by railway companies is to absorb and divert a portion of the legitimate business of railways into the pockets of private corporations and individuals, who deny any obligation as common carriers to the public or the Government, and who seek to interpose themselves between the public and the railways as middlemen and thus extract a private profit from each.

Respondent further answering says that in the transaction set forth in complainant's complaint respondent has granted and allowed to said complainant equal advantages and facilities, without preference or discrimination in favor of or against any other person or corporation similarly situated tendering for transportation cars of the same character, construction, weight, length and capacity; and that the charges made said complainant for hauling and handling the same by respondent were reasonable and just.

Respondent further answering denies that in said transaction it has been guilty in any way or manner, either directly or indirectly, of a breach of sections 1, 2 or 3, or of any other sec-

tion of the Act of Congress passed at the late session of Congress; all of which respondent is ready to support by appropriate proof.

Respondent further submits that it is not under any legal obligation, either of common law or by construction, to receive and transport over its road trains, cars and vehicles owned by private parties or corporations, whether tendered by the owners thereof or by the hirers thereof, not operating railways as common carriers and not exchanging passengers, freight or other cars with respondent as common carriers.

Respondent further answering denies each and every allegation of complainant's complaint not herein already denied, confessed or avoided and prays that it may be dismissed with its costs.

Union Pacific Railway Company,

By A. J. Poppleton, its Attorney.

State of Nebraska, } ss.
County of Douglas. }

Thomas L. Kimball being first duly sworn, on oath says that he is the General Traffic Manager of the Union Pacific Railway Company, respondent herein, having general charge and supervision of its traffic business; that he has read the foregoing answer and knows the contents thereof; and that the facts therein stated are true as he verily believes.

Subscribed in my presence and sworn to before me this fourth day of June, A. D. 1887.

(Seal) J. S. Shropshire, Notary Public.

E. B. RAYMOND

CHICAGO, MILWAUKEE & ST. PAUL
R. CO.

(No. 20.)

PLEADINGS in a case pending before the Commission, based upon allegations of the exaction of an unreasonable charge for the transportation of wheat.

COMPLAINT.

(Filed May 26, 1887.)

This is to certify that I, E. B. Raymond, am a citizen of the Town of Mazeppa, County of Wabasha, and State of Minnesota; that I am interested with another party in the purchase and sale of produce; that the Town of Mazeppa is located on the Wabasha division of the Chicago, Milwaukee & Saint Paul Railroad, about fifty-two miles from Wabasha where the said Wabasha division connects with river division of the said Chicago, Milwaukee & Saint Paul Railroad, the said river division constituting and being a part of the main line extending from Chicago via Racine, Milwaukee and La Crosse to Saint Paul, Minnesota. That Lake City and Red Wing are located on the said river division of the said Chicago, Milwaukee & Saint Paul Road, the former, Lake City, about twenty miles from Mazeppa, and the latter, Red Wing, about twenty-two miles from Mazeppa, both towns

being direct competitors with the Town of Mazeppa for the rail traffic and purchase of produce from the territory or country intervening.

That the posted rates on wheat and some other kinds of grain by the said Chicago, Milwaukee & Saint Paul Railroad from Red Wing and Lake City to Chicago was fifteen cents per 100 pounds from August 15, 1886, until April 5, 1887. That the posted rates on wheat and some other kinds of grain by the said Chicago, Milwaukee & Saint Paul Railroad from Mazeppa to Chicago was seventeen cents per 100 pounds from August 15, 1886, until April 5, 1887. That when the Chicago, Milwaukee & Saint Paul Railroad posted its new rates April 5, 1887, it did not change the old rates on wheat from Winona or Hastings on the river division, nor the rates on wheat to Chicago from Hammonds, a station about thirty-four miles from Wabasha on the said Wabasha division; but at all stations west of Hammonds on said Wabasha division, the rate on wheat was advanced to eighteen cents per 100 pounds to Chicago, making at this place a differential of three cents per 100 pounds in place of two cents per 100 pounds as existed from August 15, 1886, until April 5, 1887.

That the said Chicago, Milwaukee & Saint Paul Railroad I believe at times previous to August 15, 1886, did make such rates on some kinds of grain to interstate points from Lake City as to draw the grain from within eighty rods of our own elevator. That an eighteen cents rate from Mazeppa to Chicago is what I believe to be unreasonable, and I further believe that the advance April 5, 1887, from seventeen cents to eighteen cents on wheat to Chicago from Mazeppa was wholly unwarranted. That any differential exceeding two cents per 100 pounds on grain from Mazeppa to Chicago or other interstate points over the rates from Red Wing and Lake City to such interstate points I believe to be unjust and a discrimination against this place and locality. That it is now claimed by the Daily Press that a ten cent rate on wheat from Minneapolis to Chicago, including Red Wing and Lake City, is now being made; if so, then an eight cent differential exists sufficient to take the wheat from before our own door.

Therefore I ask of your honorable Commission as early a consideration of my complaint as possible. I further ask that if you find that the advance April 5, 1887, was unwarranted and unjust, then you request the said Chicago, Milwaukee & Saint Paul Railroad Company to refund the excess collected from shippers since April 5, 1887. I further ask that if you find that the said Chicago, Milwaukee & Saint Paul Railroad is carrying wheat from Red Wing and Lake City to Chicago at ten cents per 100 pounds and has been since the 18th inst. that you declare the same to be a discrimination against this place and locality and a violation of section 8 of the Interstate Commerce Law so long as the rate remains eighteen cents per 100 pounds from this place to Chicago; and that you further request it, if you find that it has violated said third section of the Interstate Commerce Law, to refund any excess of money it may have collected from shippers over and above the rate at Lake City

ENTER S.

and Red Wing, with a reasonable differential, and to pay any damages that may have accrued in consequence of such violation of the Interstate Commerce Law.

Subscribed and sworn to }
according to my best
knowledge and belief.

E. B. Raymond.

Witness, H. F. Fowler.

Sworn to and subscribed before me this 23d day of May, 1887.

(Seal) Homer T. Fowler, Notary Public,
Wabasha Co.

ANSWER.

(Filed June 13, 1887.)

Milwaukee, Wis. June 7, 1887.

Mr. Edward A. Moseley, Secretary Interstate
Commerce Commission,
Washington, D. C.

Sir:

Answering the complaint of E. B. Raymond, a citizen of Mazeppa, County of Wabasha, State of Minnesota, the Chicago, Milwaukee & St. Paul Railway Company states as follows:

First. It is true, as claimed, that immediately prior to April 5, 1887, fifteen cents per 100 pounds was the rate charged from stations on the River Division, including Lake City and Red Wing, and seventeen cents per 100 pounds from Mazeppa to Chicago.

Second. That in adjusting rates to take effect April 5, 1887, it was agreed by all lines that eighteen cents per 100 pounds was a reasonable rate for the transportation of grain and flour from St. Paul and Minneapolis to Chicago, via the river, La Crosse and the Chicago & Milwaukee divisions to Chicago.

This rate of eighteen cents was graded down so that the rate from Lake City and from Red Wing was made fifteen cents.

Mazeppa is a station on the Wabasha division, *narrow gauge*, and is fifty-two miles from the main line of the river division at Wabasha.

Zumbrot is eight miles west of Mazeppa, and is the terminus of the Wabasha division, and is the terminus of the Zumbrot branch of the Winona & St. Peter Division of the Chicago & Northwestern Railway. Thus all this territory is competitive, and rates are usually made after agreement.

In adjusting new rates it was agreed that eighteen cents was a reasonable rate from this interior territory, including corresponding stations on the Zumbrot branch of the Winona & St. Peter Railway.

The question of an agreed differential, above rates charged on the River Division, was not and is not considered, as there are many contingencies affecting rates from river division stations which do not directly concern interior points.

Third. May 18, in consequence of the action of our competitors, we reduced rates from St. Paul, Minneapolis and all stations on the River and the La Crosse divisions, to ten cents per 100 pounds, but we made no change in the rates from stations on the Wabasha division, nor on other divisions, not part of the direct line to Chicago over which the St. Paul and Minneapolis business is done.

Fourth. May 20, for the same reasons, we made a further reduction to 7½ cents per 100 pounds, but made no change at Mazeppa or other points on the Wabasha division, or from stations on other divisions not part of the direct line to Chicago.

Fifth. May 26, the 7½ cent rate from St. Paul and Minneapolis remaining in effect, we made reductions on branches connecting with the direct line to Chicago, among which was a reduction of rates from Mazeppa to 12½ cents per 100 pounds, which rate is now in effect.

Sixth. The rates from St. Paul, Minneapolis, and from river division stations, to Chicago, are affected by the competition via Lake Superior and the competition of the Mississippi River, causing at times (notably today), extremely low and unprofitable rates. This competition and these low rates only indirectly affect the rates at Mazeppa and other interior points; and we claim that the rates charged from Mazeppa to Chicago since April 5 have been and are just and reasonable.

Very Respectfully,
The Chicago, Milwaukee & St. Paul Railway Company, by
Roswell Miller, General Manager.

George M. JACKSON

ST. LOUIS, ARKANSAS & TEXAS R. CO.

(No. 28.)

PLEADINGS in a case pending before the Commission, based upon allegations of the exaction of unjust rates for the transportation of hewed lumber or ties, and of discrimination in favor of sawed lumber as against hewed lumber.

COMPLAINT.

(Filed June 7, 1887.)

St. Francis, Clay Co. Arkansas,
June 1, 1887.

Judge Thomas M. Cooley,
Chairman Interstate Commerce Commission:

I respectfully ask that your honorable body summon the St. Louis, Arkansas & Texas Railroad Company before you. Your petitioner charges the said Railroad Company with a violation of the first section of the Interstate Commerce Law, in this: that the said Railroad Company refuses to ship ties or hewed lumber for your petitioner from this place to Kansas City, Missouri which is in another State, for less than 40½ cents each, which is an unreasonable and unjust charge. A tie is generally made of oak, and is 6 x 8 inches, 8 feet long, which is of a convenient shape and size to handle, and is such freight as is not liable to injury in transit. A tie is a hewed stick of lumber of the above dimensions and will weigh 160 pounds, which makes the rate a fraction over twenty-five cents per 100 pounds. In proof that said charge is unreasonable your petitioner will state that said Railroad Company charges a rate of eighteen cents per 100 pounds on sawed oak lumber from here to Kansas City.

Your petitioner further charges the St. Louis, Arkansas & Texas Railroad Company

with the violation of the second section of said Act, in this,—that said Railroad Company refuses to transport for your petitioner from this place to Kansas City, Missouri, which is in another State—hewed lumber or ties, for a less rate than 40½ cents each, which is a fraction over twenty-five cents per 100 pounds, while it transports for other parties oak lumber that is sawed, to and from the same points, at eighteen cents per 100 pounds. For the purpose of concealing the discrimination said Railroad Company will not quote you a rate per 100 pounds on ties or hewed lumber; that there is no difference between hewed and sawed lumber; that it is "a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances."

Your petitioner further charges the said St. Louis, Arkansas & Texas Railroad Company with a violation of the third section of said Act, in this—that said Railroad Company gives "undue and unreasonable" preference to sawed lumber, as against hewed lumber, when they are substantially the same thing, which is a discrimination against a "particular kind of traffic."

Your petitioner asks that said Railroad Company be ordered to discontinue said discrimination, and that hewed lumber or ties be transported at the same rate per 100 pounds as sawed lumber.

And your petitioner would further ask that if you find that said Company has violated the Law, that the lowest penalty be assessed, as this petition is filed solely with the view of forcing the said Railroad Company to do that which it ought to do without being forced, viz.: transport your petitioner's hewed lumber at the same rate that it does your petitioner's sawed lumber, who is also engaged in running a saw mill on said Railroad, and shipping lumber to Kansas City, Missouri.

(Signed) Geo. M. Jackson.

Subscribed and sworn to before me, a Justice of the Peace within and for the County aforesaid.

(Signed) M. D. Gunter, J. P.

June 2, 1887.

ANSWER.

(Filed June 23, 1887.)

To the Interstate Commerce Commission,

Hon. Thomas M. Cooley, Chairman:

Now comes the St. Louis, Arkansas & Texas Railway Company in Arkansas and Missouri, and for answer to the petition of George M. Jackson, of St. Francis, Clay County, Arkansas, dated June 1, 1887, respectfully states as follows:

First. It denies that it has violated the first section of the Interstate Commerce Law, as alleged in the first paragraph of said petition, and specially denies that it refuses to ship ties of hewed timber, for the petitioner, for less than 40½ cents each from St. Francis to Kansas City, and denies that it ever had a rate on hewed cross ties of 40½ cents from St. Francis to Kansas City, or that it has ever charged, or offered to charge, the petitioner at the rate of 40½ cents each for hewed cross ties between the points named.

Further answering the said first paragraph of

said petition, it admits that a tie is generally made of oak, 6x8 inches, 8 feet long, and that such freight is not liable to injury in transit, but denies that the weight thereof is 160 pounds, and says that the weight thereof would average about 180 pounds in the condition in which they are usually shipped.

And further answering said petition, it denies that it has violated the second section of the Interstate Commerce Law, as alleged in the second paragraph of said petition, and denies that it has refused to transport for petitioner hewed timber or ties from St. Francis, Arkansas, to Kansas City, Missouri, at a less rate than 40½ cents each; but admits that it transports oak timber, which is sawed, from St. Francis, billed for Kansas City, Missouri, at a through rate of eighteen cents per 100 pounds.

It denies that it discriminates against hewed timber or ties, as alleged, and denies that it refuses to quote rate per 100 pounds on ties or hewed timber for the purpose of concealing any such discrimination; denies that there is no difference between hewed and sawed timber, and denies that the hauling of the one class is a like contemporaneous service in transportation of a like kind of traffic under substantially similar circumstances.

And further answering said petition, it denies that it has violated the third section of said Interstate Commerce Law in giving undue or unreasonable preference to sawed lumber as against hewed timber, and denies that they are substantially the same thing.

And for further answer to said petition, it says that in transporting ties or timber or other material from St. Francis, Arkansas, to Kansas City, Missouri, it does the same in connection with the Kansas City, Springfield & Memphis Railway Company, the line of which latter road it crosses at Jonesboro, Arkansas; that this respondent has no line of its own road, or any line that it controls, which reaches Kansas City or any point nearer to Kansas City than Jonesboro, Arkansas; that at no time has it ever charged or attempted to charge a rate between St. Francis and Kansas City for the amount of 40½ cents per cross tie; that previous to the 23d day of May, 1887, the rate between St. Francis and Kansas City was forty cents, but on said last named day it was reduced for cross ties to 33½ cents per tie. The special order fixing this rate is filed with your honorable Commission, and is numbered I. S. 136, and this rate has been maintained since said time, and was in force at the time petition was filed.

Further answering, respondent states that said rate is reasonable and just, and has not been complained of by any person other than petitioner.

Further answering, respondent says that hewn ties, such as are usually offered for transportation, weigh about 180 pounds, instead of 160 as stated in the petition; that they are usually offered for transportation while green and while they are wet, and may be reduced by seasoning from about 180 pounds to 160 pounds if left to dry before they are transported; yet as a matter of fact those offered for shipment on respondent's road are nearly always so offered before they are so seasoned.

INTER 8.

Further answering, respondent states that in charging a rate per tie rather than by the 100 pounds, as is customary with sawed timber, it is following the ordinary custom of railroads west of the Mississippi River in the handling of such freights. Hewn ties are always sold at so much per ties. They are of unequal size. Along the line of respondent's road they are nearly always cut from swampy, wet lands; and to charge per 100 pounds would be an injustice to those parties, causing them to have to pay more for transporting cross ties than if the same tie was cut from upland. If the rate was made per 1,000 feet, there would necessarily be disputes as to the number of feet in a tie, from the fact that being hewn they are necessarily of innumerable shapes, rendering accurate measuring difficult. For these reasons respondent and other railroads west of the Mississippi River have found it to the mutual advantage of shippers, consumers and themselves to make rate per tie instead of in any other manner. The rate at present charged, of 33½ cents per tie from St. Francis and contiguous stations, to Kansas City, is a reasonable rate for the service performed; and when the weight of each tie is taken into consideration is about the same rate per 100 pounds as is charged for sawed timber, of which rate the petitioner has not complained and with which it seems to be satisfied; therefore respondent states that in making the rate as hereinbefore set forth it has violated no part of the Interstate Commerce Law, has followed the usual and ordinary course as adopted by railroads of the section of the country in which it operates, and has charged but a reasonable rate, without discrimination, and is therefore entitled to be hence discharged with its costs. It therefore prays for such order in the premises.

The St. Louis, Arkansas & Texas Railway Company in Arkansas and Missouri.

By Phillips & Stewart, General Attorneys.

The State of Missouri, }
The City of St. Louis. } ss.

Before me, the undersigned notary public within and for the City of St. Louis, and State of Missouri, personally appeared D. Miller, who being by me duly sworn according to law, upon his oath, deposeth and saith that he is the General Freight and Passenger Agent of the St. Louis, Arkansas & Texas Railway Company in Arkansas and Missouri, and that he has read the foregoing answer and knows the contents thereof, and that the allegations contained therein are true to the best of his knowledge, information and belief.

(Signed) D. Miller.

Subscribed and sworn to before me this the 20th day of June, A. D. 1887.

(Signed) Isaac H. Orr, Notary Public,
[L. s.] City of St. Louis, Mo.

The State of Missouri, }
The City of St. Louis. } ss.

Before me, the undersigned notary public within and for the said City and State, personally appeared A. C. Stewart, of lawful age, who being by me duly sworn, according to law, upon his oath, deposeth and saith that on the 23d day of June, A. D. 1887, he delivered a copy of the foregoing answer and the verifi-

cation thereof to George M. Jackson, the petitioner herein, in person the said George M. Jackson at the time of said delivery being within the City of St. Louis, and State of Missouri, and being the same George M. Jackson who is described in the petition herein and in said answer, as being of St. Francis, Clay County, Arkansas.

(Signed) A. C. Stewart.

Subscribed and sworn to before me this the 24th day of June, 1887.

(Signed) Harvey L. Christie, Notary Public,
[L. a.] City of St. Louis, Missouri.

GEORGE RICE

ST. LOUIS, IRON MOUNTAIN & SOUTHERN R. CO.*

(No. 52.)

SYNOPSIS of pleadings.

COMPLAINT.

Defendant is a corporation organized, etc., in Missouri and Arkansas and engaged in transportation from St. Louis to Newport, Little Rock and Texarkana in Arkansas, and beyond.

In the transportation of oil two methods are employed: (a) by box cars, carrying the oil in barrels; (b) by tank cars holding 100 barrels and upwards.

Complainant manufactures and deals in oils at Marietta, Ohio, where he has large capital invested. He would have produced and sold many thousand more barrels of oil but for the wrongful acts of defendant.

Many of complainant's principal markets are in the territory reached by defendant's road.

The Waters-Pierce Oil Co., a Missouri corporation, is a large dealer in and shipper of oils, and is complainant's chief and almost sole competitor in said markets.

The defendant has violated the Interstate Commerce Act, as follows:

First Charge. By making charges for transporting oil from St. Louis, "which were in themselves unjust and unreasonably high."

As specifications, under charge 1, rates charged July 7, 1887, are given.

Second Charge. Defendant has charged complainant higher rates for the same services than it has charged said Waters-Pierce Oil Co., in transporting oils from St. Louis to points in States other than Missouri. The Waters-Pierce Oil Co.—being sometimes consignor and

sometimes consignee and sometimes both consignor and consignee.

Specifies comparative rates thus:

Rates per bbl. since April 5, 1887.

Destination,	To G. Rice,	To Waters-Pierce Oil Co.
Newport, Ark.	91 cts.	50 cts.
Little Rock, "	91 "	50 "

Defendant charges complainant for actual weight and charges the Waters-Pierce Oil Co., in many instances for much less than weight.

Third Charge. Undue and unreasonable preference to the Waters-Pierce Oil Co.

Specifications. Repeats specification No. 1, under second charge, and avers that the differences in rates are not measured by differences in the circumstances, and that the differences in cost, convenience, etc., to the carrier, if any, are insignificant in comparison with the difference in rates. This discrimination has had, and complainant believes was intended to have, the effect of giving said Waters-Pierce Oil Co. a monopoly at the points reached by defendant's line, and to exclude complainant's products entirely from said markets.

Prayer. For investigation, and that the Commission will report to what reparation complainant is entitled; and will require defendant to cease and desist from such violations, etc., and for general relief.

ANSWER.

Admits that defendant is a common carrier, as alleged, that it transports oil from St. Louis as alleged either in barrel packages, in box cars, or in tank cars. Is not informed as to capital invested by complainant. Admits that the Waters-Pierce Oil Co. is a shipper of oil, but is not informed whether it is complainant's chief competitor.

To Charge First. Defendant's charges for transporting refined petroleum oil from St. Louis to Newport and Little Rock, Arkansas, \$50 per box car containing 55 bbls., i. e., a little more than 90.9 cents per bbl.; and from St. Louis to Texarkana, Arkansas, forty-five cents per 100 lbs., not sixty-seven cents.

Denies that these rates are unjust, etc.

To Charge Second. The rates charged to complainant, to said Waters-Pierce Oil Co., and to all, are the same: to be shipped in bbls., 90.9 cts. per bbl.; and when shipped in tank cars, \$50 per tank car.

Denies discrimination in favor of said Waters-Pierce Co., or any other shipper.

Denies that it has discriminated against Rice in matter of "weights."

Denies that it has charged Rice at any time since April 5, more than it has charged the Waters-Pierce Oil Co., or any other shipper "for like and contemporaneous service performed under substantially similar circumstances and conditions."

To Third Charge. Denies giving unreasonable preference or subjecting complainant, etc.; denies that any charges were designed to have the effect of giving said Waters-Pierce Oil Co. any monopoly or to exclude complainant, etc.; answer to second charge to be deemed repeated here; and asserts that the circumstances, etc., under which oil is shipped in barrels

*This case, and cases Nos. 53 to 60 inclusive on the Docket of the Commission, following, belong to the group of cases based upon allegations of discrimination in favor of the Standard Oil Company and others, in rates for the transportation of oil, of which Rice v. Louisville & Nashville R. R. Co., (the complaint in which is given in full on page 576, ante, and the answer on page 443, ante), is one. As all the cases are based upon the same general grounds, it is thought that a synopsis of the pleadings will suffice to give all the desired information in reference to them.

and in tank cars "are so dissimilar as to prevent one rate being taken as a standard whereby to measure the other," and that if they are compared it will be found that neither relatively to the other is unjust.

George RICE

MOBILE & OHIO R. CO.

(No. 53.)

SYNOPSIS of pleadings.

COMPLAINT.

Complaint alleges defendant is a corporation existing in Illinois, Kentucky, Tennessee, Mississippi and Alabama, and is a common carrier, etc., engaged in transportation from Cairo, Illinois, to Rives and Jackson, in Tennessee; Columbus and Meridian, in Mississippi; and Chunchula, Eight Mile and Mobile, in Alabama.

Allegations as to complainant's business same as in case 52.

Charges violations of Act as follows:

1. Charges unreasonably high in themselves; specifies rates from Cairo thus:

Destination.	Rate per 100 lbs.
Columbus, Miss.	58 cts.
Lauderdale, "	68 "
Meridian, "	84 "
Enterprise, "	68 "
Shubuta, "	76 "
Eight Mile, " (sic)	76 "

and to other points not in Illinois as in tariffs required to be filed.

2. Defendant has charged more for a less than for a greater distance "over the same line," etc., repeating the words of the Act.

Specifies

From Cairo to	Distance.	Rate per 100 lbs.
Shubuta, Miss.	396	76 cts.
Eight Mile, " (sic)	483 4-10	76 "
Mobile, " (sic)	491 4-10	84 "

(Prayer as in No. 52.)

ANSWER.

Defendant is a corporation under the laws of Alabama, Mississippi, Tennessee and Kentucky, authorized to build a railroad from Mobile, Alabama, "to a point at or near the mouth of the Ohio River, in Kentucky," and is now operating such road.

Has no knowledge of complainant's business. Denies violation of the Act.

3. *To First Charge.* Denies that the rates set forth in petition are unreasonably high, says that the rate of thirty-four cents per 100 lbs. "per car load" from Cairo to Meridian (357 miles) is unreasonably low,—but is necessary, owing to competition "due to a combination of rates of steamers plying up and down the Mississippi River, with the rates of the Vicksburg & Meridian Railroad within the State of Mississippi," both said carriers being outside of the jurisdiction of the Commission. Said rate could be availed of by petitioner. All defendant's charges are just and reasonable "un-

der the circumstances, conditions and necessities of the business of the defendant."

To Second Charge. Admits that its tariffs filed with the Commission provide seventy-six cents per 100 lbs. (per car load) from Cairo, Illinois, to Shubuta, Miss., 396 miles; and seventy-six cents from Cairo to Eight Mile, Ala., 485 miles; and twenty-four cents from Cairo to Mobile, Ala., 492 miles; admits greater charge for shorter distance over, etc. (quoting statute), that the oils are of like kind and character, and justifies under order of relief granted April 16, 1887.

Further answering all charges. Since expiration of said order, where more has been charged for shorter haul, denies that such transportation was under similar circumstances and conditions.

Further answering. The rate of twenty-four cents from Cairo to Mobile was fixed by competition with water lines and combinations of rates by water lines with rates from New Orleans to Mobile.

Further answering, says that the rate of thirty-four cents per 100 lbs. from Cairo to Meridian, Miss., is fixed by competition with rates made by combination of steamer rates (on Ohio and Mississippi Rivers), with rates of Vicksburg & Meridian Railroad (wholly within Mississippi), and also by competition with the short rail line from Marietta, Ohio, to Meridian over the Cincinnati, New Orleans & Texas Pacific. Such competition is beyond the jurisdiction of the Commission.

Defendant is expressly authorized by the Act "to meet competitive rates fixed by causes beyond the jurisdiction of the Commission."

Further answering. Rates for oil in bbls. per 100 lbs. are:

From Mobile north to Eight Mile, 8 cts.

From Mobile (97 miles) to Shubuta, Miss., 80 cts.

From Mobile (120 miles) to Enterprise, Miss., 88 cts.

Denies damage to complainant.

Defendant has revised its rates since filing of petition, which are now as follows:

From Cairo to	Distance.	Rate per 100 lbs.
Columbus, Miss.	287	37 cts.
Lauderdale, "	339	48 "
Meridian, "	357	45 "
Enterprise, "	373	45½ "
Shubuta, "	396	47½ "
Eight Mile, Ala.,	485	54 "
Mobile, "	492	81 "

George RICE

v.

EAST TENNESSEE, VIRGINIA & GEORGIA R. CO.

(No. 54.)

SYNOPSIS of pleadings.

COMPLAINT.

Defendant is a corporation organized and existing in Tennessee, Georgia, Alabama and Mississippi. Is a common carrier, etc., from Chattanooga, Tennessee, through Tennessee,

to Boston for merchandise which to said points on the coast east of same as the rate to New York. of Portland and the points on the of Portland, mentioned in the petition, and the circumstances and attending transportation thereto are dissimilar from those attending and transportation to points on the Portland.

true that the same rates have been charged on west bound freight, from Chicago, as from New York to Chicago, by Boston is put upon an equality of ports of entry, and with other without such equality the western the Boston and New England manufacturer and merchant, by reason of the competition of manufacturers and merchants of the cities, ports of entry and States of the West would be seriously and diminished, and the said railroads would be deprived of a large and business.

Lake Shore & Michigan Southern Railway Company asks that the prayers of the petition be granted.

Lake Shore & Michigan Southern Railway Company, by

John Newell, President.

Greene,

Attorney at Law, L. S. & M. S. R. Co.,
Cleveland, Ohio.

of Ohio, }
Cuyahoga, } ss.

John Newell, being first duly sworn, says that the contents of the Lake Shore & Michigan Southern Railway Company, named in the petition, and that said answer is true of deponent's knowledge and belief.

John Newell.
before me by the said John Newell,
I subscribed in my presence, this
10th day of August, A. D. 1887.

L. Rood Loomis,
Notary Public.

Filed.

DRESSED MEAT CASES.*

(Nos. 31 to 40 on Docket.)

ARMOUR & CO.

vs.
Baltimore & Ohio R. R. Co.

(No. 31.)

(Answer filed July 6, 1887.)

Following is the answer of the Baltimore & Ohio R. R. Co. to the complaint of Armour & Co. (The complaint in this case is, inception of the names of parties,

None of these cases was originally set for trial at Chicago, but at the Commission at Rutland, Vt., on September 7, 1887, it was ordered, by consent of parties, that the trial should be had at Washington, on September 11, 1887.

etc., the same as that in the case of *Nelson Morris & Co. v. Lake Shore & Michigan Southern R. R. Co.* which is given in full, *ante*, 303.)

ANSWER.

To the Honorable, the Interstate Commerce Commission:

The Baltimore & Ohio Railroad Company, in answer to the petition filed in the above matter, says:

1. It admits the allegation contained in the first paragraph, and also that the allegations in the second paragraph are substantially true, so far as they allege the carriage by it of the petitioners' dressed meats and meat provisions between the terminus of the Baltimore & Ohio Railroad in the City of Chicago, and its terminus in the City of Baltimore. But it denies that it has ever carried the shipments of petitioners to points on the eastern seaboard other than Baltimore.

2. Respondent does not know what sidings the petitioners have provided in connection with their slaughter houses, etc., at point of shipment, those slaughter houses not being contiguous to, or in any way connected with, any of the tracks of the respondent's road; but it denies that the petitioners have provided any sidings or tracks at the City of Baltimore. On the contrary, all the tracks at the point of destination used in handling or discharging refrigerator cars of the petitioners' over or on the respondent's railroad are furnished by the respondent at its own expense.

While the respondent admits that the petitioners "furnish ice, provide the labor for relcing in transit, load and unload the cars, and ship the meats at their own risk of refrigeration and condition" yet it denies that it is relieved from all special expense, labor and risk attending the transportation of such property, and avers that on the contrary it is subjected to special expense, labor and risk in the transportation of the petitioners' meat, some of the particulars of which are hereinafter stated.

3. Respondent admits that the table of rates on dressed beef contained in the fourth paragraph of the petition, is substantially correct, and that the rate which went into effect March 1, 1886, has continued in force from that date to the present time; but it calls attention to the fact that the table itself shows that this rate was established on the first of March, 1886, and not on the fifth (see page 8), of April, 1887, and that the passage of the Interstate Commerce Act had nothing to do with the establishment of the rate as the statements in the fourth section of the petition would seem to imply.

Respondent further states that the rates during a great part of the period covered by the table, were affected by special circumstances and were the result of active competition between the railroads running from Chicago to the seaboard and of the cutting of rates on the part of some of said roads; and that in particular the rates of forty, thirty-two and 48½ cents respectively, which are cited in the fourth paragraph of the petition to show what the respondent has heretofore deemed a remunerative rate, were not established or fixed by its judgment of what would be a fair and reason-

able remunerative rate for the service, but were forced upon it by special circumstances referred to above.

Respondent denies that the rate of forty cents for 100 pounds was a fairly remunerative rate, and denies that the rates now charged are unjust or unreasonable for the services rendered; but, on the contrary, it alleges that such rates are only fairly remunerative and are wholly just and reasonable.

4. The respondent admits that the rates now charged are fixed by agreement between it and certain other common carriers, but denies that the rates were so fixed for the purpose of destroying competition between the carriers, or that respondent refuses, because of such agreement, to make petitioners just and reasonable rates for the service rendered, or that it is the purpose of any combination between the respondent and other carriers to prevent the petitioners or other shippers from obtaining just and reasonable rates; and further denies that the respondent would establish less rates for the services performed, if not prevented from so doing by its agreement with other carriers.

Respondent denies the allegations contained in the first clause of the seventh paragraph of the petition, and states that meat provisions and beef, sheep and hog products, such as side meats, partly cured or cured, beef, pork and pickled tongues in barrels or tierces, loose green hams, loose salt hams, salt tongues, beef and pork hams, are not like kinds of property with the dressed beef, sheep and hogs, and that they are not transported by this respondent under similar circumstances and conditions, with such dressed beef, sheep and hogs.

The respondent further denies the accuracy of the first table contained in paragraph 7 and states that while the rates on side meats, pork and beef hams in tierces or barrels, and on salt or pickled tongues, are as stated in the table, the tariff rates on loose green hams and other similar meat provisions, are five cents per 100 pounds higher than those stated, and that the tariff rates on the articles mentioned in the second column of said table, to wit: side meats, pork or beef hams in tierces or barrels, salt or pickled tongues, loose green hams and other similar meat provisions, are not made under conditions of refrigeration; but, on the contrary, they are made for shipments in ordinary cars of the respondents.

It is denied that the articles mentioned above require refrigeration, except under special conditions and at special times. The tariffs upon those articles are made with reference to shipments which are not refrigerated; moreover, respondent avers that the circumstances and conditions under which the above mentioned articles are carried differ from those under which the dressed beef, sheep and hogs of the petitioners are carried in the following, among other particulars:

The dressed beef of the petitioners is invariably carried in heavy refrigerator cars, weighing about 37,000 lbs. to 43,000 lbs., empty, as against about 25,000 to 26,000 lbs. the weight of an ordinary car, in which the other articles above mentioned are carried. To the weight of the empty refrigerator car must be added that of the ice used for refrigeration. The capacity in paying freight of these refrigerator

appointed, commissioned and qualified, and authorized by law to administer oaths and take acknowledgments.

In testimony whereof I hereunto set my hand and affix the seal of the said Circuit Court for said Garrett County, this fifth day of July, A. D. 1887.

E. Z. Tower, Clerk.

Nathaniel W. HOWELL *et al.*,

v.

NEW YORK, LAKE ERIE & WESTERN R. R. CO., New York, Ontario & Western R. Co., New York, Susquehanna & Western R. R. Co., and Lehigh & Hudson River R. R. Co.*

(No. 4 on Docket.)

PLEADINGS in a proceeding based upon allegations of the exaction of unreasonable and unjust charges for the transportation of milk, now pending before the Commission.

The hearing of the case was entered upon on July 13, 1887, but not being then concluded it was postponed to a day to be agreed upon.

COMPLAINT.

To the honorable body of Interstate Railroad Commissioners of the United States:

Gentlemen:

The petition of Nathaniel W. Howell, Hiram A. Pooler, Charles M. Thompson, Cornelius B. Wood and A. T. Moshier, residents and taxpayers of Orange County, in the State of New York, and duly commissioned to represent the farmers and milk producers of said county show:

First: That the New York, Lake Erie & Western Railroad Company is a duly incorporated Railroad Company running through the States of New York, New Jersey & Pennsylvania.

Second: That said Railroad Company runs in and through the County of Orange aforesaid a distance of about fifty miles.

Third: That your petitioners and those by them represented, transport daily over the line of said Railroad Company large quantities of milk from various points in said county to the City of Jersey City, in the State of New Jersey.

Fourth: That in the estimation of your petitioners and those by them represented, the rate charged by said Railroad Company for transporting milk from points in said county to the City of Jersey City, in the State of New Jersey, a mean distance of about fifty miles is unreasonable and unjust.

Fifth: That said charges are unreasonable and unjust for the following reasons:

That the rate charged by said Railroad Company from and to the points aforesaid amounts to the 35 per cent of the value of said product,

or at the rate of thirty-five cents per 100 pounds with 5 per cent additional for ferriage, from Jersey City to New York City; whereas, other classes of freight and produce of equal value are transported by said Railroad Company from and to the points aforesaid and generally delivered in the City of New York for a less rate, and with no greater risk attached.

Sixth: That in the estimation of your petitioners such charges being unreasonable and unjust, the continuance thereof by said Railroad Company is contrary to and in violation of the latter clause of section 1 of the Interstate Commerce Law.

Seventh: And your petitioners further show that the said New York, Lake Erie & Western Railroad Company charge for transporting milk to the City of Jersey City from Summit in the State of New York a distance of 184 miles from Jersey City, the same rate for a like service from points in Orange County, a mean distance of fifty miles.

That in the estimation of your petitioners said Railroad Company, by such rates and charges and discriminations, demands, collects and receives from other persons (by special rate), for doing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions a less compensation for such service contrary to and in violation of section 2 of the Interstate Commerce Law.

That in the estimation of your petitioners the rates charged by said Company for transporting milk, being no greater for a longer than a shorter distance, is an undue and unjust preference and advantage to particular persons and localities, and subjects your petitioners and the persons by them represented, and the locality in which they reside, and their particular description of traffic to an unjust and unreasonable prejudice as against other persons and localities contrary to and in violation of section 3, of the Interstate Commerce Law.

Eighth: And your petitioners further show that the New York, Ontario & Western Railroad, and the New York, Susquehanna & Western Railroad and the Lehigh & Hudson River Railroad, are corporations doing a general freight and passenger business, the former running through a portion of Orange County, N. Y., with a terminus in the State of New Jersey, and the two latter passing through the States of New York and New Jersey and a portion of Orange County aforesaid.

Ninth: With the exception of the New York, Ontario & Western Railroad Company which charges an advanced rate of three cents per 100 pounds for transporting milk from points west of Bloomingburgh, in the County of Sullivan, the allegations of your petitioners are equally applicable to the last named corporations as to the New York, Lake Erie & Western Railroad Company, and are to be so regarded.

Wherefore, by reason of the allegations aforesaid your petitioners pray that your honorable body will take such immediate action in the premises as shall seem just and equitable, to the end that the said corporations complained of may be restrained from a further continuance of the acts complained of, and that such other and further relief may be afforded your

*See *Re Milk Traffic*, ante, 24, 232, 315.

petitioners as shall, in the estimation of your honorable body, be deemed proper.

And your petitioners will ever pray, etc.,

(Signed) Nat. W. Howell, C. B. Wood,
H. A. Pooler, Chas. M. Thompson,
A. T. Moshier.

State of New York, } ss.
County of Orange. }

Nathaniel W. Howell, Hiram A. Pooler, Cornelius B. Wood, Charles M. Thompson and A. T. Moshier of said county being sworn say, and each for himself says, that they have read the foregoing petition, that the facts therein stated of their own knowledge are true, and that the facts therein stated to be alleged on information and belief they believe to be true.

(Signed) Charles L. Mead, Notary Public.
[L. S.]

Sworn to before me, this
19th day of April, 1887.

ANSWER OF NEW YORK, LAKE ERIE & WESTERN R. R. CO.

The New York, Lake Erie & Western Railroad Company, for an answer to the complaint in the above entitled matter, respectfully shows:

First: It admits that it is a duly incorporated railroad company, whose lines of railroad extend into the States of New York, New Jersey and Pennsylvania, and that about fifty miles of the main stem thereof are in the County of Orange, in said State of New York.

Second: It denies that all of the petitioners herein transport daily over its line large quantities of milk from various points in said county to the City of Jersey City, in the State of New Jersey, as they have alleged in their petition; and upon information and belief it also denies that the said petitioners are duly commissioned to represent the farmers and milk producers of the said County of Orange, as is further alleged in said petition.

Third: The said Railroad Company denies the allegations contained in the fourth paragraph of said petition to the effect that the rate charged by it for transporting milk from points in said county to the said City of Jersey City, a mean distance of about fifty miles, is unreasonable and unjust; but on the contrary it avers that said charges are reasonable and just, as will fully appear from the facts hereinafter stated.

Fourth: And it also denies that said charges are unreasonable and unjust as is alleged in the fifth paragraph of said petition; and it further avers that the reasons stated by the petitioners in support of their allegations are not in accordance with the facts, because it avers that the rate which the said Company charges is not 85 per cent of the value of said product, but on the contrary is only thirty-five cents per can, of forty quarts each, which weigh about 100 pounds, and that the said charge of thirty-five cents per can, as above stated, includes the expense of returning the empty cans from Jersey City to the points from which the milk was shipped, for which service no additional charge is made, although the empty cans require the same service in handling as full cans do. And said Company further avers that it

does not receive the five cents per can ferry charges, as is alleged in said petition.

It also denies that it transports milk at any less rate for any one person, company, firm or corporation, than for another, or that it subjects any particular person, company, firm, corporation or locality, to any undue prejudice or disadvantage in any respect whatsoever, or that it gives any special rate to any shipper of milk.

Fifth: And the said Railroad Company further denies that its charges are unreasonable and unjust, and that the continuance thereof by it would be contrary to, and in violation of, the latter clause of section 1 of the Interstate Commerce Law, as is alleged in the sixth paragraph of the petition.

Sixth: The said Railroad Company admits that it charges for transporting milk from Summit, in the State of New York, to Jersey City, in the State of New Jersey, a distance of about 184 miles, the same rates that it charges from points in Orange County, New York, to said Jersey City, New Jersey, a mean distance of about fifty miles. But said Company avers that said rates which it charges as aforesaid are not unreasonable and unjust for the following reasons:

That milk is a perishable commodity, and must reach its market within a few hours after it is made ready for shipment by the producer; that all the milk carried on said road is sold in the Cities of New York and Brooklyn, and is delivered by the dealers or peddlers to consumers in those cities early in the morning, and that it must, therefore, arrive at Jersey City not later than midnight, so that it may be taken away by the consignees, and distributed before the early hour at which it must be delivered to the consumer.

That in order to insure the arrival of the milk in proper condition, and in time to reach its market, said Company is obliged to run two trains each way daily, consisting of about thirteen cars each, especially for the transportation of this traffic; that during the winter, to prevent the milk from freezing, said Company is obliged to heat the cars by stoves, that the trains have to be run at a high rate of speed, equal to that of an ordinary passenger train, for which are required cars, equipped with Miller platforms and Westinghouse airbrakes, and much more expensively constructed than the cars in the ordinary freight service; that the milk is shipped in various lots ranging from one can to 200 cans, and more frequent stops are necessary than with other trains, intermediate milk stations being established solely for the accommodation of milk shippers; that the fast time necessary to be made by the trains increases the risk of accidents, and requires the employment of larger crews in order to handle the cans, and arrange them convenient for quick delivery, and also entails greater expense for fuel and maintenance of equipment; that the consignees of the milk who take it away in wagons from Jersey City, assemble there so as to meet the trains, about the time of their arrival, and are so numerous and require so much room for their accommodation that extra men have to be employed to make the delivery, and separate delivery sheds and grounds have to be provided and maintained; that the

dealers or consignees who come for the milk at Jersey City, cross from New York or Brooklyn, and ferries have to be run for several hours during the night for their accommodation, at large expense, there being during those hours very little, or none other, business passing from one side of the river to the other and the fares paid by the milkmen being insufficient to meet the cost of operating the ferries.

That milk is time freight and delay of a few hours in arrival, by accident, or otherwise, would render the whole cargo comparatively worthless, because even if the milk were not spoiled, the demand for the day would have passed, and that for the next day would be met by the following shipment.

That the trains coming in at night have to go out early in the following morning to carry back to the shipper the cans brought in by the trains on the previous day, and returned empty, so that he may receive them before night, and in time to use them on the following day; that it requires the same number of cars to return the empty cans that it does to bring them down loaded, and the equipment used in the milk traffic can therefore be used for no other purpose, consequently, the return trip of the cars employed in such traffic brings no revenue whatever to the Company (the carriage of the empty cans being included in the charge of thirty-five cents, as already stated).

Said Company further shows and alleges that having regard to the cost and character of the service, and the facilities and accommodations afforded, the rate on milk is lower comparatively than that made on any other class of freight.

Seventh: The said Railroad Company further avers that ever since the establishment of the business of transporting milk from remote points to the Cities of New York and Brooklyn (about forty years ago), it has been the custom of all the common carriers engaged in that business to charge a uniform fixed rate per quart or gallon for the milk so transported, irrespective altogether of the length of the haul; and that the same custom now prevails among all the common carriers engaged in transporting milk to the Cities of New York and Brooklyn. This custom owes its origin, and long continuance, to the fact that milk is sold to all consumers in the cities aforesaid at a uniform price for the quantity sold; and it was therefore deemed better and more satisfactory for all parties interested to have one uniform charge made for transporting milk, irrespective of distance, instead of prorating for the same according to the length of the haul.

And it is averred that up to, or about, the time of filing this petition, the establishment and observance of the custom aforesaid regulating the charge for transporting milk gave a general, if not universal, satisfaction, and that there is not now any legal or just ground for complaint against the same.

Eighth: And the said Railroad Company further avers that it is of the greatest importance to the citizens of New York and Brooklyn, as well as to the other consumers of milk, to have the area for the production thereof enlarged as much as possible, instead of having the same

narrowed and circumscribed, which would be the effect of granting the prayer of the petitioners; because the practical effect of so doing would be to enable the petitioners to establish a monopoly in the milk business by preventing the establishment of dairy farms and creameries at a greater distance than fifty miles from New York City.

The business of producing milk is a peculiar one, confined to few localities in comparison with the raising of other farm products, and requires therefore all lawful and reasonable encouragement for the establishment and successful working of dairy farms and creameries.

Ninth: And this Railroad Company avers, upon information and belief, that quite a number of persons relying upon the custom hereinbefore mentioned of making the same charge for the transportation of milk irrespective of the length of the haul, have established dairy farms and creameries at or near Summit, and at various points between there and the points in Orange County, New York, mentioned in the petition; and the said Railroad Company further avers that to make any change in the rates heretofore charged for the transportation of milk would cause great loss and damage to the parties who have established such dairy farms and creameries, as aforesaid.

Tenth: And the said Railroad Company denies that by conducting the milk business in the manner, and for the rates and charges hereinbefore stated, it has done anything unlawful, or improper, or in violation of the second and fourth sections of the Interstate Commerce Law, or any other section or provision thereof.

Eleventh: And this Railroad Company finally says that having answered fully and particularly each and all of the allegations of said petition, it prays that the same may be dismissed.

The New York, Lake Erie & Western Railroad Company.

By J. A. Buchanan, Attorney.

State of New York,
City and County of New York. } ss.

John S. Hammond, being duly sworn, says that he is the General Freight Agent of the New York, Lake Erie & Western Railroad Company, the defendant named in the foregoing answer, and that he has read the same and knows the contents thereof, and that the same is true, of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Sworn to before me this }
26th day of May, 1887. }

(Signed) J. S. Hammond,
Geo. E. Grant & Co. Notary Public,
[L. s.] N. Y. City.

ANSWER OF NEW YORK, ONTARIO & WESTERN R. Co.

The New York, Ontario & Western Railway Company answering the complaint in the above entitled matter:

First. Demands that the said complaint be dismissed, because it contains no statement of facts as against said Company, showing any

violation by said Company of any provision of the Act of Congress, approved February 4, 1887, entitled "An Act to Regulate Commerce," nor any omission on the part of said Company to do anything that by the provisions of said Act it is required to do.

1. By the ninth paragraph of the complaint, the said Company is expressly excepted from the allegations of said complaint.

2. The allegations as against the New York, Lake Erie & Western Railway Company, which the complainants allege show a violation of the provisions of the said Act by that Company, do not apply to the New York, Ontario & Western Railway Company for the reasons (which appear upon the complaint) that the said New York, Lake Erie & Western Railway Company is alleged to charge a certain rate for the transportation of milk from various points upon its road in the County of Orange, to the City of Jersey City, in the State of New Jersey, with 5 per cent additional for ferriage from Jersey City to New York City, which rates the complaint alleges are unreasonable and unjust: Whereas, it appears by the said complaint that milk transported by this Company is carried upon its own road; that such road does not terminate in Jersey City, and that the milk carried upon its road is not carried between the same points as to which it is alleged that the Erie Company make an unreasonable or unjust charge.

3. That the complaint as against this Company is too vague and indefinite and insufficient to base any proceeding under the said Act, and would not furnish the Commission with any facts upon which it could formulate or make any judgment or order.

Without waiving the foregoing objections to the insufficiency of the complaint, the said Company for a further and separate answer admits that it is a corporation doing a general freight and passenger business, and that its railroad runs through a portion of Orange County, in the State of New York, with a terminus in the State of New Jersey, but denies that it transports milk from Summit or any other point in the County of Orange or in the State of New York to Jersey City, or makes any charges or rate for transportation of milk, between Summit or any other point and Jersey City.

It also denies that it charges for the transportation of milk 35 per cent of the value thereof, or at the rate of thirty-five cents per 100 pounds; and it also denies that the rates charged by it for transporting milk upon its railroad, are unreasonable and unjust.

It also denies that it transports milk at any less rate for any one person, company, firm or corporation than for another, or that it subjects any particular person, company, firm, corporation or locality to any undue prejudice or disadvantage in any respect whatsoever, or that it gives any special rate to any shipper of milk.

It also denies that it transports any freight or produce, under similar circumstances and conditions, at a less rate than that charged for the transportation of milk.

Said Company further answering, shows and alleges that the terminus of its road in the State of New Jersey, is at Weehawken on the

west bank of the Hudson River; that its railroad passes through a portion of the County of Orange, in the State of New York, and that it charges for the transportation of milk in cans from points in said county to Weehawken, and the return of the can empty to the point of original shipment, thirty-five cents per can; that the can weighs twenty pounds, and contains forty quarts of milk, weighing eighty pounds; that the average distance of transportation of milk from points in Orange County to Weehawken is seventy-seven miles, and that the rate charged by said Company for such transportation of the milk, and return of the can, is at the rate of twenty-nine cents per 100 pounds; that the full load per car of milk in cans is ten tons, while the load per car returning with the empties is but two tons.

That the milk is a perishable commodity and must reach its market within a few hours after it is made ready for shipment by the producer; that all the milk carried on said road is sold in the Cities of New York and Brooklyn, and is delivered by the dealers or peddlers to consumers in those cities early in the morning, and that it must, therefore, arrive at Weehawken not later than midnight, so that it may be taken away by the consignees, and distributed before the early hour at which it must be delivered to the consumer.

That in order to insure the arrival of the milk in proper condition, and in time to reach its market, said Company is obliged to run trains especially for the transportation of this traffic; that during warm weather, to preserve the milk, the Company is obliged to cool the cars with ice, placed in refrigerators in the cars, and during winter, to prevent it from freezing, is obliged to heat the cars by stoves; that the trains have to be run at a high rate of speed, equal to that of an ordinary passenger train, for which are required cars, equipped with Miller platforms and Westinghouse air-brakes, and more expensively constructed than the cars in the ordinary freight service; that the milk is shipped in small lots ranging from five to forty cans, and more frequent stops are necessary than with other trains, intermediate milk stations being established solely for the accommodation of milk shippers; that the fast time necessary to be made by the train increases the risk of accidents, and requires the employment of larger crews in order to handle the cans, and arrange them convenient for quick delivery, and also entails greater expense for fuel and maintenance of equipment; that consignees of the milk who take it away in wagons from Weehawken, assemble there so as to meet the train, about the time of its arrival, and are so numerous and require so much room for their accommodation that extra men have to be employed to make the delivery, and separate and costly delivery sheds and grounds have to be provided and maintained, which cannot be used for general delivery of other classes of freight; that the dealers or consignees who come for the milk at Weehawken, cross from New York or Brooklyn, and ferries have to be run for several hours during the night for their accommodation at large expense, there being during those hours very little, or none other, business passing from one side of the river to

the other, and the fares paid by the milkmen being insufficient to meet the cost of operating the ferries.

That milk is time freight and a delay of a few hours in arrival by accident or otherwise, would render the whole cargo worthless, because even if the milk were not spoiled, the demand for the day would have passed, and that for the next day would be met by the following shipment.

That the train coming in at midnight has to go out early in the following morning to carry back to the shipper the cans brought in by the train on the previous day, and returned empty, so that he may receive them before night, and in time to use them on the following day; that it requires the same number of cars to return the empty cans that it does to bring them down loaded, and the equipment used in the milk traffic can therefore be used for no other purpose; consequently the return trip of the train brings no revenue whatever to the Company from other sources than the milk traffic (the carriage of the empty cans being included in the charge of thirty-five cents as already stated).

Said Company further shows and alleges that having regard to the cost and character of the service, and the facilities and accommodations afforded, the rate on milk is lower comparatively than that made on any other class of freight.

Said Company further shows that to the best of its knowledge, information and belief, none of the complainants are shippers of milk upon the road of said Company.

Dated, New York, May 28, 1887.

New York, Ontario & Western Railway Company,

By John Burton, Secretary.

John B. Kerr,

Attorney for said Company,

16 & 18 Exchange Place, New York.
State of New York, City } ss.
and County of New York.

John Burton being duly sworn deposes and says: that he is the Secretary and Treasurer of the New York, Ontario & Western Railway Company above named; that the foregoing answer is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Sworn to before me, this 28th day of May,

1887,

John Burton.

[Seal] George Marsden, Notary Public,
Westchester County.

Certificate filed in New York County.

ANSWER OF NEW YORK, SUSQUEHANNA &
WESTERN R. R. Co.

The New York, Susquehanna & Western Railroad Company, one of the corporations complained against in and by the above mentioned petition, answering so much and such parts thereof as relate to this respondent, says:

1. It admits that it is a corporation (formed under and by virtue of the laws of New Jersey and Pennsylvania) doing a general freight and passenger business, as in the eighth paragraph of said petition alleged; but it denies it to

be true as in said paragraph alleged, that its road passes "through the State of New York," and says that its main line extends from Marion, in Jersey City, in the State of New Jersey, to Gravel Place, in the State of Pennsylvania, with a branch (called the "Unionville Branch") extending from the Two Bridges on its main line, to the boundary line between the States of New Jersey and New York, at Unionville, in the last named State; together with a railroad (known as the "Middletown, Unionville & Water Gap Railroad") operated by it under a traffic arrangement, in connection with said branch, and extending from said state line at Unionville, to Middletown, in the County of Orange, a distance of 13.9-10 miles; which last mentioned road is the only road operated by this respondent in the State of New York.

2. It denies it to be true (as in the ninth paragraph of said petition alleged), that the allegations of the petition "are equally applicable" to this respondent, "as to the New York, Lake Erie & Western Railroad Company"; and further answering, severally, the allegations of said petition alleged to be applicable to this respondent.

3. It denies the allegation that its railroad runs "through the County of Orange aforesaid, a distance of about fifty miles," contained in the second paragraph of said petition; and it says that it runs only 13.9-10 miles in said County, as hereinbefore stated.

4. It admits that considerable (though not very large) quantities of milk are daily transported from various points in said county, to Jersey City, in the State of New Jersey; but it denies that the same is transported by said petitioners and those by them represented; and it says that, as it has been informed and believes, the milk so transported over its road, as aforesaid, is transported largely (if not entirely) by or for other persons, who purchase the same before transportation, of the said petitioners and others.

5. It denies that the rate charged for such transportation is unreasonable or unjust, as alleged in the fourth paragraph of said petition.

6. It says that the rate charged by it amounts to only thirty-five cents per can, containing about 100 pounds of milk, for the transportation of filled cans from different points on its said New York line of 13.9-10 miles in extent to Jersey City aforesaid, and the return transportation of the empty cans from said city to said points on said New York line; and it denies that such charge is simply for the transportation of the filled cans to Jersey City aforesaid, or that this respondent has anything to do with the ferriage thereof to or from the City of New York, or that it charges or receives anything therefor or on account thereof,—as alleged or insinuated in said petition; and while it may be true, as indefinitely alleged in the last mentioned paragraph, that "other classes of freight and produce of equal value, are transported from and to the same points for a less rate and with no greater risk attached"; yet such "other classes of freight and produce," transported at a less rate, are not in fact, and are not alleged to be, of a like kind or description, nor is the service in the transportation thereof of a like and contemporaneous service under substantially similar circum-

stances and conditions, with that performed in the transportation of milk as aforesaid; nor is the charge in question (as this respondent submits) a violation of the law.

7. It denies that the allegations of the seventh paragraph of said petition are true in respect to this respondent, or that they are at all applicable to it.

8. It submits that the "estimation," inference, or conclusion of the said petitioners, following the allegations of facts, herein before answered, and characterizing them as violations of the Act of Congress entitled "An Act to Regulate Commerce"—are unfounded, unwarranted, and unjust.

And this respondent prays to be hence dismissed.

John W. Taylor, F. A. Potts,
Solicitor for Respondent. President.
State of New York, } ss.
County and City of New York. }

The foregoing answer of the New York, Susquehanna & Western Railroad Company, was taken before me, this thirteenth day of May, A. D. 1887, under the common seal of the said corporation, as by their seal thereto affixed, appears.

R. C. Shimeall.
[Seal] Notary Public for Kings County.
Certificate filed in New York County.

ANSWER OF LEHIGH & HUDSON RIVER R. CO.

The Lehigh & Hudson River Railway Company answering the petition of Nathaniel W. Howell and others heretofore filed with the Interstate Commerce Commission against said Company,

1. Admits that said Company is a corporation doing a general freight and passenger business upon their line of railway passing through the State of New Jersey and a portion of Orange County, in the State of New York.

2. Denies each and every other allegation and statement in said petition contained, so far as such allegations and statements refer to or are sought to be alleged against the said Lehigh & Hudson River Railway Company.

3. And for a further and separate answer and defense to said petition the said Lehigh & Hudson River Railway Company avers that its charges for the transportation of milk over the line of said railway or for the receiving, delivering, storage or handling of such property are and have been reasonable and just; that in the transportation of said property the said Company has not in the past and does not now violate any of the provisions of the Act of Congress entitled "An Act to Regulate Commerce" and known as the Interstate Commerce Act.

4. And for a further and separate answer and defense to said petition the said Company avers that in the transportation of milk over the said Railway for the shippers thereof the said Company, as a common carrier, does not do for any other person or persons a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar conditions and circumstances; that such transportation of milk is by a different and separate service from that of any other traffic over said Railway and is carried under

wholly dissimilar circumstances and conditions, in that among other things such milk is transported by special train service at greater expense for equipment, maintenance and carriage, and that the cans returned as freight to the shipper require the same service and car room as the original shipment, and no additional charge or charges are made for such return and transportation.

Wherefore, the said Lehigh & Hudson River Railway Company demands that the said petition be dismissed as against said Company.

Dated the 31st day of May, 1887.

(Signed) John J. Beattie,
Attorney for the Lehigh & Hudson River Railway Company.

Warwick, Orange County, N. Y.

State of New York, } ss.
County of Orange. }

Grinnell Burt, being duly sworn, says that he has heard read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

And deponent further says that the reason why this verification is not made by the party is that the said party is a corporation and that this deponent is an officer thereof to wit: the President, and that all of the allegations in said answer are within the personal knowledge of this deponent.

Sworn to before me this } Grinnell Burt.
31st day of May, 1887.
F. A. Sanford, Notary Public.

Leverett LEONARD

v.

UNION PACIFIC R. CO.

(No. 10.)

PLEADINGS in case now pending before the Commission, based upon allegations of the exaction of an unreasonable and discriminating rate for the transportation of cattle in a Burton stock car.*

COMPLAINT.

(Filed May 21, 1887.)

Mount Leonard, Mo., April —, 1887.

To the Honorable Chairman, Interstate Commerce Commission, Washington, D. C.

Dear Sir:

Be it known to your honorable board that I, Leverett Leonard, of Mount Leonard, Saline County, and State of Missouri, am a breeder and shipper of pure bred stock. That on the 14th day of April, A. D. 1887, I did deliver to the Union Pacific Railroad Company, at their station at Kansas City, Missouri, to their authorized employees, twenty-six long yearling, pure bred stock cattle, in the Burton feeding and watering stock car, No. 47, said car being owned and operated by the Burton Stock Car Company (Incorporated), Boston,

*See *Burton Stock Car Co. v. Chicago, Burlington & Quincy R. R. Co.*, ante, 222.

Mass., said stock being consigned by and to myself, to Pueblo, Colorado, on sale. The said employees of the Union Pacific Railroad Company charged me a rate of freight, for transportation of said stock from Kansas City, Missouri, to Pueblo, Colorado, 88 per cent in excess of the regular rate of transportation of same stock, from Kansas City to Pueblo, in the common stock cars owned and operated by the Union Pacific Railroad Company. (See expense vouchers attached).

I protested against said excess charge for transportation, the same being wholly in defiance of the letter and the spirit of the Interstate Commerce Law; the employees of the said Union Pacific Railroad Company then referred me to a copy of the western classification (revised to April 1, 1887), page 23, relating to "The transportation of live stock in special or palace cars" (copy of said western classification being herewith attached). I then demanded of said employees that the said Union Pacific Railroad Company supply me with an improved feeding and watering stock car, suitable for the safe and prompt transportation of the above mentioned pure bred stock, and was informed that the Union Pacific Railroad Company did not own any such stock cars, and that it supplied only the common stock car.

Be it further known to your honorable board that the common stock cars supplied by the said Union Pacific Railroad Company are wholly inadequate for the comfortable and safe transportation of valuable and pure bred stock, being common rack cars, exposing animals transported therein to draughts of air, dust, and locomotive cinders, and having no appliances for feeding and watering pure bred animals on the cars, which is very important to their comfort and safety on long hauls.

Therefore, I, Leverett Leonard, respectfully petition your honorable board to cause the Union Pacific Railroad Company to refund to me the aforementioned excess charge of 88 per cent above the regular rates; and further, I petition, in the interest of breeders and shippers of live stock, that all railroads operating under the aforesaid western classification, or any other classification, be required to supply suitable improved live stock cars, provided with adequate appliances for properly feeding and watering horses and cattle on the cars while in transit; or in the event of failing to supply such improved stock cars, said railroad companies shall be required to receive live stock, loaded in improved feeding and watering stock cars, when offered to them, and transport said stock, in said improved cars, at the same rates of freight as they receive for transporting a like number or weight of live stock, in their own cars, the same distance, without charging any excess whatever for the use of said improved cars; all of which your petitioner respectfully prays;

Leverett Leonard.

Done at Denver, Colorado, this 12th day of April, 1887.

State of Missouri, }
County of Saline. }

Personally appeared Leverett Leonard, who is personally known to the undersigned notary public, and he states upon his oath that the above statements are true, for the uses and purposes therein set forth.

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Witness my hand and seal in Mt. Leonard, Saline Co., Missouri, this eleventh day of May, 1887.

John Cherry, Notary Public.

Term of office expires 5-12, 1889.

(Seal)

ANSWER.

(Filed June 9, 1887.)

The answer of the Union Pacific Railway Company, to the complaint of Leverett Leonard made to the Interstate Commerce Commission and filed May 21, 1887, alleging overcharge in the transportation of twenty-six head of cattle loaded in Burton stock car No. 47 from Kansas City to Denver:

For answer to said complaint respondent, the Union Pacific Railway Company, says that it is true that about the 14th day of April, 1887, application was made to the Union Pacific Railway Company at Kansas City for the transportation of a Burton stock car, said to be loaded with twenty-six head of cattle, from that place to Pueblo, Colorado, via Denver, Colorado. That at the date of said application the assistant general freight agent of respondent located at Kansas City explained to said Leonard the rate of freight upon said car so loaded as aforesaid from Kansas City to Denver. That said stock car was represented to said agent, and was a Burton palace stock car of the ordinary size, and thirty-six feet in length, internal measurement. That the rate of freight upon an ordinary stock car thirty feet in length as used by railways generally was \$72.50, and was so explained to said Leverett Leonard. That under the rules adopted for the transportation of live stock in the general western classification, as adopted and used by agreement of western roads, through the western classification committee,—so called,—as existing at the date of said shipment, the rate established by said association on live stock palace cars, thirty-six feet in length, internal measurement, was 188 per cent of the regular tariff rate; which said regular tariff rate was \$72.50 as stated and explained to said Leonard at the time of his application for such transportation. That said Leonard at that time made no objection to said rate, and that the only difference which arose between said Leonard and said freight agent, at that interview or at any other interview prior to said shipment, was in relation to the issue of a free pass to said Leonard by said Union Pacific Railway Company from Kansas City to Denver. That said assistant general freight agent having, as he was advised and believed, no authority under the Act of Congress to Regulate Commerce, to issue such free transportation to said Leonard from Kansas City to Denver, refused the request of said Leonard for the same. To this refusal the said Leonard objected; but no other or further complaint was made by him in respect to said shipment, nor were said assistant general freight agent or any general officer of the company advised of any dissatisfaction in respect to said shipment until the filing of his complaint with the Interstate Commerce Commission. That he made no complaint or claim for the refunding of any alleged excess in the rate to any department or officer of respondent, and that the first knowledge said Railway Company had of said claim was re-

or manner, either directly or indirectly, of a | Mazeppa, and the latter, Red Wing, about
breach of sections 1, 2 or 3, or of any other sec- | twenty-two miles from Mazeppa, both towns

being direct competitors with the Town of Mazeppa for the rail traffic and purchase of produce from the territory or country intervening.

That the posted rates on wheat and some other kinds of grain by the said Chicago, Milwaukee & Saint Paul Railroad from Red Wing and Lake City to Chicago was fifteen cents per 100 pounds from August 15, 1886, until April 5, 1887. That the posted rates on wheat and some other kinds of grain by the said Chicago, Milwaukee & Saint Paul Railroad from Mazeppa to Chicago was seventeen cents per 100 pounds from August 15, 1886, until April 5, 1887. That when the Chicago, Milwaukee & Saint Paul Railroad posted its new rates April 5, 1887, it did not change the old rates on wheat from Winona or Hastings on the river division, nor the rates on wheat to Chicago from Hammonds, a station about thirty-four miles from Wabasha on the said Wabasha division; but at all stations west of Hammonds on said Wabasha division, the rate on wheat was advanced to eighteen cents per 100 pounds to Chicago, making at this place a differential of three cents per 100 pounds in place of two cents per 100 pounds as existed from August 15, 1886, until April 5, 1887.

That the said Chicago, Milwaukee & Saint Paul Railroad I believe at times previous to August 15, 1886, did make such rates on some kinds of grain to interstate points from Lake City as to draw the grain from within eighty rods of our own elevator. That an eighteen cents rate from Mazeppa to Chicago is what I believe to be unreasonable, and I further believe that the advance April 5, 1887, from seventeen cents to eighteen cents on wheat to Chicago from Mazeppa was wholly unwarranted. That any differential exceeding two cents per 100 pounds on grain from Mazeppa to Chicago or other interstate points over the rates from Red Wing and Lake City to such interstate points I believe to be unjust and a discrimination against this place and locality. That it is now claimed by the Daily Press that a ten cent rate on wheat from Minneapolis to Chicago, including Red Wing and Lake City, is now being made; if so, then an eight cent differential exists sufficient to take the wheat from before our own door.

Therefore I ask of your honorable Commission as early a consideration of my complaint as possible. I further ask that if you find that the advance April 5, 1887, was unwarranted and unjust, then you request the said Chicago, Milwaukee & Saint Paul Railroad Company to refund the excess collected from shippers since April 5, 1887. I further ask that if you find that the said Chicago, Milwaukee & Saint Paul Railroad is carrying wheat from Red Wing and Lake City to Chicago at ten cents per 100 pounds and has been since the 18th inst. that you declare the same to be a discrimination against this place and locality and a violation of section 3 of the Interstate Commerce Law so long as the rate remains eighteen cents per 100 pounds from this place to Chicago; and that you further request it, if you find that it has violated said third section of the Interstate Commerce Law, to refund any excess of money it may have collected from shippers over and above the rate at Lake City

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and Red Wing, with a reasonable differential, and to pay any damages that may have accrued in consequence of such violation of the Interstate Commerce Law.

Subscribed and sworn to }
according to my best
knowledge and belief.

E. B. Raymond.

Witness, H. F. Fowler.

Sworn to and subscribed before me this 23d day of May, 1887.

(Seal) Homer T. Fowler, Notary Public,
Wabasha Co.

ANSWER.

(Filed June 13, 1887.)

Milwaukee, Wis. June 7, 1887.

Mr. Edward A. Moseley, Secretary Interstate
Commerce Commission,

Washington, D. C.

Sir:

Answering the complaint of E. B. Raymond, a citizen of Mazeppa, County of Wabasha, State of Minnesota, the Chicago, Milwaukee & St. Paul Railway Company states as follows:

First. It is true, as claimed, that immediately prior to April 5, 1887, fifteen cents per 100 pounds was the rate charged from stations on the River Division, including Lake City and Red Wing, and seventeen cents per 100 pounds from Mazeppa to Chicago.

Second. That in adjusting rates to take effect April 5, 1887, it was agreed by all lines that eighteen cents per 100 pounds was a reasonable rate for the transportation of grain and flour from St. Paul and Minneapolis to Chicago, via the river, La Crosse and the Chicago & Milwaukee divisions to Chicago.

This rate of eighteen cents was graded down so that the rate from Lake City and from Red Wing was made fifteen cents.

Mazeppa is a station on the Wabasha division, *narrow gauge*, and is fifty-two miles from the main line of the river division at Wabasha.

Zumbrota is eight miles west of Mazeppa, and is the terminus of the Wabasha division, and is the terminus of the Zumbrota branch of the Winona & St. Peter Division of the Chicago & Northwestern Railway. Thus all this territory is competitive, and rates are usually made after agreement.

In adjusting new rates it was agreed that eighteen cents was a reasonable rate from this interior territory, including corresponding stations on the Zumbrota branch of the Winona & St. Peter Railway.

The question of an agreed differential, above rates charged on the River Division, was not and is not considered, as there are many contingencies affecting rates from river division stations which do not directly concern interior points.

Third. May 18, in consequence of the action of our competitors, we reduced rates from St. Paul, Minneapolis and all stations on the River and the La Crosse divisions, to ten cents per 100 pounds, but we made no change in the rates from stations on the Wabasha division, nor on other divisions, not part of the direct line to Chicago over which the St. Paul and Minneapolis business is done.

Fourth. May 20, for the same reasons, we made a further reduction to $7\frac{1}{4}$ cents per 100 pounds, but made no change at Mazeppa or other points on the Wabasha division, or from stations on other divisions not part of the direct line to Chicago.

Fifth. May 26, the $7\frac{1}{4}$ cent rate from St. Paul and Minneapolis remaining in effect, we made reductions on branches connecting with the direct line to Chicago, among which was a reduction of rates from Mazeppa to $12\frac{1}{4}$ cents per 100 pounds, which rate is now in effect.

Sixth. The rates from St. Paul, Minneapolis, and from river division stations, to Chicago, are affected by the competition via Lake Superior and the competition of the Mississippi River, causing at times (notably today), extremely low and unprofitable rates. This competition and these low rates only indirectly affect the rates at Mazeppa and other interior points; and we claim that the rates charged from Mazeppa to Chicago since April 5 have been and are just and reasonable.

Very Respectfully,

The Chicago, Milwaukee & St. Paul Railway Company, by
Roswell Miller, General Manager.

George M. JACKSON

v.

ST. LOUIS, ARKANSAS & TEXAS R. CO.

(No. 28.)

PLEADINGS in a case pending before the Commission, based upon allegations of the exaction of unjust rates for the transportation of hewed lumber or ties, and of discrimination in favor of sawed lumber as against hewed lumber.

COMPLAINT.

(Filed June 7, 1887.)

St. Francis, Clay Co. Arkansas,

June 1, 1887.

Judge Thomas M. Cooley,

Chairman Interstate Commerce Commission:

I respectfully ask that your honorable body summon the St. Louis, Arkansas & Texas Railroad Company before you. Your petitioner charges the said Railroad Company with a violation of the first section of the Interstate Commerce Law, in this: that the said Railroad Company refuses to ship ties or hewed lumber for your petitioner from this place to Kansas City, Missouri which is in another State, for less than $40\frac{1}{4}$ cents each, which is an unreasonable and unjust charge. A tie is generally made of oak, and is 6×8 inches, 8 feet long, which is of a convenient shape and size to handle, and is such freight as is not liable to injury in transit. A tie is a hewed stick of lumber of the above dimensions and will weigh 160 pounds, which makes the rate a fraction over twenty-five cents per 100 pounds. In proof that said charge is unreasonable your petitioner will state that said Railroad Company charges a rate of eighteen cents per 100 pounds on sawed oak lumber from here to Kansas City.

Your petitioner further charges the St. Louis, Arkansas & Texas Railroad Company

with the violation of the second section of said Act, in this,—that said Railroad Company refuses to transport for your petitioner from this place to Kansas City, Missouri, which is in another State—hewed lumber or ties, for a less rate than $40\frac{1}{4}$ cents each, which is a fraction over twenty-five cents per 100 pounds, while it transports for other parties oak lumber that is sawed, to and from the same points, at eighteen cents per 100 pounds. For the purpose of concealing the discrimination said Railroad Company will not quote you a rate per 100 pounds on ties or hewed lumber; that there is no difference between hewed and sawed lumber; that it is “a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances.”

Your petitioner further charges the said St. Louis, Arkansas & Texas Railroad Company with a violation of the third section of said Act, in this—that said Railroad Company gives “undue and unreasonable” preference to sawed lumber, as against hewed lumber, when they are substantially the same thing, which is a discrimination against a “particular kind of traffic.”

Your petitioner asks that said Railroad Company be ordered to discontinue said discrimination, and that hewed lumber or ties be transported at the same rate per 100 pounds as sawed lumber.

And your petitioner would further ask that if you find that said Company has violated the Law, that the lowest penalty be assessed, as this petition is filed solely with the view of forcing the said Railroad Company to do that which it ought to do without being forced, viz.: transport your petitioner's hewed lumber at the same rate that it does your petitioner's sawed lumber, who is also engaged in running a saw mill on said Railroad, and shipping lumber to Kansas City, Missouri.

(Signed) Geo. M. Jackson.

Subscribed and sworn to before me, a Justice of the Peace within and for the County aforesaid.

(Signed) M. D. Gunter, J. P.

June 2, 1887.

ANSWER.

(Filed June 23, 1887.)

To the Interstate Commerce Commission,

Hon. Thomas M. Cooley, Chairman:

Now comes the St. Louis, Arkansas & Texas Railway Company in Arkansas and Missouri, and for answer to the petition of George M. Jackson, of St. Francis, Clay County, Arkansas, dated June 1, 1887, respectfully states as follows:

First. It denies that it has violated the first section of the Interstate Commerce Law, as alleged in the first paragraph of said petition, and specially denies that it refuses to ship ties of hewed timber, for the petitioner, for less than $40\frac{1}{4}$ cents each from St. Francis to Kansas City, and denies that it ever had a rate on hewed cross ties of $40\frac{1}{4}$ cents from St. Francis to Kansas City, or that it has ever charged, or offered to charge, the petitioner at the rate of $40\frac{1}{4}$ cents each for hewed cross ties between the points named.

Further answering the said first paragraph of

said petition, it admits that a tie is generally made of oak, 6x8 inches, 8 feet long, and that such freight is not liable to injury in transit, but denies that the weight thereof is 160 pounds, and says that the weight thereof would average about 180 pounds in the condition in which they are usually shipped.

And further answering said petition, it denies that it has violated the second section of the Interstate Commerce Law, as alleged in the second paragraph of said petition, and denies that it has refused to transport for petitioner hewed timber or ties from St. Francis, Arkansas, to Kansas City, Missouri, at a less rate than 40½ cents each; but admits that it transports oak timber, which is sawed, from St. Francis, billed for Kansas City, Missouri, at a through rate of eighteen cents per 100 pounds.

It denies that it discriminates against hewed timber or ties, as alleged, and denies that it refuses to quote rate per 100 pounds on ties or hewed timber for the purpose of concealing any such discrimination; denies that there is no difference between hewed and sawed timber, and denies that the hauling of the one class is a like contemporaneous service in transportation of a like kind of traffic under substantially similar circumstances.

And further answering said petition, it denies that it has violated the third section of said Interstate Commerce Law in giving undue or unreasonable preference to sawed lumber as against hewed timber, and denies that they are substantially the same thing.

And for further answer to said petition, it says that in transporting ties or timber or other material from St. Francis, Arkansas, to Kansas City, Missouri, it does the same in connection with the Kansas City, Springfield & Memphis Railway Company, the line of which latter road it crosses at Jonesboro, Arkansas; that this respondent has no line of its own road, or any line that it controls, which reaches Kansas City or any point nearer to Kansas City than Jonesboro, Arkansas; that at no time has it ever charged or attempted to charge a rate between St. Francis and Kansas City for the amount of 40½ cents per cross tie; that previous to the 23d day of May, 1887, the rate between St. Francis and Kansas City was forty cents, but on said last named day it was reduced for cross ties to 33½ cents per tie. The special order fixing this rate is filed with your honorable Commission, and is numbered I. S. 136, and this rate has been maintained since said time, and was in force at the time petition was filed.

Further answering, respondent states that said rate is reasonable and just, and has not been complained of by any person other than petitioner.

Further answering, respondent says that hewn ties, such as are usually offered for transportation, weigh about 180 pounds, instead of 160 as stated in the petition; that they are usually offered for transportation while green and while they are wet, and may be reduced by seasoning from about 180 pounds to 160 pounds if left to dry before they are transported; yet as a matter of fact those offered for shipment on respondent's road are nearly always so offered before they are so seasoned.

Further answering, respondent states that in charging a rate per tie rather than by the 100 pounds, as is customary with sawed timber, it is following the ordinary custom of railroads west of the Mississippi River in the handling of such freights. Hewn ties are always sold at so much per tie. They are of unequal size. Along the line of respondent's road they are nearly always cut from swampy, wet lands; and to charge per 100 pounds would be an injustice to those parties, causing them to have to pay more for transporting cross ties than if the same tie was cut from upland. If the rate was made per 1,000 feet, there would necessarily be disputes as to the number of feet in a tie, from the fact that being hewn they are necessarily of innumerable shapes, rendering accurate measuring difficult. For these reasons respondent and other railroads west of the Mississippi River have found it to the mutual advantage of shippers, consumers and themselves to make rate per tie instead of in any other manner. The rate at present charged, of 33½ cents per tie from St. Francis and contiguous stations, to Kansas City, is a reasonable rate for the service performed; and when the weight of each tie is taken into consideration is about the same rate per 100 pounds as is charged for sawed timber, of which rate the petitioner has not complained and with which it seems to be satisfied; therefore respondent states that in making the rate as hereinbefore set forth it has violated no part of the Interstate Commerce Law, has followed the usual and ordinary course as adopted by railroads of the section of the country in which it operates, and has charged but a reasonable rate, without discrimination, and is therefore entitled to be hence discharged with its costs. It therefore prays for such order in the premises.

The St. Louis, Arkansas & Texas Railway Company in Arkansas and Missouri.

By Phillips & Stewart, General Attorneys.

The State of Missouri, } ss.
The City of St. Louis. }

Before me, the undersigned notary public within and for the City of St. Louis, and State of Missouri, personally appeared D. Miller, who being by me duly sworn according to law, upon his oath, deposeth and saith that he is the General Freight and Passenger Agent of the St. Louis, Arkansas & Texas Railway Company in Arkansas and Missouri, and that he has read the foregoing answer and knows the contents thereof, and that the allegations contained therein are true to the best of his knowledge, information and belief.

(Signed) D. Miller.

Subscribed and sworn to before me this the 20th day of June, A. D. 1887.

(Signed) Isaac H. Orr, Notary Public,
[L. s.] City of St. Louis, Mo.

The State of Missouri, } ss.
The City of St. Louis. }

Before me, the undersigned notary public within and for the said City and State, personally appeared A. C. Stewart, of lawful age, who being by me duly sworn, according to law, upon his oath, deposeth and saith that on the 23d day of June, A. D. 1887, he delivered a copy of the foregoing answer and the verifi-

cation thereof to George M. Jackson, the petitioner herein, in person the said George M. Jackson at the time of said delivery being within the City of St. Louis, and State of Missouri, and being the same George M. Jackson who is described in the petition herein and in said answer, as being of St. Francis, Clay County, Arkansas.

(Signed) A. C. Stewart.

Subscribed and sworn to before me this the 24th day of June, 1887.

(Signed) Harvey L. Christie, Notary Public,
[L. a.] City of St. Louis, Missouri.

GEORGE RICE

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN R. CO.*

(No. 52.)

SYNOPSIS of pleadings.

COMPLAINT.

Defendant is a corporation organized, etc., in Missouri and Arkansas and engaged in transportation from St. Louis to Newport, Little Rock and Texarkana in Arkansas, and beyond.

In the transportation of oil two methods are employed: (a) by box cars, carrying the oil in barrels; (b) by tank cars holding 100 barrels and upwards.

Complainant manufactures and deals in oils at Marietta, Ohio, where he has large capital invested. He would have produced and sold many thousand more barrels of oil but for the wrongful acts of defendant.

Many of complainant's principal markets are in the territory reached by defendant's road.

The Waters-Pierce Oil Co., a Missouri corporation, is a large dealer in and shipper of oils, and is complainant's chief and almost sole competitor in said markets.

The defendant has violated the Interstate Commerce Act, as follows:

First Charge. By making charges for transporting oil from St. Louis, "which were in themselves unjust and unreasonably high."

As specifications, under charge 1, rates charged July 7, 1887, are given.

Second Charge. Defendant has charged complainant higher rates for the same services than it has charged said Waters-Pierce Oil Co., in transporting oils from St. Louis to points in States other than Missouri. The Waters-Pierce Oil Co.—being sometimes consignor and

sometimes consignee and sometimes both consignor and consignee.

Specifies comparative rates thus:

Rates per bbl. since April 5, 1887.

Destination,	To G. Rice,	To Waters-Pierce Oil Co.
Newport, Ark.	91 cts.	50 cts.
Little Rock, "	91 "	50 "

Defendant charges complainant for actual weight and charges the Waters-Pierce Oil Co., in many instances for much less than weight.

Third Charge. Undue and unreasonable preference to the Waters-Pierce Oil Co.

Specifications. Repeats specification No. 1, under second charge, and avers that the differences in rates are not measured by differences in the circumstances, and that the differences in cost, convenience, etc., to the carrier, if any, are insignificant in comparison with the difference in rates. This discrimination has had, and complainant believes was intended to have, the effect of giving said Waters-Pierce Oil Co. a monopoly at the points reached by defendant's line, and to exclude complainant's products entirely from said markets.

Prayer. For investigation, and that the Commission will report to what reparation complainant is entitled; and will require defendant to cease and desist from such violations, etc., and for general relief.

ANSWER.

Admits that defendant is a common carrier, as alleged, that it transports oil from St. Louis as alleged either in barrel packages, in box cars, or in tank cars. Is not informed as to capital invested by complainant. Admits that the Waters-Pierce Oil Co. is a shipper of oil, but is not informed whether it is complainant's chief competitor.

To Charge First. Defendant's charges for transporting refined petroleum oil from St. Louis to Newport and Little Rock, Arkansas, \$50 per box car containing 55 bbls., i. e., a little more than 90.9 cents per bbl.; and from St. Louis to Texarkana, Arkansas, forty-five cents per 100 lbs., not sixty-seven cents.

Denies that these rates are unjust, etc.

To Charge Second. The rates charged to complainant, to said Waters-Pierce Oil Co., and to all, are the same: to be shipped in bbls. 90.9 cts. per bbl.; and when shipped in tank cars, \$50 per tank car.

Denies discrimination in favor of said Waters-Pierce Co., or any other shipper.

Denies that it has discriminated against Rice in matter of "weights."

Denies that it has charged Rice at any time since April 5, more than it has charged the Waters-Pierce Oil Co., or any other shipper "for like and contemporaneous service performed under substantially similar circumstances and conditions."

To Third Charge. Denies giving unreasonable preference or subjecting complainant, etc.; denies that any charges were designed to have the effect of giving said Waters-Pierce Oil Co. any monopoly or to exclude complainant, etc.; answer to second charge to be deemed repeated here; and asserts that the circumstances, etc., under which oil is shipped in barrels

*This case, and cases Nos. 53 to 60 inclusive on the Docket of the Commission, following, belong to the group of cases based upon allegations of discrimination in favor of the Standard Oil Company and others, in rates for the transportation of oil, of which Rice v. Louisville & Nashville R. R. Co., (the complaint in which is given in full on page 376, ante, and the answer on page 443, ante), is one. As all the cases are based upon the same general grounds, it is thought that a synopsis of the pleadings will suffice to give all the desired information in reference to them.

and in tank cars "are so dissimilar as to prevent one rate being taken as a standard whereby to measure the other," and that if they are compared it will be found that neither relatively to the other is unjust.

George RICE

MOBILE & OHIO R. CO.

(No. 53.)

SYNOPSIS of pleadings.

COMPLAINT.

Complaint alleges defendant is a corporation existing in Illinois, Kentucky, Tennessee, Mississippi and Alabama, and is a common carrier, etc., engaged in transportation from Cairo, Illinois, to Rives and Jackson, in Tennessee; Columbus and Meridian, in Mississippi; and Ohunchula, Eight Mile and Mobile, in Alabama.

Allegations as to complainant's business same as in case 52.

Charges violations of Act as follows:

1. Charges unreasonably high in themselves; specifies rates from Cairo thus:

Destination.	Rate per 100 lbs.
Columbus, Miss.	58 cts.
Lauderdale, "	68 "
Meridian, "	84 "
Enterprise, "	68 "
Shubuta, "	76 "
Eight Mile, " (sic)	76 "

and to other points not in Illinois as in tariffs required to be filed.

2. Defendant has charged more for a less than for a greater distance "over the same line," etc., repeating the words of the Act.

Specifies

From Cairo to	Distance.	Rate per 100 lbs.
Shubuta, Miss.	896	76 cts.
Eight Mile, " (sic)	488 4-10	76 "
Mobile, " (sic)	491 4-10	84 "

(Prayer as in No. 52.)

ANSWER.

Defendant is a corporation under the laws of Alabama, Mississippi, Tennessee and Kentucky, authorized to build a railroad from Mobile, Alabama, "to a point at or near the mouth of the Ohio River, in Kentucky," and is now operating such road.

Has no knowledge of complainant's business. Denies violation of the Act.

3. *To First Charge.* Denies that the rates set forth in petition are unreasonably high, says that the rate of thirty-four cents per 100 lbs. "per car load" from Cairo to Meridian (857 miles) is unreasonably low,—but is necessary, owing to competition "due to a combination of rates of steamers plying up and down the Mississippi River, with the rates of the Vicksburg & Meridian Railroad within the State of Mississippi," both said carriers being outside of the jurisdiction of the Commission. Said rate could be availed of by petitioner. All defendant's charges are just and reasonable "un-

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der the circumstances, conditions and necessities of the business of the defendant."

To Second Charge. Admits that its tariffs filed with the Commission provide seventy-six cents per 100 lbs. (per car load) from Cairo, Illinois, to Shubuta, Miss., 896 miles; and seventy-six cents from Cairo to Eight Mile, Ala., 485 miles; and twenty-four cents from Cairo to Mobile, Ala., 492 miles; admits greater charge for shorter distance over, etc. (quoting statute), that the oils are of like kind and character, and justifies under order of relief granted April 16, 1887.

Further answering all charges. Since expiration of said order, where more has been charged for shorter haul, denies that such transportation was under similar circumstances and conditions.

Further answering. The rate of twenty-four cents from Cairo to Mobile was fixed by competition with water lines and combinations of rates by water lines with rates from New Orleans to Mobile.

Further answering, says that the rate of thirty-four cents per 100 lbs. from Cairo to Meridian, Miss., is fixed by competition with rates made by combination of steamer rates (on Ohio and Mississippi Rivers), with rates of Vicksburg & Meridian Railroad (wholly within Mississippi), and also by competition with the short rail line from Marietta, Ohio, to Meridian over the Cincinnati, New Orleans & Texas Pacific. Such competition is beyond the jurisdiction of the Commission.

Defendant is expressly authorized by the Act "to meet competitive rates fixed by causes beyond the jurisdiction of the Commission."

Further answering. Rates for oil in bbls. per 100 lbs. are:

From Mobile north to Eight Mile, 8 cts.
From Mobile (97 miles) to Shubuta, Miss., 80 cts.
From Mobile (120 miles) to Enterprise, Miss., 88 cts.

Denies damage to complainant.

Defendant has revised its rates since filing of petition, which are now as follows:

From Cairo to	Distance.	Rate per 100 lbs.
Columbus, Miss.	287	87 cts.
Lauderdale, "	839	48 "
Meridian, "	357	45 "
Enterprise, "	873	45½ "
Shubuta, "	896	47½ "
Eight Mile, Ala.,	485	54 "
Mobile, "	492	81 "

George RICE

v.

EAST TENNESSEE, VIRGINIA & GEORGIA R. CO.

(No. 54.)

SYNOPSIS of pleadings.

COMPLAINT.

Defendant is a corporation organized and existing in Tennessee, Georgia, Alabama and Mississippi. Is a common carrier, etc., from Chattanooga, Tennessee, through Tennessee,

Georgia and Alabama to Selma, Alabama, and Meridian, Mississippi.

First Charge. Charges from Chattanooga to points in other States unjust, etc., in themselves.

Specifies rates per 100 lbs. from Chattanooga to

Selma, Ala. - - - 28 cts.

Meridian, Miss. - - - 25 cts.

Second Charge. Violation of section 4.

Specifies. From Chattanooga (bbl. pkg. C. L. lots)

To

Selma, Ala. 293 m. 28 cts. per 100 lbs.

Meridian, Miss. 403 m. 25 cts. " " "

ANSWER.

Denies that charges are unreasonable.

Denies that defendant's rates from Chattanooga are as charged.

Since November 1886, rates have been

To Selma, Ala. - - - 23 cts.

" Meridian, Miss., - - - 25 cts.

Denies violation of section 4, since April 5, 1887.

Distances are not as alleged but "over respondent's line" are as follows:

From Chattanooga, to Selma, 276 miles.

" " Meridian, 389 "

General denial.

George RICE

v.

CINCINNATI, NEW ORLEANS & TEXAS
PACIFIC R. CO.

(No. 55.)

SYNOPSIS of pleadings.

COMPLAINT.

Defendant is a corporation organized under laws of Ohio. Is a common carrier, etc. (by means of a line leased by it) between Cincinnati and Chattanooga, and intermediate points on its line between said cities, through Kentucky and Tennessee.

Standard Oil Company is a corporation under laws of Kentucky; is complainant's chief and almost sole competitor in said markets.

First Charge. Charges from Cincinnati unjust, etc. in themselves.

Specifies.

To Lexington, Kentucky, 13 cts.

" Chattanooga, Tenn. 33 cts.

Second Charge. Defendant since April 5, 1887, has charged complainant more than said Standard Oil Co.

Specifies	Charged Rice	Charged Oil Co.
To Lexington	13 cts.	8 cts. 8 mills.
" Chattanooga,	33 cts.	15 cts. 9 "

The rate to the Company being made on assumption that tank cars contain no more than 100 bbls. each (which is untrue). Such cars were hauled to

Lexington, for \$26 per car, and to

Chattanooga, " \$50 " "

Complainant has been charged for actual weight. Oil Company for much less than actual weight.

Third Charge. Defendant has given unreasonable preference, etc. to Standard Oil Company, and has subjected Rice to, etc.

Specifies.

Repeats specification No. 1 under second charge. Difference in rates not measured by difference in circumstances, etc. (as in Case No. 52).

The discrimination, etc., was intended to give monopoly to the Oil Co. and to exclude complainant, etc. (as in No. 52.)

ANSWER.

Denies first charge.

Denies second charge, and to specification 1 thereunder says rates charged per bbl. are (as alleged).

Denies that rates in tank were 8.3 cents and 15.9 cents as alleged, but were per car \$26 and \$50 as alleged.

Denies the charges per tank car "were not based upon the exact capacity."

When these cars were first introduced they were understood to have a capacity of seventy bbls. and rates were made accordingly.

Rice ships in bbls.

Oil Co. in tank cars.

Rice was charged for actual weight.

Oil Co., by the car; and "while it may be true that thereby said Standard Oil Co. obtained transportation for its said oil at a cost that would be less per 100 pounds of oil than the complainant Rice paid," yet the price charged per tank car is based on the average capacity, is open to all shippers, is fair, and has been in practice for many years by all railroad companies in the West and Northwest, as well as in the South.

To the third charge. Denies preference, etc.

To specification 1 repeats its answer to specification 1 under second charge, and further alleges that the difference between rates per 100 lbs. and rates per tank car is justified by difference to defendant in circumstances, etc., and denies that such difference is insignificant.

Oil in bbls. is undesirable freight on account of leakage and odors, unfitting the cars for other freight. Many claims for damage to other goods have to be paid, thereby increasing expense of transportation; risk of fire is greater.

Tank cars are generally unloaded on separate side tracks (by pumping) by the owners. Shipper furnishes the cars. Ninety per cent of the tank cars are used on their return for other freight—principally turpentine and cotton seed oil.

The Standard Oil Company to accommodate said return freight has erected at its own expense extensive plants at Ludlow, Kentucky (Cincinnati), and at Louisville.

Said tank car shippers also furnish large return shipments of resin.

No monopoly given or designed to be given.

George RICE

v.

CINCINNATI, NEW ORLEANS & TEXAS
PACIFIC R. CO., and Alabama Great
Southern R. R. Co.

(No. 56.)

SYNOPSIS of Pleadings.

COMPLAINT.

The Cincinnati, New Orleans & Texas Pacific R. Co. is the lessee of and as such is engaged in operating a line of railroad from Cincinnati through Kentucky and Tennessee, to Chattanooga, 836 miles (and intermediate points), and there connect with the Alabama Great Southern R. R. Co. (which owns and operates its line) extending from Chattanooga through Georgia and Alabama to Meridian, in Mississippi.

Charges as in preceding (including discrimination in favor of Standard Oil Co.).

Specifications are of course for different points.

Also charges violation of section 4; specifies from Cincinnati

To Birmingham, Ala.	478 m.	47 cts.
Meridian, Miss.	630 "	45 "

JOINT ANSWER.

Substantially as in No. 55.

(There are some allegations as to the arrangements between the two defendants for continuous carriage.)

The rates are fixed by competition with water rates.

In answer to the charge of violation of section 4, rely on order of relief of April 19, and at the expiration thereof the rates were altered.

George RICE

v.

MISSISSIPPI & TENNESSEE R. R. CO.

(No. 57.)

SYNOPSIS of Pleadings.

COMPLAINT.

Charge unreasonable rates from Memphis, Tennessee, to Grenada, Mississippi, and intermediate points, by charging between said points, a distance of 100 miles, thirty-eight cents per 100 lbs., or \$1.52 per bbl.

ANSWER.

Admits incorporation, etc. Denies the charge generally. States that defendant's charges are barely sufficient to pay running expenses, etc., and that its rates on oil are in proportion to other parts of its tariff. Defendant has failed several times in earning enough to pay mortgage interest. Never has paid a dividend. Was torn to pieces in the war. Is subject to competition with lines on either side of it, viz.: Kansas City, Memphis & Birmingham R.

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R. Co., on the east, and the Mississippi Valley R. Co. on the west.

Has only transported since February 25, 1887, three shipments of oil, amounting to about 7,000 lbs. in all. None of them shipped by Rice.

That the complaint is "frivolous and speculative."

George RICE

v.

NEWPORT NEWS & MISSISSIPPI VAL-
LEY R. R. CO., and Louisville, New Or-
leans & Texas Pacific R. Co.

(No. 58.)

SYNOPSIS of Pleadings.

COMPLAINT.

Charges 1, exaction of unreasonably high rates: Specifies 75 cts. per bbl. from Louisville to New Orleans, and from Louisville to Vicksburg.

2. Discrimination in favor of Standard Oil Co., which ships in tank cars, etc., as in other cases.

SEPARATE ANSWER OF LOUISVILLE, NEW
ORLEANS & TEXAS PACIFIC R. CO.

Denies that Standard Oil Co. is sole or principal competitor of complainant, or that said Company transports oil exclusively in tank cars.

Rate when shipped in barrels seventy-five cents per bbl.; box car holds sixty bbls.; making total freight from Louisville to Vicksburg (612 miles) as well as from Louisville to New Orleans (848 miles) about \$45 per car, and rate in tank cars, \$55 per car. Average load of tank cars, ninety bbls.

When shipped in bbls. the oil usually comes to respondent from the road of another company and has to be transhipped, or respondent has to pay mileage.

Denies preference, etc.

The rates on tank cars are open to both, as are the rates in barrels.

Denies that its rates have been made at the dictation or even the suggestion of Standard Oil Co., and "denies that the difference in rates on a car load in barrels and a car load in tanks is not based or measured by a difference to it in the cost, expense or convenience of handling same between said two methods, because," etc., the tank cars are owned by shippers, and loaded by them at shipper's risk of leakage; and also there is a demand for cars for cotton oil on their return.

General denial, except, etc.

SEPARATE ANSWER OF NEWPORT NEWS &
MISSISSIPPI VALLEY R. R. CO.

Similar to preceding answer.

Tank cars hold about eighty-five barrels.

Respondent gives notice to petitioner to produce at hearing all original letters, etc., between him and it, during 1887. Also freight bills and bills of lading.

General denial, except etc.

George RICE

v.

NEWPORT NEWS & MISSISSIPPI VALLEY R. R. CO. and Illinois Central R. R. Co.

(No. 59.)

SYNOPSIS of Pleadings.

COMPLAINT.

Alleges that the Newport News & Mississippi Valley R. R. Co., operates a road known as the Chesapeake, Ohio & South Western, beginning at Louisville and extending through Kentucky to Fulton, Kentucky, and thence to Memphis, Tennessee, there connecting with the Illinois Central, which road extends from Chicago to Fulton and thence to Jackson, Mississippi and New Orleans.

The defendants transport oil from Louisville to Jackson and other points on the Illinois Central south of Fulton.

First Charge: Complains of charges unreasonably high. Specifies from Louisville to Jackson, 1.60 per bbl.

Second Charge: Preference etc., to Standard Oil Co., by charging gross sum of \$96 per car for tank cars containing over 100 bbls. Proceeds as in No. 52. Rates designed to give monopoly, etc.

SEPARATE ANSWER OF NEWPORT NEWS & MISSISSIPPI VALLEY R. R. Co.

Admits incorporation, etc.—Does not admit that "the continued success of petitioner's business depends upon the rates on respondent's road," for the reason that each of the points named can be reached by petitioner by water routes or other railroad lines, as conveniently and cheaply.

The rest of the answer is almost identical with this defendant's answer in No. 58.

SEPARATE ANSWER OF ILLINOIS CENTRAL R. R. Co.

Defendant is ignorant of allegations respecting Newport News & Mississippi Valley Co., except that it interchanges business with it.

Admits its incorporation and existence in Illinois. Denies that it has owned a railroad in Kentucky, Tennessee, or Mississippi, but admits that it operates the Chicago, St. Louis & New Orleans Railroad from East Cairo through Kentucky, Tennessee and Mississippi, to Jackson, Mississippi, and thence to New Orleans, under lease from the C. St. L. & N. O. R. R. Since January 1, 1883.

"If by the allegation that defendants have been engaged in the transportation of persons and property wholly * * * under a common arrangement for a continuous carriage from Louisville, Kentucky, to Jackson, Mississippi, * * * is meant that the defendants have any interest in or control of each others lines of railroad—then the allegation is denied."

The defendants receive and deliver freight from and to each other, and *pro rata* or on a mileage basis, or by special agreement. The defendants are competing lines, and their interchange of business is small.

Only two car loads of oil have been shipped over defendant's line during the period complained of, and the shipper was not in either case the complainant. The shipments were in barrels in box cars; hence, there was no discrimination. One load was consigned to the Standard Oil Co., and one by the Standard Oil Co. to S. Semly. Charge \$1.60 per bbl.

Admits that it, like all carriers, charges less for oil in tank cars furnished them, than for oil in barrels in carrier's own cars, and justifies (as in other cases).

States financial difficulties of the company, reduction of debt and corporate stock, etc., and denies that its rates for oil exceed in proportion those rates on other freight which are necessary to maintain its business.

General denial, except, etc.

Alleges that the complaint is frivolous and speculative.

George RICE

v.

ILLINOIS CENTRAL R. R. CO.

(No. 60.)

SYNOPSIS of Pleadings.

COMPLAINT.

First Charge: Unreasonably high rates, specifies:

From Cairo, Ill. to		
Water Valley, Miss.	-	46 cts per. 100 lbs.
Grenada, Miss.	-	37½ " " "
Jackson, "	-	41½ " " "
New Orleans, La.	-	24 " " "

Second Charge: Violation of section 4, since July 9, specifies:

From Cairo to		per 100 lbs.
Water Valley, Miss.	297 miles	46 cts.
Grenada, Miss.	256 "	37½ "
Jackson, "	867 "	41½ "
New Orleans, La.	550 "	24 "

ANSWER.

Denies that charges are unreasonably high.

Road from Cairo to New Orleans traverses a sparsely settled country, which affords small volume of tonnage considering mileage of the road. From the physical features of the country the line is difficult to maintain in running order, and requires large expense for operation.

If the circumstances and conditions as shown by the foregoing are not sufficient to justify respondent in charging more for the short haul where rail and water competition existed, then respondent was relieved from the charge made by complainant by order of relief granted by Commission, suspending fourth section for ninety days from April 4, 1887, *i. e.* until July 16.

Denies having received any oil for shipment or having transported any oil from Cairo to the points named in the complaint, during the period stated.

General denial, except, etc.

GRIFFITH OWEN & CO.

DELAWARE & HUDSON CANAL CO.
(No. 69.)

(September 3, 1887.)

AT a session of the Commission, held at Rutland, Vermont, on September 2, 1887, a notice of discontinuance of this proceeding (the complaint in which is given *ante*, 896), was filed by George M. Fuller, Esq., attorney for the complainant; and thereupon it was ordered by the Commission that the proceeding be discontinued accordingly.

MEMORANDA OF NEW CASES.

THE following cases, Nos. 72-77, have been recently commenced before the Commission. The pleadings and subsequent proceedings therein will be duly reported hereafter.

Robert M. TUTTLE

NORTHERN PACIFIC R. R. Co.
(No. 72.)

Complaint filed September 1, 1887, charging the use of a free pass by one of the territorial judges of Dakota.

H. T. KETRON

NORFOLK & WESTERN R. R. Co.
(No. 73.)

Complaint filed September 3, 1887, alleging that household goods consigned to a point beyond the line of the Norfolk & Western R. R. Co. were carried by that Company by a round-about route, causing higher charges and delay.

BUSINESS MEN'S ASSOCIATION OF MINNESOTA

CHICAGO & NORTHWESTERN R. Co.
(No. 74.)

Complaint filed September 3, 1887, alleging that while defendant company makes a less rate for the longer haul from Chicago to Lake Michigan points, as it ought to do, it makes a higher rate for stations beyond Janesville—thus discriminating against Janesville and other points, in violation of sections 1, 2 and 3 of the Act.

BUSINESS MEN'S ASSOCIATION OF MINNESOTA

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA R. R. Co.
(No. 75.)

Complaint filed September 5, 1887, containing the same allegations as the complaint in No. 74, in reference to Lake Superior points and points southwest of St. Paul.

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MANUFACTURERS & JOBBERS UNION OF MANKATO, Minnesota,

MINNEAPOLIS & ST. LOUIS R. Co.
(No. 76.)

Complaint filed September 5, 1887, charging violation of section 4 of the Act, and unreasonable rates.

James C. SAVERY & Co. of New York, doing business under the name of the AMERICAN EMIGRANT CO.

TRUNK LINES.
(No. 77.)

Complaint filed September 5, 1887, alleging unreasonable charges for transporting emigrants from Castle Garden to Chicago, etc., and combination to exclude plaintiffs from interviewing emigrants at Castle Garden.

James H. McMULLAN *et al.*, Committee of Board of Trade of Hartwell, Georgia,

RICHMOND & DANVILLE R. R. CO.
(No. 25.)

PLEADINGS in proceeding based upon charges of the exaction of unreasonable and preferential rates, now pending before the Commission.

COMPLAINT.

(Filed June 9, 1887.)

Hartwell, Ga, May 10, 1887.

To the honorable Interstate Commerce Commissioners:

The undersigned, a committee of the Board of Trade at Hartwell, Hart County, Georgia, beg to submit to your honorable body their petition for relief under the Interstate Commerce Law, arising out of the following statement of facts:

1. The Town of Hartwell, the county site of Hart County, is located at the terminus of a part of the Richmond & Danville Railroad intersecting with another part of said Richmond & Danville Railroad running from Toccoa to Elberton, Georgia, at Bowersville being a distance of ten miles from Hartwell to Bowersville. The portion of said road from Hartwell to Bowersville along with that portion of said road from Toccoa to Elberton, while keeping up a nominal official organization, is under the absolute control and management of said Richmond & Danville Railroad and is operated by it. Freight for Hartwell is shipped without any change of cars at Bowersville. The geographical location, etc. of Hartwell is shown on map annexed.

2. The rate of freight to Hartwell as compared with the rate of freight to Elberton, say on corn from Chattanooga, Tennessee, is as follows:

To Hartwell, 27½ cents per 100 pounds.

" Elberton, 18 cents per 100 pounds.

Again from New York to Elberton the spe-

cial rate on sixth class goods, including sugar, syrup, etc., is thirty-three cents per 100 pounds, to Hartwell, sixty-two cents per 100 pounds; and from other points and on other goods the difference between Elberton and Hartwell rates is onerous and unjust, as will be seen by reference to freight rates.

8. By reference to the map hereto annexed it will be noticed that freight, in being transported from Chattanooga to Hartwell, a distance of about 260 miles, passes over but two roads, the Western & Atlantic, and the Richmond & Danville, and the rate on corn is 27½ cents per 100 pounds; whereas, the rate to Elberton over the same road and fifteen miles farther than Hartwell is only eighteen cents per 100 pounds.

Again; freight from Chattanooga to Eatonton, Georgia, a distance of about 290 miles, passes over four roads, Western & Atlantic, East Tennessee, Virginia & Georgia (or Central), Georgia Railroad and Southwestern, and the rate is 21½ cents per hundred.

And several other points will be noticed by reference to the map where freights are shipped from Chattanooga to points more distant than Hartwell, and passing over more roads, and the rate is lower than the rate to Hartwell. The special point, however, from which our town and community suffer injury is the great difference in rates between Hartwell and Elberton.

4. There to Elberton, being so much lower than the rate to Hartwell, takes from the southern and western parts of the county a large part of the trade which should legitimately go to Hartwell, and which would go to Hartwell if we had the same rate of freights as to Elberton. In addition to the above we have a very small area on eastern side of county before reaching the Savannah River, and cannot draw trade from the Carolina side with present high rate.

5. We respectfully ask that section 4 of the Interstate Commerce Bill be put in force at the expiration of the present ninety days' suspension. We claim, however, that the foregoing high rates to Hartwell are in violation of section 3 of the Interstate Commerce Bill. We claim that the present rate gives "an undue and unreasonable preference to Elberton," and subjects Hartwell to "an undue and unreasonable prejudice and disadvantage." We ask relief under both sections, 8 and 4, of said Bill.

6. We respectfully submit that if the present rate to Elberton is just and right; the present rate to Hartwell is too high, and if the present rate to Hartwell is just and right, then the present rate to Elberton is too low. It will be noticed that the above advantage is given to Elberton over Hartwell, the former being a rural business town only twenty miles distant, and both with the same railroad facilities, and said road managed and controlled by the same company.

7. Some time ago the business men of Hartwell found it would be cheaper to have their goods shipped to Elberton and then reshipped back to Hartwell. They began this method, and soon after the Richmond & Danville Railroad Company raised the local rates from Elberton to Hartwell, and thus continue to sub-

ject us to the unjust discrimination set forth in this memorial.

(Signed) Jas. H. McMullan, J. D. Matheson,
" E. B. Benson, A. F. Brown,
" J. W. Williams, T. J. Linder,
" A. R. McCurry,
Committee of the Board of Trade
of Hartwell, Ga.

State of Georgia, }
Hart County. }

In person came before me, F. C. Stephenson, Ordinary in and for said County, James H. McMullan, E. B. Benson, J. W. Williams, J. D. Matheson, A. F. Brown, T. J. Linder, and A. R. McCurry, who being duly sworn say that to the best of their knowledge and belief the facts stated in the within and foregoing petition are true.

Sworn to and subscribed before me this the 31st day of May, 1887.

F. C. Stephenson,
Ordinary.
(Signed) Jas. H. McMullan, J. D. Matheson,
" E. B. Benson, T. J. Linder,
" J. W. Williams, A. F. Brown,
" A. R. McCurry.

[L. s.]

ANSWER.

(Filed July 18, 1887.)

The above named respondent, the Richmond & Danville Railroad Company, in obedience to the citation of the honorable, the Interstate Commerce Commission, issued to it upon the complaint entitled as above, without waiving and specially reserving all rights of objection or exception legally inuring to it, hereby makes answer to so much and such parts of said complaint as it is advised it is material and necessary for it to do, and says:

First. That the said complaint does not comply, and is not filed in accordance, with the rules adopted by the said honorable Commission, and that for such reason this respondent is entitled to, and does insist, that the said complaint shall be wholly stricken out and dismissed.

Second. That the said complaint does not contain a statement of facts sufficient to show that this respondent has done or omitted to do anything in contravention of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce," to constitute a lawful cause of complaint to this honorable Commission, or require an investigation by it, or, especially, to require this respondent to make answer thereto.

Third. That all charges made in said complaint of unjust or unlawful discrimination, in freight rates or otherwise, by this respondent against the said Town of Hartwell, Georgia, or the citizens thereof, are untrue, and this respondent denies the same, and alleges the fact to be that the said freight rates, over line owned, controlled or managed by this respondent, and in so far as the same are made, fixed or determined by it, have been so made, fixed and determined without any intention or design of giving any undue or unreasonable preference or advantage to the said Town of Elberton, Georgia, or the citizens thereof; or of discriminating against said Town of Hartwell, in favor of said Town of Elberton,

or otherwise, or, as a matter of fact, resulting in said discrimination, or to the undue or unreasonable prejudice or disadvantage of said Town of Hartwell.

Fourth. That the through rate on corn shipped at Chattanooga, Tennessee, to said Town of Elberton, complained of in said complaint, is not made and determined, either by general arrangement or special contract, by this respondent, or any authorized agent of it, nor is it in any wise controlled by it, but is made by the common carrier or transportation line to which the shipper may deliver to, and contract with, at said Town of Chattanooga, and which transports such corn to the City of Atlanta, Georgia, at which point it is transferred to the respondent, and that in no instance is said contracting first carrier authorized to name, give or fix for the portion of the transportation passing over lines controlled and managed by this respondent,—that is to say, over the Charlotte Air Line Railway from Atlanta to Toccoa, both in the State of Georgia; thence, by unloading and reloading, to narrow gauge cars, over the Elberton Air Line, being a narrow gauge railroad from Toccoa, Georgia, to Bowersville, Georgia; and thence by new train over the Hartwell Railroad to Hartwell, Georgia,—any other or different, less or greater, rate than is named and established in and by the regular and ordinary schedule of rates for like service by this respondent over the said lines, and whether the freight and transportation thereof originates at said City of Atlanta, Georgia, or at points beyond.

Fifth. That under the provisions of the Statute of the State of Georgia, in such case made and provided, that is to say, section 719 g. of the Code of the State of Georgia of 1882, the maximum rates which railroads are permitted to charge for transportation of freight or passengers to and from points within said State of Georgia, are fixed and determined by a board of railroad commissioners, and that the rate on corn charged by this respondent between said City of Atlanta and said Town of Hartwell, which is complained of in said complaint as being so unduly and unreasonably high as to violate section 8 of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce," is in fact four cents per hundred less than the rates fixed and authorized to be charged by the said board of railroad commissioners.

Sixth. That, at the rates heretofore charged and named and complained of in said complaint, the business of said Town of Hartwell, both freight and passenger, as developed and existing to the present time, is not only wholly unremunerative but is done by this respondent at a heavy yearly loss, which is illustrated by the financial statement of the said Hartwell Railroad for the first eight months of the current fiscal year, as follows, viz.:

1886, Oct. 1, 1887, May 31	
Expenses, - - -	\$3,650.59
1886, Oct. 1, 1887, May 31	
In. on bonds - - -	1,333.34 \$4,983.93
Gross earnings - - -	4,452.44
Lost on operation, first eight months	
current fiscal year - - -	\$531.49

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so that it may in fact be said that, at the rate complained of in the said complaint, this respondent has been and is operating the said railroad solely for the benefit and advantage of the said complainants and said Town of Hartwell, without benefit or profit to itself, and at a cost and expense largely in excess of any return of earnings.

Seventh. That the provisions of the fourth section of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce," do not apply and cannot be applied to the regulation of the business of this respondent to and from the said Town of Hartwell, with the object of requiring it to charge and receive a less, or of prohibiting it from charging and receiving a greater, compensation for the transportation of freight to or from said Town of Hartwell than it charges and receives for a similar service to and from said Town of Elberton.

Eighth. That at said Town of Elberton, which is the southern terminus of the said Elberton Air Line Railroad, this respondent comes into competition with the Georgia Railroad (a separate and distinct organization), for business at said town and from the territory contiguous thereto, which said condition and circumstances does not exist as to said Town of Hartwell and its contiguous territory.

Ninth. That as appears from said complaint and the exhibits filed therewith, the rates which form the basis of said complaint are those which were in force prior to the 31st day of March, 1887, and which said rates were authorized to be continued for the period of ninety days from and after the 6th day of April, 1887, by the order of this honorable Commission duly made and entered on said last named day, and which said order was made upon the petition of this respondent, and other railroad companies, asking for a permanent suspension of the fourth clause of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce," and that said period of time expired but three days prior to the date of the filing of said complaint, at which time and since, this respondent was diligently revising the schedules of rates and charges over its entire extended system of railroads, reaching and traversing four different States, so as to conform the same to the requirements of the said Act of Congress as substantially, and as fairly and equitably to the people, communities and localities served and reached by its said system of railroads, as the same can be reasonably done, and that as soon as it was possible to accomplish the same, and on the 18th day of July, 1887, a new schedule of rates was duly perfected and posted, in conformity to the sixth section of said Act of Congress, to take effect on the 18th day of July, 1887, in all cases where said schedules show a reduction of rates, and on the 25th day of July, 1887, in all cases where said schedules show an increase of rates, which said schedules are duly filed with this honorable Commission as required by said Act of Congress, and hereby referred to in verification of the statements herein made and contained; that said schedules show all the through rates as made by this respondent, as aforesaid, to and from said Town of Hartwell, and to and from said Town of Elberton,

to and from Boston, Mass., Providence, R. I., New York, N. Y., Philadelphia, Pa., Baltimore, Md., Richmond, Petersburg and Norfolk, Va., to be identical without any discrimination or inequality whatever as against or in favor of either of said towns; and beyond these, all other rates to and from said towns are local rates in the State of Georgia, and are made in conformity to the requirements of the laws, and of the board of railroad commissioners of said State; but nevertheless in the revision of the rates above referred to, said local rates as fixed by this respondent are less, by a large percentage, than the rates authorized to be charged by said railroad commissioners, and shows large reduction of charge to said Town of Hartwell, and increase to said Town of Elberton, from the rates heretofore charged to said points, respectively, and as specified and complained of in said complaint.

Tenth. That the matters and things complained of in said complaint relate and refer wholly to rates and charges between points situated within the state limits of the said State of Georgia; and this respondent respectfully submits and insists that, therefore, the said complaint, and said matters and things, are not within the jurisdiction of this honorable Commission.

Wherefore, this respondent prays that the said complaint may be dismissed, and that it have its costs in this behalf expended.

The Richmond & Danville Railroad Company, by Jas. F. Worthington,
General Attorney.

District of Columbia, } ss.
City of Washington. }

Peyton Randolph, being first duly sworn, says that he is the Assistant General Manager of The Richmond & Danville Railroad Company, the respondent making the foregoing answer; that he has carefully read the same, and that it is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(Signed) Peyton Randolph.

Sworn and subscribed before me, this 18th day of July, 1887.

(Signed) John T. C. Clark,
Notary Public.

[L. s.]
District of Columbia, } ss.
City of Washington. }

John T. Downs, being first duly sworn, says he is a clerk in the Law Department of The Richmond & Danville Railroad Company, at the City of Washington, D. C., and that on Monday the eighteenth day of July, A. D. 1887, he mailed at said City of Washington a copy of the foregoing answer in a sealed envelope, postage prepaid and addressed, "James H. McMullan, Esq., Chm. Com: Board of Trade, Hartwell, Georgia."

(Signed) John T. Downs.

Sworn and subscribed before me, this 18th day of July, 1887.

(Signed) John T. C. Clark,
Notary Public.

[L. s.]

James PYLE & SONS

SOUTHERN RAILWAY & STEAMSHIP ASSOCIATION.

(No. 28.)

PLEADINGS in proceeding now pending before the Commission, based upon charges of discrimination and improper classification of an article manufactured by complainants, known as "Pearline."

COMPLAINT.

(Filed June 11, 1887.)

New York, June 7, 1887.

To the United States Interstate Commerce Commission, Washington, D. C.

Gentlemen:

We beg to present to your respected board the following statement of persistent discrimination, against the goods we manufacture, by the railroad and steamship lines that form "The Southern Railway & Steamship Association"—whose address is Atlanta, Georgia,—(Virgil Powers, Gen. Commissioner), and pray that your Commission grant such order as will give relief from such undue and unreasonable disadvantage—which we believe to be forbidden under section 8 of the "Interstate Commerce Law."

We cite the Southern Railway & Steamship Association, as it is the legislative body that makes up the classification and rates for the railroads and steamship lines that form said Association, and also append a list of the said railroads and steamship lines (as far as we are able) that make up said Association or adhere to its rulings.

We have made repeated and persistent application to these railway and steamship lines, and to the rate committee of the said Southern Railway & Steamship Association, particularly during the year past—to correct the unjust rating of our goods; but they have been unavailing to secure such favorable action, or even any reason for continuing their discrimination against our goods.

Our article is sold under our trademark name of *Pearline*, and is a soap prepared in powdered form—it is classified either under the adjective name of *Pearline* or the general heading *soap powder* at the same rate as "common soap" to all parts of our country excepting only a portion of that that comes under the control of the said Southern Railway & Steamship Association; and in this latter section the following state railroad commissions have decided that "Pearline should be classified the same as common soap", viz.: of South Carolina (as per letter April 14, 1887, to railroads and to the Southern Railway & Steamship Association), of Georgia (as per circular No. 82), of Alabama (as per circular letter April 4, 1887).

See official classification No. 1; classification by Eastern Railway and Steamship Lines: joint western classification; New Orleans, Texas, and Southwestern classification; trans-continental lines classification; etc.

Very justly, "soap powders" (and, or including, pearline) are placed under the same freight

classification and tariff as common soap (as noted above) for the following reasons, viz.:

It is a soap in powdered form.

It is used for laundry and household purposes in place of soap, and not in connection with it, and so is competitive with soap.

It is of similar bulk, packed in boxes like soap, is no more liable to injury or damage, and no more trouble or expense to handle and forward.

It is sold at a low price—being retailed to consumers throughout the Southern States at five cents per package, containing six to seven ounces of powder—while the quality of the goods is the very best for a laundry article and unadulterated in any way whatsoever. Compared to common soap in price it may be higher than the bulk of low grade stuff, but not high for the grade of this article.

In bulk it figures forty pounds to the cubic foot, viz.: case weighing fifty-three pounds 9 x 15 x 17½ inches.

The name, you can readily appreciate, is for the purpose of protecting the quality of the article and the trademark for it, and is in no sense a monopoly as there are innumerable other "soap powders" sold throughout the country, but of course no one else can use the adjective Pearlina on such an article.

The Southern Railway & Steamship Association puts our article under the fourth class rate, while common soap is made sixth class; and *special class to the leading cities*—so taking the rate from New York to Atlanta as a basis (this we believe is their standard)—common soap goes for fifty-three cents per 100 pounds, while our goods are subject to a rate of seventy-three cents per 100 pounds. This to us seems clearly "to subject" a "particular description of traffic to undue" and "unreasonable disadvantage."

The said Association put our article under the title "Powders and Washing Compounds," etc., which of course will cover it, but yet it will apply to many very dissimilar articles—say purely chemical articles of small bulk, etc., which might properly pay a higher freight tariff—yet we care nothing for the title if rate is correct.

Trusting this will be regarded as a proper complaint for the consideration of your Commission, we are,

Very Respectfully Yours, etc.,
James Pyle & Sons.

City and County }
of New York }

June 8, 1887, before me personally came Wm. S. Pyle to me known, and being sworn saith that he is a member of the firm of James Pyle & Sons, of New York, and that the foregoing statement is correct and true to the best of his knowledge and belief.

Jesse Howell, Commissioner of Deeds,
City and County of New York.

Railroads and steamship lines belonging to or adopting the classification and rates of the Southern Railway & Steamship Association, viz.: the great Southern Freight Lines—viz.: New York, Charleston & Florida Steamship Co.; South Carolina Railway and connections; Georgia Railroad; Ocean Steamship Co. of Savannah; Central Railroad of Georgia; Old Dominion Steamship Co. New York; Richmond & Danville Railroad; Norfolk & West-
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ern Railroad; East Tennessee, Virginia & Georgia Railroad; Wilmington & Weldon Railroad; Mobile & Ohio Railroad; Georgia Pacific Railroad; Western & Atlantic Railroad; Alabama Great Southern; Alabama Central; Atlanta & West Point; Florida Railway & Navigation Co.; Florida Southern Railway & *etc.*

ANSWER.

(Filed June 30, 1887.)

The Southern Railway & Steamship Association.

Office of the General Commissioner.

Virgil Powers, Gen. Com.

Atlanta, Ga. June 25, 1887.

To the United States Interstate Commerce Commission.

Edward A. Mosely, Esq., Secretary.

Washington, D. C.

Dear Sir:

Yours enclosing charge against the Southern Railway & Steamship Association (Virgil Powers General Commissioner), by Messrs. James Pyle & Sons, received, and would have received earlier attention but for absence attending meetings of the executive and rate committees.

We admit that this firm has made repeated and persistent applications both by letter and in person to our committee to have their trademark article Pearlina advertised in our classification and put in sixth class. Also that they have made repeated and persistent application to the Railroad Commissioners of Georgia, Alabama, etc., and succeeded in getting their trademark article classed as common soap; which the Georgia Commission has corrected as per enclosed circular; and I have no doubt that the South Carolina and Alabama Commissions will do so when they have investigated the case.

Our rate committee is also the classification committee of the Southern Railway & Steamship Association, composed of fifteen general freight agents of the several railroads of the South with Virgil Powers and Jas. R. Ogden as commissioners and chairmen and Chas. A. Sindall as secretary. These gentlemen are supposed to know, or at least should know, from their occupation, much about the classification and rates of goods. They have on each application made by Messrs. Pyle & Sons fully discussed their application. They have in all cases refused to class patent or trademark articles, under their patent or trademark name, but class them under the general name of the article.

As to this article "Pearline:" it is a powder or "washing compound" and is classed under the head of "Powders and Washing Compounds," and is put in fourth class for the following reasons:

1. It is a powder or washing compound, and we would be advertising their trademark extensively against all other washing compounds, if put under their "trademark" name.

2. It is of more than double the value of common bar soap. According to their own valuation it is worth 18½ cents per pound when common soap is worth not exceeding 6 cents

per pound, or an average of about 5 cents per pound varying from 4 cents to 6 cents per pound according to quality.

3. It takes about one fourth as much in weight as common soap to do the same work according to their own assertions; therefore carrying about one fourth as much in weight of an article, of more than double the value, certainly entitles our railroads to make much higher classification on these goods than on common soap (at least fourth class), as compared with sixth class for common soap. I think it might be third class with propriety.

4. The tonnage of our Southern roads is, as is well known, very light as compared with the Northern and Western roads, and if our tonnage was reduced one half or three fourths by new things taking the place of old, we would have to make much higher classification or rates to earn as much money as now, or to sustain the property. In considering all these questions the committee takes into consideration the quality as well as the quantity of articles shipped, and class them accordingly.

For the above and foregoing reasons I am sure the committee did right in making washing compounds of all names fourth class.

Respectfully Yours,
Virgil Powers, Gen. Com.

State of Georgia, } ss.
Fulton County.

Before me personally came Virgil Powers and, being duly sworn, says he is General Commissioner of the Southern Railway & Steamship Association and that the foregoing statement is true to the best of his knowledge and belief.

Sworn and subscribed to before me,

June 25, 1887.

[L. s.]

Lewis Redwine, N. P.

WESTERN & ATLANTIC R. R. CO.

v.

EAST TENNESSEE, VIRGINIA & GEORGIA R. CO.

(No. 41.)

COMPLAINT filed June 17, 1887, alleging violations of the third section of the Act, in refusing equal facilities for the interchange of traffic, etc. Proceedings on the complaint have been suspended, and no answer has been filed.

COMPLAINT.

Atlanta, Ga. June 6, 1887.

To the Interstate Commerce Commission,
Washington, D. C.:

The petition of the Western & Atlantic Railroad Company, by R. A. Anderson, its Superintendent, which road extends from the City of Atlanta, in the State of Georgia, to the City of Chattanooga, in the State of Tennessee, crossing the East Tennessee, Virginia & Georgia Railway at Dalton, Georgia, respectfully complains that the East Tennessee, Virginia & Georgia Railway Company, in its intercourse with the Western & Atlantic Railroad Company, is violating the last paragraph in section 3 of the Interstate Commerce Act, which is in these words:

"Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or other terminal facilities to another carrier engaged in like business."

Your petitioner avers that the Western & Atlantic Railroad Company is carrying out in good faith the provision of the Law just referred to, and is affording all the reasonable, proper, and equal facilities in its power for the interchange of traffic between its lines and those of the East Tennessee, Virginia & Georgia Railway Company, and is ready to receive, forward and deliver passengers and property to and from the lines of the said East Tennessee, Virginia & Georgia Railway Company, without any discrimination in rates or charges between said lines,—the Western & Atlantic Railroad Company being ready and willing to receive the usual prorate between given points, and to protect rates, and advance charges, as is usual practice between railroad companies.

But your petitioner further avers that the East Tennessee, Virginia & Georgia Railway Company refuses to comply with the requirements of said paragraph in said above quoted Law, and refuses to exercise its power in affording all reasonable, proper, and equal facilities for the interchange of traffic between its lines and the lines of the Company of your petitioner, while daily affording to other connecting railroads, all the reasonable, proper, and equal facilities in its power for an interchange of traffic between them, which is greatly to the detriment and injury of the Western & Atlantic Railroad Company, and which is in violation of the Interstate Commerce Act.

To illustrate the above allegation by examples.

The East Tennessee, Virginia & Georgia Railway Company interchanges traffic with the Richmond & Danville Railroad Company at Atlanta on all business coming from Virginia and the Carolinas over the Richmond & Danville, on the usual terms, and consigned to stations on the East Tennessee, Virginia & Georgia, in Georgia and Tennessee, and the like interchange takes place on business going from stations on the East Tennessee, Virginia & Georgia, in the States of Tennessee and Georgia, consigned to stations in the Carolinas, or Virginia, each railroad advancing charges, and protecting rates.

But the East Tennessee, Virginia & Georgia refuses to make the like interchange on the usual terms with the Western & Atlantic Railroad on business coming from the Carolinas and Virginia over the Richmond & Danville to Atlanta, and shipped thence over the Western & Atlantic to Dalton, and tendered to the East Tennessee, Virginia & Georgia Railway Company for shipment to the point of consignment upon its line, and to points beyond its lines, or business originating at At-

lanta, and it refuses in such case either to protect the usual rate, or advance charges in the usual manner. As evidence of this fact, reference is hereby made to the accompanying way bills, numbered 1, 2 and 8, and communication from H. A. Lowry, agent of said Company at Dalton, marked number 4. The same fact will appear by reference also to the accompanying communication from T. S. Davant, numbered 5, G. F. A. of the East Tennessee, Virginia & Georgia Railway Company, in which he distinctly notifies the Western & Atlantic Railway Company that their Company will not pay charges on shipments received from the Western & Atlantic.

To further illustrate, it is clear that a bill of lading given at Danville, Virginia, over the Richmond & Danville to Atlanta, and thence over the East Tennessee, Virginia & Georgia Railway via Dalton to Charleston, Tennessee, would pass under the usual rule of interchange as between the Richmond & Danville and the East Tennessee, Virginia & Georgia; while way bill 1291 from Danville, Virginia, to Charleston, Tennessee, which is herewith submitted, shows that on a similar shipment made from Danville to Charleston where the consignment is through Atlanta, thence over the Western & Atlantic from Atlanta to Dalton, it is refused by the East Tennessee, Virginia & Georgia Railway at Dalton, and they will not receive it, protect the rates, or advance the charges, as is usual in such cases.

To still further illustrate, the East Tennessee, Virginia & Georgia Railway Company interchanges traffic both ways on the usual terms with the Georgia Railroad & Banking Company at Atlanta, whether the traffic originated upon the Georgia and is consigned to stations on the East Tennessee, Virginia & Georgia, or to points beyond.

As evidence of this fact, you are respectfully referred to the accompanying communication from E. A. Werner, agent of the Georgia Railroad & Banking Company, at Atlanta, marked number 6. But it refuses to make interchange with the Western & Atlantic where the freight originates on the Georgia Railroad and is billed via the Western & Atlantic to points on the East Tennessee, and beyond, as will appear by reference to exhibit number 6-A.

A like interchange of freights and passengers takes place daily at Atlanta between the East Tennessee, Virginia & Georgia Railway Company, and the Central Railroad & Banking Company and between the East Tennessee, Virginia & Georgia Railway Company and the Atlanta & West Point Railroad Company as will appear by the accompanying statement of Mr. R. Schmidt, the agent of the Central Railroad & Banking Company, and of the Atlanta & West Point Railroad Company at Atlanta. Marked number 7.

The East Tennessee, Virginia & Georgia Railroad Company also interchanges traffic on the usual terms at Jesup, Georgia, with the Savannah, Florida and Western Railway Company, on business passing both ways over the said roads respectively, via Jesup, Georgia. This will appear by the accompanying statement of W. P. Hardee, general freight agent of the Savannah, Florida & Western Railway Company. Marked number 8.

INTER S.

The East Tennessee, Virginia & Georgia Railway Company also interchanges business upon the usual terms and affording the usual facilities, with the Louisville & Nashville Railroad Company, at Calera, Alabama, on traffic going over the lines of the respective railroads at that point.

This will appear from the accompanying statement of J. M. Culp, general freight agent of the Louisville & Nashville Railroad Company. Marked number 9.

The East Tennessee, Virginia & Georgia Railway Company also interchanges traffic upon the usual terms with the Nashville, Chattanooga & St. Louis Railway Company at Chattanooga, Tennessee, as will appear by the accompanying statement of Mr. Geo. R. Knox, general freight agent of the Nashville, Chattanooga & St. Louis Railway Company. Marked number 10.

The East Tennessee, Virginia & Georgia Railway Company also interchanges, on the usual terms, traffic with the Cincinnati Southern Railway Company at Chattanooga, Tennessee, as will appear by the accompanying statement of Mr. H. Collbran, general freight agent of the Cincinnati Southern Railway. Marked number 11.

The East Tennessee, Virginia & Georgia Railway Company also interchanges upon the usual terms, traffic with the East & West Railroad of Alabama, at Rockmart, Cross Plains, Alabama, and East & West Junction, Alabama, affording the usual facilities, as will appear by the accompanying statement of J. J. Calhoun, general freight agent of said East & West Railroad Company. Marked number 12.

But, notwithstanding the said East Tennessee, Virginia & Georgia Railway Company interchanges with all the other railway companies above mentioned, upon the usual terms, protecting rates and advancing charges, said Company utterly refuses to make a like interchange with petitioner's Company at Dalton, Georgia, or Chattanooga, Tennessee, for any business originating in or consigned to East Tennessee, thereby denying to the Company of your petitioner the same reasonable, proper, and equal facilities which it extends to all other railroad companies connected with its entire system, which is greatly to the damage of your petitioner.

And your petitioner humbly prays that the Interstate Commerce Commission will pass such order in the premises as will correct the abuses referred to and will secure to the Western & Atlantic Railroad Company the reasonable, proper, and equal facilities afforded by the East Tennessee, Virginia & Georgia Railway Company to its other connections.

And your petitioner will ever pray, etc.

R. A. Anderson, Supt.

State of Georgia, }
Fulton County. } ss.

Personally appeared before the undersigned, a notary public in said county, R. A. Anderson, who on oath says, that he is the Superintendent of the Western & Atlantic Railroad Company, that the facts set forth in the foregoing petition, in so far as they relate to his own acts and deeds and that of the Company of which he is superintendent, are true of his

own knowledge, and so far as they relate to the acts and deeds of others, he believes them to be true.

Sworn to and subscribed }
this June 8, 1887.

C. T. Watson, N. P. }
[Seal] R. A. Anderson.

B. S. CREWS *et al.*, Committee of Chamber
of Commerce of Danville, Va.,
v.

RICHMOND & DANVILLE R. R. CO. and
Virginia Midland R. Co.
(No. 24.)

PLEADINGS in proceeding now pending
before the Commission, based upon allega-
tions of unjust rates and of discrimination
against Danville.

COMPLAINT.

(Filed June 8, 1887.)

To the Honorable Board of Interstate Com-
merce Commissioners:

B. S. Crews, J. E. Schoolfield and D. A. Overbey, members of the committee on transportation of the Chamber of Commerce of the City of Danville, Virginia, for themselves, and in behalf of said Chamber of Commerce, respectfully prefer this, their petition, to your honorable body, and say that they are aggrieved by the action and operations of certain common carriers conducting business in and throughout the State of Virginia and States adjacent.

Especially have your petitioners cause to complain of the Richmond & Danville and Virginia Midland Railroads, corporations created by and in pursuance of the laws of Virginia, the latter, to wit: the Virginia Midland Road, being now operated under the auspices of the Richmond & Danville Railroad, and recognized as a part of its system, said system extending into and over several States adjacent to said State of Virginia. As the Midland is now in fact operated as a part of the Richmond & Danville Railroad, your petitioners will speak of the two as the Richmond & Danville Railroad, as of one body or corporation.

Your petitioners beg to represent that for a number of years the Richmond & Danville was the only railroad running into Danville, and there was much complaint of its freight and other charges. To obtain a competitive line of road, the people of Danville and country adjacent, after a large outlay of time and money, procured the building of the Lynchburg & Danville Road which connected with the Midland Road at Lynchburg. After some years the said Lynchburg & Danville was merged into, or absorbed by the Virginia Midland Road, and only some two or three years ago the said Midland was consolidated with, or passed to the control of the Richmond & Danville Railroad. Very soon after the Midland passed to the control of, the said Richmond & Danville Road, the latter commenced to make changes in its freight charges, and conditions of transportation and business, so that the people of Danville and vicinity felt

oppressed by such charges and ever since have been put to disadvantage, loss and damage in all their commercial and trade relations.

That before the Midland passed to the control of the Richmond & Danville Road, the merchants and traders of Danville drove a large trade in grain, meat, flour and heavy goods generally with nearly all points South in Virginia, North and South Carolina and beyond. Now that trade is destroyed by reason of lower freight rates, and better facilities afforded by said Richmond & Danville Road to other points and localities than were or are accorded to Danville.

Your petitioners have appealed to said Railroad for redress, but to no purpose or effect. Your petitioners are advised to appeal to your honorable body, and now come and humbly represent that they are informed, believe and charge, that the Richmond & Danville Railroad Company, through combination and arrangements with connecting lines of railroad North and West, has charged, and continues to charge the people, merchants and tradesmen of Danville, Virginia, and adjacent country, a greater price for the hauling and transportation of their goods and merchandise purchased in New York, Philadelphia, Baltimore, Chicago, Cincinnati, Mansfield, Grand Rapids, St. Louis and other places, than the said Railroad charges other persons and localities, under like conditions and for similar services. To specify, the said Company and its connections aforesaid charge for the transportation of grain from Chicago to Charlottesville, Lynchburg and Richmond, Virginia, twenty-two cents per cwt., on meat from Chicago to same points twenty-seven cents per cwt.; while from Chicago to Danville the charge for grain is thirty-four cents per cwt., and for meat bulk, per car load forty-three cents per cwt., and for boxed meat or lard fifty-eight cents per cwt. On flour in barrels from Columbus, Ohio, to Lynchburg per car load of 125 barrels the charge is \$50 per car; from same point to Danville, only sixty-six miles further, the charge is \$86.25; these things will more fully appear from a statement here filed, marked "A," and prayed to be taken as a part of the petition.

Your petitioners are informed, believe and charge that the said Richmond & Danville Railroad, has for some time past discriminated, and continues to discriminate in its transportation and freight charges in favor of other persons and localities, and against Danville and its people, merchants, tradesmen and others. To instance: the said Railroad has so arranged its freight charges from Charlottesville, Richmond and Lynchburg to Ridgeville, Greensboro, Durham, Salisbury, High Point, Asheville and Charlotte, North Carolina points south of Danville, that far higher relative rates are charged to the people of Danville and country adjacent, than are charged by said Road to the people at the points referred to or named. A statement showing said relative charges is here filed, marked "B," as part of this petition.

Your petitioners are further informed, believe and charge that the said Richmond & Danville Railroad discriminates against Danville, its merchants and people adjacent, in its freight charges, by applying or attaching to goods and merchandise received from other

lines of road for Danville local rate or charges from the point of reception to point of delivery at Danville, notwithstanding it receives from said other lines of road goods of similar character for, and carriers to such other points at lower and through rates, at the same time and by the same haul.

For instance: meat, lard, grain, flour, etc., are received by said Road for Richmond and Lynchburg, which are transported from said points directly by Danville to points south and beyond, at prices lower than said goods or goods of similar kind and quantity are shipped or transported by said Road from Danville to said points as Durham, Salisbury, Asheville and Charlotte, North Carolina. A statement bearing in said matters is here filed, marked "C," as a part of this petition.

Your petitioners are informed, believe and charge, that the said Richmond & Danville Railroad discriminates against the people of Danville and vicinity by denying to them a lower or approximate "through rate" upon the transportation of their goods, which it accords to other persons and points south, say from Richmond to Durham, Salisbury, High Point, Asheville and Charlotte, North Carolina.

Your petitioners are informed, believe and charge, that said Richmond & Danville Railroad has charged and received of the merchants and people generally of Danville and vicinity, and continues to charge and receive of said people, a greater price and compensation for the transportation of goods and merchandise over short lines or by "short hauls," than it charges to, and receives of other localities and people for like and contemporaneous services in the transportation of like traffic under substantially similar circumstances and conditions, over long distances or by "long hauls." For example, meat, lard, grain, flour and other goods are received at Charlottesville, Lynchburg and Richmond by said Road, and transported over the same to points south of and beyond Danville, say to Durham, Asheville, High Point and Charlotte, North Carolina, at lower rates than it charges and receives for the transportation of goods of like character, bulk weight, and to Danville from said Charlottesville, Lynchburg, and Richmond. A statement in regard to said charges is here filed, marked "D," as a part of the petition.

Your petitioners are informed, believe and charge, that said Richmond & Danville Railroad, by the exercise of its discriminating charges in the matter of "long and short hauls," have rendered the merchants and tradesmen of Danville and vicinity unable to compete for trade with points possessing less advantages by reason of distance, etc., say with Charlottesville, Lynchburg and Richmond, in favor of which discriminations have been made. An inspection of the freight charges made by said Road from Lynchburg and Richmond, to Danville, and thence south to points of stoppage on said road and to Charlotte, N. C., will show the truth of this charge.

Your petitioners are informed, believe and charge, that the Richmond & Danville Railroad makes discrimination in its freight charges between Danville and other points, and against Danville and the people thereof and vicinity, for the transportation of iron goods and coal.

To instance: the charge upon iron goods from Lynchburg to Danville, sixty-six miles, varies from \$4 to \$5 per ton. On coal the freight per ton is from \$3 to \$3.50, this charge in effect compels the people in Danville, etc., to pay double or nearly twice as much for coal per ton, as do the people of Lynchburg, to which point it is brought by rail a much greater distance, and from other States.

Your petitioners are informed, believe and charge, that the Richmond & Danville Railroad, since the passage of the Act known as the "Interstate Commerce Law," has increased the freight charges to the manufacturers and others of Danville and those dealing with them for the transportation of tobacco from Danville to Richmond, and thence to points beyond, and exacts exorbitant and unreasonable freight charges of said manufacturers and others, and those trading with them, for the transportation of their goods over said Road. For example, tobacco is shipped from Richmond to San Francisco, California, for from \$1.50 to \$1.61 per cwt. The charge for the same from Danville, via Richmond by and under the auspices of said Road to San Francisco is \$3 per cwt.; charges for the transportation of tobacco from Danville to points in Florida and other States are similarly high and unreasonable. As these charges are believed "to be fixed" by the Richmond & Danville Railroad, proof of the same will be offered at the proper time.

Your petitioners are informed, believe and charge, that the Richmond & Danville Railroad Company, exacts of the merchants, traders and people generally of Danville and vicinity, exorbitant, unjust and unreasonable charges and freight rates for the transportation of dry goods and of all other characters and classes of goods and merchandise to and from said city. For example: the freight charges upon goods of the first class from New York to Lynchburg, about 425 miles, is sixty cents per cwt., from Lynchburg to Danville, sixty-six miles, thirty-three cents per cwt. A statement showing the charges attached by said Road to many goods, and different classes of the same is here filed, marked "E," as part of this petition.

Your petitioners believe and charge that the combinations, arrangements, acts and doings of the said Richmond & Danville Railroad Company hereinbefore referred to, set forth and complained of whether said combinations, arrangements, acts and doings have or bear relation to the main line of said Richmond & Danville Railroad, or any of its parts or divisions operated under purchase, lease or otherwise, have been greatly to the loss and injury of your petitioners and those they represent, are illegal and improper and in plain violation of the second, third, fourth, and other sections of the Act of the Congress of the United States approved February 4, 1887, entitled "An Act to Regulate Commerce."

Your petitioners are advised that said Act was passed by Congress to prevent unjust discrimination in the matters of freight and transportation, and the imposition of wrong by excessive charges or otherwise upon the trading or traveling public by common carriers, and that to your honorable body, as a commission, were confided by said law the power and

authority to investigate complaints, and in proper cases to compel obedience to law. Your petitioners humbly pray your intervention, and the exercise of the authority vested in you, in their behalf, and in behalf of those they represent, in regard to and touching the matters herein complained of, they pray relief against the unjust charges, discriminations and wrongs imposed and perpetrated by the Richmond & Danville Railroad Company, its managers, agents, and servants upon your petitioners and the people generally of Danville and country adjacent, that your honorable board will investigate all the matters and things herein set forth and complained of, that you will take such steps and action against and in regard to said Railroad Company as the law authorizes and contemplates, and mete out such redress and relief to your petitioners and those for whom they are acting, as justice and the nature of their case demand. And award all proper rules, orders, etc., and your petitioners will ever pray, etc.

B. S. Crews,
J. E. Schoolfield,
D. A. Overbey.

State of Virginia, }
City of Danville. } ss.

I, W. J. Daner, Jr., a notary public in and for the City of Danville, in the State of Virginia, do hereby certify that B. S. Crews, J. E. Schoolfield, D. A. Overbey, came personally before me in my corporation aforesaid and made oath that the matters and things in the foregoing petition contained are true to the best of their knowledge and belief. Given under my hand this 28th day of May, 1887.

W. J. Daner, Jr., N. P.

Geo. C. Cabell, Danville, Va., for petitioners.

ANSWER.

(Filed July 18, 1887.)

The Richmond & Danville Railroad in its own behalf, and for the Virginia Midland Railway Company, of which it is lessee, in obedience to the citation of the honorable the Interstate Commerce Commission, issued upon the complaint entitled as above, without waiving and especially reserving all rights of objection or exception legally inuring to it so to do, hereby makes answer to so much and such parts of said complaint as it is advised it is material and necessary for it to do, and says:

First. That the said complaint does not comply, and is not filed in accordance, with the rules adopted by the said honorable Commission, and that for such reason the said respondents are justly entitled to insist that the said complaint shall be wholly stricken out and dismissed.

Second. That the said Virginia Midland Railway Company is not a proper party respondent hereto, because all the railway property, rights, privileges and franchises of said Company are held, controlled, operated and managed by the said respondent, The Richmond & Danville Railroad Company, as lessee thereof; and if there exists any just cause of complaint, requiring the intervention and investigations of this honorable Commission, growing out of the matters and things alleged in said complaint, the said lessor thereof, the said Virginia Mid-

land Railway Company, should be hence dismissed with its reasonable costs herein.

Third. That all charges in said complaint of unjust, unlawful and improper discrimination against the City of Danville, Virginia; or of "combination and arrangements" to "charge the people, merchants and tradesmen of Danville, Virginia, and adjacent country, a greater price for the handling and transportation of their goods and merchandise purchased in New York, Philadelphia, Baltimore, Chicago, Cincinnati, Mansfield, Grand Rapids, St. Louis, and other places than the said Railroad charges other persons and localities, under like conditions and for similar services," or of "exorbitant, unjust, and unreasonable charges and freight rates for the transportation of dry goods and of all other characters and classes of goods and merchandise to and from said city;" in so far as they are made either specifically, inferentially or generally against this respondent, The Richmond & Danville Railroad Company, in its own corporate capacity, or as the lessee, managing and operating the said Virginia Midland Railway, are untrue; and this respondent wholly denies all and every of such charges and allegations, and says that, on the contrary, its schedule of rates and charges to and from the said City of Danville, in all instances in which the same are made, determined and controlled by its action, have been so made and determined without any intention or design of giving any undue or unreasonable preference or advantage to others, or of discriminating to any extent against said city, persons, parties, or localities, or, as a matter of fact, resulting in such discrimination, or to the undue or unreasonable prejudice or disadvantage of said city, persons, parties or localities.

Wherefore, this respondent prays that the said complaint both as against itself and the said Virginia Midland Railway Company, may be dismissed and that it have its costs in this behalf expended.

The Richmond & Danville Railroad Co. by Jas. S. Worthington, General Attorney.

District of Columbia, }
City of Washington } ss.

Peyton Randolph, being first duly sworn, says, that he is the Assistant General Manager of the Richmond & Danville Railroad Company, the respondent making the foregoing answer; that he has carefully read the same, and that it is true to his knowledge, except as to the matter therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Peyton Randolph.

Sworn and subscribed before me this 18th day of July, 1887.

[Seal] John T. Clark, Notary Public.

District of Columbia, }
City of Washington } ss.

John T. Downs, being first duly sworn, says he is a clerk in the Law Department of the Richmond & Danville Railroad Company, at the City of Washington, D. C. and that on Monday the eighteenth day of July, A. D. 1887, he mailed at said City of Washington, a copy of the foregoing answer in a sealed envelope, postage prepaid, and addressed to

George C. Cabell, Esq., Atty. for B. S. Crews and others, Danville, Va.

Jno. T. Downs.

Sworn and subscribed before me this 18th day of July, 1897.

[Seal.] John T. Clark, Notary Public.

W. H. HEARD

GEORGIA R. R. CO.*

(No. 46.)

PLEADINGS in proceeding pending before the Commission, based upon the exclusion of a colored man from a first-class car.

COMPLAINT.

(Filed July 4, 1897.)

To the Interstate Commerce Commission, Washington, D. C.:

The petition of the undersigned respectfully sheweth to your honorable body that he is a citizen of the United States, and as such citizen he is entitled to the benefit of section 3 of the Interstate Commerce Act approved February 4, 1887; that your petitioner held a first class through ticket from Cincinnati, Ohio, to Charleston, South Carolina; that on the 18th day of June, 1897, your petitioner, in company with Dr. Wesley J. Gaines, and Mrs. Josie Gunseager, at Atlanta, Georgia, approached the first-class coach of the Georgia Railroad Company for the purpose of entering the same, and was told by the conductor of said train that he could not ride in that car, and was compelled by said conductor to ride in what is known on said Georgia Railroad, as the "Jim Crow Car." The accommodation in the "Jim Crow Car" was much inferior to the accommodation accorded to persons who rode in the first class car, which the ticket of your petitioner entitled him to ride in.

The car in which your petitioner was forced to ride by the conductor, is but a half car partially partitioned from the other half, which is used as a smoking car. It was dirty, and dirty railroad hands with their tools and baggage were allowed to ride in said car.

Your petitioner therefore prays that your honorable body will cause the said Georgia Railroad Company to furnish equal accommodations to persons holding first class tickets traveling over said road, irrespective of race or color, according to the Act of Congress in such cases made and provided.

W. H. Heard.

State of South Carolina, }

County of Charleston. }

Personally appeared W. H. Heard, who being duly sworn says that the facts set forth in the foregoing petition are true of his own knowledge.

Sworn to before me this }
second day of July, A. D. 1897. }

[Seal]

W. H. Heard.

Saml. J. Lee, Notary Public,

DEMURRER, PLEA AND ANSWER.

(Filed August 4, 1897.)

Respondent respectfully demurs to the petition and says that section 3 of the Act to Regulate Commerce, upon which section the petition is founded, has no application to such facts as are set out in the petition.

Without prejudice to its aforesaid demurrer, respondent says by way of plea to the jurisdiction of this honorable Commission, that petitioner was not, as he avers, the holder of a through ticket from Cincinnati, Ohio, to Charleston, South Carolina, at the time of the occurrences of which he complains; but at that time he was traveling on a local ticket from Atlanta, Georgia, to Augusta, Georgia—the line of travel being altogether in the State of Georgia.

Wherefore, respondent respectfully submits that this honorable Commission has no jurisdiction to hear and determine said petition.

Not waiving its aforesaid demurrer and plea, respondent answers as follows:

Petitioner claims that he was not permitted to ride in the first-class coach of respondent, but was compelled to ride in what is known on said Georgia Railroad as the "Jim Crow Car."

Respondent replies that it has in no way given or authorized such designation of any car on its road, and if, when complainant says that the car, on which he rode, is known as the "Jim Crow Car," he means to say that respondent is in any way responsible for this designation, and implied contempt for its inmates, respondent denies such allegation. At the Augusta end of respondent's main line, there is an accommodation train, running out of Augusta twenty five miles, and spoken of popularly as "The Picayune." At the Atlanta end, a similar train is known to its patrons and dwellers along the line of the Road as "The Goober." But these designations or nicknames are merely effusions of popular pleasantries, beyond the control of respondent, and considered by respondent, up to this time (perhaps erroneously), as entirely innocuous. If any of respondent's cars have been spoken of by evil disposed persons as "Jim Crow Cars," respondent is not aware of it; but prays, if the fact is shown to exist, that the Commission, if its large powers extend to such a case, will afford appropriate and adequate relief to respondent.

Complainant avers that the accommodation in the car, in which he was compelled to ride, was much inferior to the accommodation accorded to persons who rode in the "first class car."

Respondent respectfully denies this allegation, and in reply to the same, and as a statement at large of the true state of affairs on respondent's Road, so far as they concern the transportation of passengers, says as follows, to wit:

The regular day passenger trains on respondent's road are composed of: 1, an engine; 2, a combined baggage, express and mail car; 3, a passenger coach, divided about equally into two compartments—the two compartments communicating by a solid door, which opens and shuts after the usual manner of passenger

*See ante, 314; and Council v. Western & Atlantic R. R. Co., ante, 303.

car doors; and, 4, a passenger coach of the usual size and construction.

One of the compartments in No. 3 is assigned to smokers and the other to colored passengers, just as the whole of No. 4 is set apart for white passengers. The smaller amount of space, set apart for colored passengers, is for the obvious reason that there are much fewer of them.

This respondent says that except in the particular above noted—less space—the car for colored passengers affords accommodation substantially equal to that of the white passengers' car.

It is equally safe. It is equally comfortable. It is equally clean and well ventilated. No person is allowed to smoke in it; all smokers being obliged whether white or colored, to confine themselves to the smoking car.

No white person is allowed to ride in it, just as no colored person is allowed to ride in the white passengers' car.

It is not a car for the transportation of "railroad hands with their tools and baggage" any more than the white passengers' car. It might happen that a colored passenger was a railroad hand and traveling with his tools. This fact would not authorize his exclusion from the colored passengers' car. If he were exceptionally and disgustingly filthy in his person, this would furnish a substantive ground for exclusion, without reference to his occupation or calling. The same considerations would also operate to admit or exclude a white railroad hand to or from the white passengers' car.

The differences, if any, between the white passengers' and colored passengers' cars relate to matters æsthetical only, and consist in higher ornamentation and matters of that sort rather than in those which effect the substantial conditions of safety, comfort and convenience. If the two cars fail to be equal to each other in these respects, such failure is, to the extent of it, a departure from the aim and purpose of the management, and is not willful or intentional.

In a word, respondent states that it is the purpose and aim of its management, while insisting on separate accommodations for the races, to furnish, in all essential matters, equal accommodation to all. If it does this, it respectfully submits that it complies with the law of the land, including "An Act to Regulate Commerce."

Finally, respondent says that if the honorable Interstate Commerce Commission has under the law and the facts of this case jurisdiction in the matter set forth in the petition, respondent makes no resistance to the grant of the prayer of the petition, to wit: "That your honorable body will cause the Georgia Railroad Company to furnish equal accommodations to persons holding first class tickets traveling over said road, irrespective of race or color," etc., etc.

For respondent says that it has been its aim and policy and practice to do so for several years last past.

The Georgia Railroad Co.

By Jos. B. Cumming, its General Counsel.

State of Georgia, } ss.
Richmond County, }

Personally appeared John W. Green, who

being duly sworn says that he is the President and General Manager of The Georgia Railroad Company and that the facts set forth in the foregoing answer are true of his own knowledge.

Sworn to and subscribed }
before me this first
day of August, 1887.

W. T. Richards.

[Seal]

John W. Green.

W. O. HARWELL *et al.*,

COLUMBUS & WESTERN R. CO., and Western Railway of Alabama.*

(No. 47.)

PLEADINGS in proceeding pending before the Commission, based upon allegation of discrimination against Opelika, Alabama.

COMPLAINT.

(Filed July 6, 1887.)

Opelika, Ala. July 3, 1887.

To the honorable Interstate Commerce Commission,
Washington, D. C.
Gentlemen:

We would respectfully petition your honorable body and call your attention to the unjust discrimination as practiced by the Columbus & Western Railroad and Western Railroad against Opelika, Alabama, in favor of Columbus, Georgia and Montgomery, Alabama, in violation of the Interstate Commerce Commission Law, by charging Opelika, Alabama, more for freight on similar shipments, when there is less service rendered, than for either Columbus or Montgomery. When Opelika was building up the rates were so adjusted that she could sell goods north and west, which is her natural territory, and she was enabled to divide the territory between Columbus and Montgomery. These advantages being thus, the people were induced to come and invest their money. And in this way, Opelika was being built and aided in building the Savannah & Memphis and East Alabama & Cincinnati Railroads. Now the rates are so fixed that Montgomery can retail goods at Opelika's very door, to Auburn, which is only seven miles, for less money than Opelika; Columbus can retail goods at Youngsboro, which is three miles from Opelika, for less money than Opelika. This is equally true to all points on Columbus & Western Railroad and Western Railway beyond Opelika. By these unjust and ruinous rates, Opelika has no outlet. What goods she sells are at such profits that it has forced the merchants to the most rigid economy. The profits have been reduced from fair rents to the property holders, until today her rents are only about one fourth. Yet Opelika furnishes equal facilities for distributing goods that Columbus or Montgomery does. The goods from the West are shipped by Opelika and there distributed up the Columbus & Western Railroad and East Alabama Railroad. To illustrate, from Louisville, Henderson, Kentucky, and Evansville, Indiana and other western points to Columbus, Georgia, via Louisville &

*See Re Opelika Board of Trade, ante, 314.

Northern Railroad and Western Railroad via Opelika and over the Columbus & Western Railroad (Opelika being twenty-nine miles nearer shipping point than Columbus), the rates are as follows, in favor of Columbus and to the ruin of Opelika:—

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
	23	18	16	14	12	10	8	8	8	6	12	23	14
in favor of Montgomery, against Opelika:—													
Class	1	2	3	4	5	6	A	B	C	D	E	H	F
	32	18	19	19	15	15	8	15	12	9	14	25	20
													10

By adding these differences in favor of Columbus to the locals of Columbus & Western Railroad, you will find that Columbus can deliver goods at the first station beyond Opelika, which is Gold Hill, on Columbus & Western Railroad, for less money than Opelika, Montgomery can do the same thing with all the stations on the Western Railroad. Freight from Chattanooga, Tennessee, via Atlanta and West Point, Georgia, to Opelika, on grain is 23½ cents per 100 pounds. To Montgomery over the same roads via Opelika and sixty-six miles further, is only 12½ cents per 100 pounds. Now the same goods back to Auburn from Montgomery with a rate of fifteen cents per 100 pounds, makes a rate of 27½ cents to Auburn. Now take Opelika's rate of 23½ cents and add eight cents, the local rate from Opelika to Auburn, and you see 31½ which makes four cents per 100 pounds against Opelika and in favor of Montgomery; and as already stated, Auburn is only seven miles from Opelika.

Cotton. We desire further to call your attention to the unjust discriminations on cotton. It is a fact that to New Orleans, Louisiana, a port, to which Opelika has no through freight rate at all on cotton. Although the Alabama State Commission, no longer than last fall, gave it as their opinion, and it is a standing order today, that—"Opelika was unjustly discriminated against," still the railroad authorities refuse to give the necessary relief, and have withdrawn all their freight rates to New Orleans from Opelika. However, the facilities for the handling of cotton, at Opelika, are good and ample. And while both Columbus and Montgomery compete with Opelika, for the cotton tributary to Opelika and for which Opelika is the natural market, and by reason of Columbus and Montgomery having these through cheap rates to the ports and to the East and eastern mills, makes it extremely disastrous to Opelika's cotton receipts—and to her business generally. When Opelika was enjoying better rates, years ago, she received and shipped 26,000 to 28,000 barrels of cotton annually; from three to five years since, about 16,000 barrels; in 1885 about 11,500 with an extra crop in 1886, about 15,000 barrels,—but still the territory tributary to Opelika continues to make more and more cotton every year.

Now to show some of Opelika's disadvantages: Opelika is nearer Savannah, Georgia, than Montgomery, Alabama,—but Opelika has a rate of fifty-two cents per 100 pounds, while Montgomery and Columbus enjoy a rate of forty-five cents per 100 pounds. And each place has only one line of railroad (the Central) to Savannah, Georgia. Again; Opelika has no through freight rate to New Orleans, while

Montgomery has a rate of forty-five cents per 100 pounds to New Orleans. We claim that situated as we are, on the Columbus & Western Railroad and Western Railroad, gives Opelika outlets to all points north, east, south and west. The course, however, pursued by the Railroads are to circumscribe Opelika's territory to within a radius of three miles, which, beyond question, cripples Opelika, drives away her business and carries it to other and distant points; besides forcing the cotton over their lines of railroads by not giving through freight rates to other and all ports alike.

In support of this petition, we especially call your attention to the evidence adduced before your honorable body in Atlanta on April 28,* all of which you have on file. And more especially, do we call your attention to the admissions as made by General E. P. Alexander, President of the Central System.†

And we, your humble petitioners, therefore pray that Your Honors relieve us of this unjust discrimination as practiced by the Columbus & Western R. R. Co. and Western Railway.

Respectfully Submitted,

W. O. Harwell,

H. B. T. Montgomery,

J. W. Ponder

} Trans. Com.

The State of Alabama, }
Lee County, } ss
Opelika, Ala.

Before me, C. T. Hodges, J. P., personally appeared W. O. Harwell, H. B. T. Montgomery and J. W. Ponder, who being duly sworn, depose and say that the foregoing petition and statements are correct, to the best of their knowledge, information and belief.

Subscribed and sworn to this the 2d day July, 1887.

W. O. Harwell

H. B. T. Montgomery

J. W. Ponder.

ANSWER OF COLUMBUS & WESTERN R. CO.

(Filed August 13, 1887.)

Office of President
Central Railroad and Banking Co. of Georgia.
E. P. Alexander, President.

Savannah, Ga., July 22, 1887.

To the honorable Interstate Commission,
Washington, D. C.

Gentlemen:

As President of the Columbus & Western Railway, I acknowledge receipt of copy of the petition filed against this Company embracing charges made by Harwell and others of Opelika, Alabama.

Representing Opelika, these gentlemen claim that there is unjust discrimination in freight rates to that point.

Briefly stated, the case is this: Montgomery situated on the Alabama River, and Columbus situated upon the Chattahoochee River, have lower rates than Opelika. The reason is very plain: the railroads there have water competition, and are compelled to meet it. The rates to Opelika are made by adding to the rates from Montgomery or Columbus, a line of rates which we call the "Ball arbitraries," as they were suggested by Colonel Ball, one of

*See ante, 119.

†See ante, 124.

the State Railway Commissioners of Alabama. They are less than the local rates which generally prevail on the railroads in that State.

Opelika wishes them still further reduced. I am prepared to say that I am not unwilling to reduce them so far as Opelika is concerned, if I may be allowed to reduce them to Opelika, without making the reduction general to all other stations upon the line of the Columbus & Western Road.

This Railroad has a bonded debt which does not represent over one half of the actual cost of building it. Last year it fell short about \$15,000 of paying the interest upon its bonds. It has very little through business, and that only over twenty-nine miles of its length. It cannot, therefore, be claimed that the Road is making exorbitant profits, and, therefore, I do not think we can be asked to reduce its average charges. Yet, as above stated, I am willing to reduce the Opelika rate alone if the Interstate Commission thinks I can do so without violating section 4 of the Law, or will give me the permission to do so without reducing to other points, which that section confers upon them the power to do.

Very Respectfully,

E. P. Alexander, Pres.

Personally appeared E. P. Alexander, Pres., who swears that the above statement is true to the best of his knowledge and belief.

Wm. W. Rogers,

[Seal] Notary Public, Chatham, C. Ga.

ANSWER OF WESTERN RAILWAY OF ALABAMA.

(Filed July 25, 1887.)

Atlanta & West Point Railroad,
The Western Railway of Alabama, and
The Cincinnati, Selma & Mobile Railway. }
Montgomery, Ala. July 23, 1887.

Cecil Gabbett,

General Manager.

To the Interstate Commerce Commission,
Washington, D. C.
Mr. Chairman, and Gentlemen:

In compliance with the summons received from your honorable body, dated July 8, to answer the petition filed against the Western Railway of Alabama, embracing the charges made by W. O. Harwell and others of Opelika, Alabama, I herein respectfully furnish you with a brief statement of the facts in the case under consideration showing why said petition, in our opinion, should not be granted.

Montgomery, Alabama, is situated on the Alabama River, sixty-six miles west of Opelika and is the terminus of the following railroads: South & North Division of the Louisville & Nashville Railroad, Mobile & Montgomery Division L. & N. R. R., Montgomery & Eufaula Railway, Montgomery & Florida Railway, and the Western Railway of Alabama, which reaches from Selma, Alabama, to West Point, Georgia, passing through Montgomery, thereby constituting it a railroad center of great importance, and a direct competitive point; which city is in direct competition with long competing lines, reaching either by rail or water to the best markets of the world.

Mobile has direct ocean rates, and a line of steamboats on the Alabama River to Montgomery, which traverse the Alabama River during

the entire year. The rates to Mobile are regulated by the ocean rates. The rates to Montgomery are therefore under the same category. The rates from the West to Montgomery are also vitally affected by its water transportation route via the Mississippi River, New Orleans, Mobile, and thence to Montgomery.

The City of Columbus, Georgia, is situated on the Chattahoochee River, and is a place of about 13,000 inhabitants, and has many manufacturing, and is also the market for a large section of country both in Alabama and Georgia. The Chattahoochee River is navigable practically during the entire year, and is a formidable competitor of the railroad lines for the freight business of that city. Statistics will show that during the years 1879, 1880, 1882, and 1884, boats run without interruption the entire year as far up as Columbus; also in 1881 navigation was only interrupted from August 17, to August 28, nine days; also in 1883 the only period of interference was from September 5, to October 5. The United States mail is carried regularly by the steamboats on the river. The water competition on western products to Columbus by steamboats on that river has practically ceased during the past three or four years, owing to the reduction of rates by the rail lines to that point from the West; but should the rates be raised from the West to Columbus, competition would again ensue similar to what it was prior to 1881. From 1865 to 1869, nearly all the western business was taken by the boats on the Chattahoochee River. Upwards of twenty-seven boats have plied the Chattahoochee River at one time. As a further evidence of the importance of the Chattahoochee River as a navigable river, I would say that in the year 1883 the boats delivered 20,000 bales of cotton in Columbus, and a few years prior to that date Appalachicola, Florida, received upwards of 160,000 bales of cotton.

Columbus is also the terminus of the following railroads: Columbus & Western Railway, Southwestern Railroad of Georgia (Central R. R.), Mobile & Girard Railroad, and Columbus & Rome Railway.

The above information I furnish you for the purpose of advising you of the modes of transportation at Montgomery and Columbus.

Opelika, Alabama, is a town of about 3,000 inhabitants, having no navigable water course in its vicinity, and dependent entirely upon its railroads for freight transportation. It is the terminus of the East Alabama & Cincinnati Railroad, a line twenty-two miles long, and is located at the junction of the Columbus & Western Railroad and the Western Railway of Alabama, twenty-two miles from West Point, Georgia, sixty-six miles from Montgomery, Alabama, and twenty-nine miles from Columbus, Georgia. It has no manufacturing interests of any importance. Opelika has always been, until the year 1884, considered strictly a local station on the line of the Western Railway of Alabama, and the rates to it were made upon the customary plan throughout the South, based upon the lowest combination of through and local rates. Samples can be found all throughout the South similar to that of Opelika, where rival roads have not reduced the rates to an undesirable figure; none of such

stations in the State the same, which would destroy the railroad property in this State.

Now, as to Opelika and all such points where the action of antagonistic or rival railroads does not cut the rates of freight to unremunerative figures, how much business can they expect to do at other railroad stations beyond them? The business to all stations may be divided into three classes: sales to local towns, wagons, and other railroad stations. The business that Opelika complains of not being able to control is that of Auburn, Youngsboro, and other towns in their vicinity similarly situated. Can the rates of freight be fixed to make it to the interest of the merchants of those points to trade with Opelika? Merchants at those points have credit and equal intelligence, and can buy goods from first hands upon just as good terms as the merchants of Opelika, without paying tribute to the middleman. Is this not the reason that one town on a railroad does not sell goods to another town a few miles off also situated on a railroad? Can Opelika reasonably expect to do more than a local town under

kind of trade; if so, it was before the merchants of smaller places had established their credit, or the present system of through bills of lading was adopted and used through the banks as they are now in western markets. In the year 1884 the subject of discrimination against Opelika in favor of Columbus and Montgomery on western products was referred to the Alabama State Commission, and after the matter had been thoroughly investigated and discussed, it was agreed upon to make some concession in favor of Opelika, which resulted in an arbitrary being added to the Columbus rate on western products. (Arbitrary means a rate that is never higher than a local rate and sometimes less, and when used stands in lieu of a local rate or part of a pro-rate.) In this case the arbitrary amounted, as you will see by reference to the figures below, to only about 50 per cent of the local rate previously charged, thereby making a considerable reduction in the through rates from the West to Opelika, apparently satisfactory to Opelika merchants dealing in western products.

The local rates sanctioned by the Alabama State Commission between Montgomery and Opelika now in operation are as follows:

	1	2	3	4	5	6	A	B	C	D	E	H	F
Local rates from Columbus to Opelika...	50	48	39	29	25	19	19	30	19	15	27	30	36
Now the rates from the West, say Cincinnati to Opelika, are made as follows:													
Cincinnati to Columbus	117	109	91	76	68	52	32	40	35	31	54	63	
Arbitrary	28	18	16	14	12	10	8	8	8	6	12	14	24
Cincinnati to Opelika	150	120	107	90	75	62	40	48	43	37	66	83	
Rates from Cincinnati to Gold Hill:													
Cincinnati to Columbus	117	109	91	76	68	52	32	40	35	31	54	63	
Local Col. to Gold Hill	62	58	48	30	23	17	17	19	22	15	22	40	
Total to Gold Hill	179	155	139	106	85	69	49	58	57	46	76	103	
Rates from Cincinnati to Youngsboro:													
Cincinnati to Columbus	117	109	91	76	68	52	32	40	35	31	54	63	
Local Columbus to Youngsboro	59	52	39	27	21	16	16	17	20	15	19	40	
Total to Youngsboro	176	154	130	103	84	68	48	57	55	46	73	103	
Rates from Cincinnati to Auburn:													
Cincinnati to Montgomery	108	102	88	71	59	47	32	33	33	28	52	56	
Local Montgomery to Auburn	47	41	37	27	24	18	18	19	18	15	25	38	
Total to Auburn	155	143	125	98	83	65	50	52	52	43	77	94	
Rates from Cincinnati to Cusseta:													
Cincinnati to Montgomery	108	102	88	71	59	47	32	33	33	28	52	56	
Local Montgomery to Cusseta	53	45	40	30	25	20	20	22	20	16	28	39	
Total to Cusseta	161	147	128	101	84	67	52	55	53	44	80	95	

These figures show that there is in reality more ground for complaint against the railroads for discriminating in favor of Opelika against Auburn, Cusseta, Youngsboro, and Gold Hill, than there is for Opelika to complain of discrimination in favor of Montgomery and Columbus. The circumstances and conditions which cause the difference in rates between Opelika and the Cities of Montgomery and Columbus are more potent and forcible than any which can be shown in favor of Opelika as against its neighboring towns.

ENTER 8.

It was in a spirit of compromise that the present concessions were made to Opelika, and we feel that if discrimination exists at all, it is in favor of the people of Opelika, and not against them.

As to the charge that no through bills of lading are being issued by this Road from Opelika to New Orleans, Louisiana, we would say that they were issued on the same basis that freights between Opelika and other places were charged, until a promise of rebates or secret rates to some of the merchants of Opelika.

aforesaid gorge for two miles, to the mine worked by your petitioners. This extension consequently brought such last mentioned mine into direct competition with the mines of the Coal Creek Mining & Manufacturing Company aforesaid. The said Coal Creek & New River Railroad Company has never owned rolling stock of any kind. For the operation of its road it has depended upon the Knoxville & Ohio Railroad Company, and the latter has always controlled, managed and operated such road. In the course of such operation, the last named Company, up to the 10th day of April, 1887, as will hereafter be shown, furnished all the cars and trains used upon such road, and delivered the same at and to all the mines along the line thereof, without improper discrimination, and then, after these had been loaded, again duly received and transported them.

Petitioners further show that coal shipped from their said mines to the State of North Carolina first goes over said Coal Creek & New River Railroad, then over the switch or branch connecting said last mentioned road with the Knoxville & Ohio Railroad proper, then over said Knoxville & Ohio Road to Knoxville, then over the Virginia Division of the East Tennessee, Virginia & Georgia Railroad to Morristown, Tennessee; then over the North Carolina Division of said East Tennessee, Virginia & Georgia Railroad to the North Carolina state line at Paint Rock, then over the Western North Carolina Division of the Richmond and Danville system, owned by the Richmond & Danville Railroad Company; then over the North Carolina Division of said Richmond & Danville Railroad, and over other divisions of the same system, to the customers of petitioners. It has been, and is now, the invariable custom of said East Tennessee, Virginia & Georgia Railway Company to receive coal for shipment at the mines in said coal field and give a through bill of lading for the same from the mines to the point of destination in the State of North Carolina, as one continuous haul.

Petitioners further show and charge that said Coal Creek & New River Railroad is managed and controlled by said Knoxville & Ohio Railroad Company, that said Knoxville & Ohio Railroad is controlled and managed by the East Tennessee, Virginia & Georgia Railway Company, that the North Carolina Division and Virginia Division of the East Tennessee, Virginia and Georgia system are controlled and managed by said East Tennessee, Virginia & Georgia Railway Company, that the North Carolina roads hereinbefore mentioned are controlled and managed by said Richmond & Danville Railroad Company; and that both said East Tennessee, Virginia & Georgia Railway system, and said Richmond & Danville Railroad system are managed and controlled by the Richmond & West Point Terminal Railway & Warehouse Company, so it is that the entire line of railroad from petitioners' mines to their customers in North Carolina is under one general management.

One E. R. Chapman, of the City of New York, is acting as and claiming to be President of said Coal Creek & New River Railroad Company; E. J. Sanford, of Knoxville, Tennessee,

is President of said Knoxville & Ohio Railroad Company; Samuel Thomas, of the City of New York is President of said East Tennessee, Virginia & Georgia Railway Company, and Alfred Sully, of said City of New York, is President of the said Richmond & Danville Railroad Company, and also of said Richmond & West Point Terminal Railway & Warehouse Company.

Prior to April 14, 1887, said E. R. Chapman, E. J. Sanford, Samuel Thomas, Alfred Sully, and Calvin Brice and C. M. McGhee, of said City of New York, who were then officers or directors in said East Tennessee, Virginia & Georgia Railway Company, and said Knoxville & Ohio Railroad Company, and others who were their friends, purchased from the then owners almost the entire stock of said Coal Creek Mining & Manufacturing Company, and thereupon said purchasers openly avowed their purpose to crush out all competitors of said Company and its lessees in the business of mining coal in said coal field. Accordingly, orders were issued by the superintendent of said East Tennessee, Virginia & Georgia Railway Company to its agent at Coal Creek not under any circumstances to furnish any cars to petitioners, or to allow petitioners to ship any coal over said railroad; but said Company continued and now continues to control, manage, operate and use said Coal Creek & New River Railroad and run its cars and engines over the same, and to furnish and deliver coal cars to the lessees of said Coal Creek Mining & Manufacturing Company, who are operating upon the line of said road, and upon the line of the road running up the south fork of Coal Creek. Petitioners have applied to the agent and officers of said Railroad Companies at Coal Creek, Knoxville, Asheville, North Carolina, Richmond, Virginia, Washington, D.C., and New York, for relief against this unjust, oppressive and outrageous discrimination against them and their business, but have been unable to get a single car, or remove or ship a pound of coal, since April 14, 1887, although the cars and trains of said Railroad Company are on said Coal Creek & New River Railroad every day and within a few yards of petitioners' mines.

Petitioners charge that this iniquitous action of the Companies named as defendants in the caption of this petition was caused by their said officers for the purpose and with the intent to give an unreasonable and undue preference to the lessees of the said Coal Creek Mining & Manufacturing Company, which is owned and controlled by said officers and their friends, and for the purpose and with the intent of crushing out petitioners as competitors, and destroying their business; all of which is in violation of section 8 of the Interstate Commerce Bill.

Petitioners now have orders from customers in the State of North Carolina for many thousand tons of coal, which were received since April 14, 1887, and which petitioners cannot fill, because of the failure and refusal of said Railroad Companies to furnish cars. At the same time, the lessees of said Coal Creek Mining & Manufacturing Company are daily shipping large quantities of coal from said coal field to the State of North Carolina, in cars

furnished, delivered and moved by said Railroad Companies.

Petitioners, by said iniquitous and oppressive action, have been damaged not less than \$25,000 already, and are sustaining further grievous loss and damage every day while such action is persisted in.

Petitioners pray that the Railroad Companies named in the caption be cited to appear and answer this petition, according to the practice of the Commission, and that the grievances hereinbefore set forth be investigated, and on final hearing that petitioners be awarded such damages as shall be just and proper, and that such orders be made, and such proceedings be had as shall fully protect petitioners.

Heck & Petree, Coal Creek, Anderson County, Tennessee.

Webb & McClung, } Attorneys.
S. F. Phillips. }

State of Tennessee, }
County of Knox. }

Personally appeared before me, H. H. Taylor, United States Circuit Court Clerk for the Eastern District of Tennessee, John D. Heck, who being duly sworn, deposed and said that the statements made in the foregoing petition are true, according to the best of his knowledge, information and belief.

John D. Heck.

Subscribed and sworn to before me, this the 30th day of August, 1887.
[Seal] H. H. Taylor, Clerk.

PROCEEDINGS AT RUTLAND, VT.

BOSTON & ALBANY R. R. CO.

v.

BOSTON & LOWELL R. R. CO. *et al.**

(Two Cases, Nos. 14 and 15.)

VERMONT STATE GRANGE OF PATRONS OF HUSBANDRY†

v.

BOSTON & LOWELL R. R. CO. *et al.*
(No. 68.)

THE Interstate Commerce Commission, all the members being present, commenced a duly appointed hearing, at the United States Court House, in Rutland, Vermont, on the morning of Thursday, September 1, 1887.

The proceedings were as follows:

Chairman Cooley. We have come here today to hear certain causes of complaint in this part of the country, embodied in the complaint made by the Boston & Albany R. R. Co. against the Boston & Lowell R. R. Co., and other defendants, and also in the complaint made by the State Grange of Vermont against certain railroad companies.

As our secretary is not in attendance, the Commission will appoint Edmund H. Smith, Esq., of Rochester, N. Y., acting secretary for the session.

We are now ready to proceed.

The pleadings having been read by respect-

ive counsel—at the suggestion of the chairman, the following appearances were noted:

For the Boston & Albany R. R. Co.—*Hon. Samuel Hoar.*

For the Vermont State Grange,—*Messrs. Haskins & Stoddard, and Hon. George F. Edmunds.*

For the Boston & Lowell R. R. Co.—*Messrs. Almon A. Strout and W. H. Coolidge.*

For the Central Vermont R. R. Co., and its roads in the line complained of,—*Hon. B. F. Fifield, and Mr. C. A. Prouty.*

For the Northern R. R. Co.—*Hon. W. L. Foster.*

For the Concord R. R. Co.—*Superintendent H. E. Chamberlin.*

Mr. Fifield. I desire to call the attention of the Commissioners to a single matter in the petition of the State Grange. The original petition of the Boston & Albany R. R. Co. is in respect to west bound traffic only; the Vermont State Grange come in by intervention and claim on east as well as west bound traffic; I respectfully submit they should be limited to the scope of the original petition.

Mr. Edmunds. Why can't we be heard on east bound, too?

Mr. Fifield. Because in this case you are limited by the original petition to west bound freight.

Mr. Edmunds. We do not want to be heard on that point on our side.

Chairman Cooley. We do not see any objection to hearing them on the matter of east bound freight, as well as west.

Mr. Hoar. I have been asked by Mr. Strout to state to the Commission the ground upon which we ask to have the Grand Trunk R. Co. a party to the all rail case, inasmuch as the Grand Trunk R. Co. is not a railroad over which traffic is taken from Boston to St. Albans, Vermont, which is an intermediate point between both Boston and Detroit, and Boston and Montreal in relation to which we complain. We have set out in the petition, and it is substantially admitted in the answer, that the Grand Trunk R. Co. participates in the rates which are charged for the longer haul, and, with the other railroads, makes that rate, and we supposed they were proper parties having an interest in the subject matter here, and were proper parties to be heard before this Commission, and so we joined them in our petition. If the petition is maintained and an order is made in the premises by this Commission, it will be binding upon all the parties to the record; that is the proposition.

Mr. Strout. The answer of the Grand Trunk R. Co., specifically denies that that road does participate in making the rate on freight by the National Despatch Line.

John Porteous, called by the complainants, sworn: testified as follows:

By **Mr. Hoar:**

Q. Your name is John Porteous?

A. It is.

Q. What is your position in relation to the Central Vermont Railroad Company?

A. General Manager of the through freight department.

Q. What is your position in relation to the National Despatch Line?

*See pleadings, *ante*, 400.

†See intervening complaint, *ante*, 408.

case, who receives the freight money from the consignee?

A. The agent of the steamers at the destination point.

Q. Is any part of the money received from that freight paid to the National Despatch Line?

A. Of the lake and rail money do you mean?

Q. Of the money paid to the terminal road, has it any part of that freight charge?

A. Are you speaking of all rail?

Q. Well, take the all rail?

A. There is so much paid for car service.

Q. So much paid for mileage on car service?

A. Yes sir.

Q. What else?

A. Expense of working the line.

Q. How is that based?

A. I don't know; I presume on an agreed division.

Q. On tonnage?

A. On division of the rate.

Q. My question is, How are the expenses of the National Despatch Line paid by these various roads?

A. On agreed division.

Chairman Cooley. Have not you the arrangement of the organization with you?

A. It is not in writing.

Mr. Strout. There is no written contract. **By Mr. Edmunds:**

Q. Is there no correspondence about it?

A. I have not any.

Q. Is there any?

INTER 8.

ern R. R. Co.

Q. Do you have anything to do with it yourself?

A. I am consulted about it.

Q. Who fixes the rates from Boston to Ogdensburgh?

A. Mr. Frank Owen, of the Ogdensburgh & Lake Champlain R. R. Co., and those other parties named.

Q. Not Mr. Chittenden, I suppose?

A. No sir; Mr. Frank Owen, except Mr. Chittenden.

Q. And you are consulted on the making of those rates, too?

A. Yes sir.

Q. Who is the person who represents the Central Vermont Co. in establishing the rate to Ogdensburgh?

A. Mr. Frank Owen.

Q. What is his position?

A. General freight agent.

Q. At Ogdensburgh?

A. Yes sir.

Q. He is the freight agent for the Central Vermont at Ogdensburgh?

A. Yes sir.

Q. And it is done on consultation with you?

A. Yes sir; I have been consulted, but he is the party who makes the rate. I do not take any responsibility of the rates from Boston to Ogdensburgh, or Boston to St. Albans.

Q. Who fixes the through lake and rail rate from Boston to western points?

A. Mr. Frank Owen.

Q. The through rate?

A. Yes sir.

Q. I thought you said you were the general manager of through traffic?

A. He is the representative of the Central Vermont line of steamers.

Q. When you say you are the general manager of the through traffic of the Central Vermont Railroad, do you mean of only the all rail traffic?

A. Well, and the other on consultation.

Q. And you also manage the lake and rail?

A. No sir; Frank Owen does.

Q. You do not at all?

A. No sir.

Q. Except consulting with him?

A. Yes sir.

Q. Is not the Central Vermont practically the initial road for west bound traffic out of Boston?

A. The Boston & Lowell is the initial road.

Q. I know it is in point of place; but in point of fact does not the Central Vermont assume to be the road that fixes the rates on traffic which is received at Boston bound for the West?

A. No more than the Boston & Lowell.

Q. Did you ever know the Boston & Lowell Road to be represented at any of the meetings of the trunk lines?

A. No sir.

Q. The Central Vermont is always the one, is it not?

A. The Central Vermont does not belong to the trunk lines.

Q. Is not the Central Vermont a member of the joint committee?

A. No sir.

Q. Don't you know it is, or published as being?

A. No sir; I never saw it.

Q. Did you ever know of their attending meetings of that association?

A. Yes; by invitation.

Q. Did you ever know of the Boston & Lowell R. R. Co. attending the meetings?

A. I think I have.

Q. Are you sure about that?

A. I am not certain; I think I have; Mr. Turner can tell whether he has or not; I would not swear to it.

By Mr. Edmunds:

Q. I suppose the same gentlemen whom you have named as fixing the rates for western bound freights do reciprocally for the same line of roads, for eastern bound freights?

A. Yes; the National Despatch Line does not issue east bound rates; they have not a tariff; I can explain that to you.

Q. Take the route, for instance from Detroit to Boston?

A. Yes sir; they do that; but they conform to the rates made by the east bound lines, but they are different.

Q. Do the same persons in authority arrange what price shall be charged on property going west over the same roads and lines?

A. On the west bound I arrange the rates for the lines; I do not for the lines east bound.

Q. Who does?

A. The initial road; but we conform to the rates.

Q. Then the all rail line, the initial road

from Detroit would be the Grand Trunk Railway?

A. Yes sir.

Q. The Grand Trunk Railway fixes the eastern rate from Detroit to Boston?

A. Yes sir.

Q. And you succeeding persons assent to that?

A. Yes; and issue what we call a "billing list" such as this (producing the same).

Q. It comes then, does it not, to a practical fact that all these gentlemen interested in all these lines that connect with each other, from any given point, as Detroit, finally come to an understanding as to what rates shall be charged from point to point both ways, don't they?

A. Yes.

Q. Can you give from any of your papers the eastern bound rates from Detroit to Boston, Toronto to Boston, Cleveland to Boston, by water and the Central Vermont Line, and so on and from St. Albans to Boston—everything west of New Hampshire?

A. The only tariff I have with me is the tariff from Detroit, and that is—Detroit to Boston—

1.	2.	3.	4.	5.	6.
62½	60½	44½	32½	28½	24½

Q. That is all you have with you?

A. All of those you have mentioned.

Q. You have no tariff here showing the rates from Toronto to Boston over the same line?

A. No sir.

Q. And none showing the rate?

A. Did you say Montreal?

Q. Yes; any points west.

A. Here is Montreal (producing the same).

Q. Who arranges the freight rates from Ogdensburgh to Boston?

A. Mr. Frank Owen, for the line.

Q. Who arranges the rates from St. Albans to Boston?

A. Mr. Chittenden and the members of the line.

Q. That covers all points in the State of Vermont, from Boston that the Central Vermont and its associations supply?

A. Yes sir.

Q. Have you any of those tariffs with you?

A. No sir.

Q. Can you tell, taking the all rail line to begin with, how this money is divided between the Grand Trunk Railway, and the Central Vermont and each of the other lines—state first the all rail line, Detroit to Boston, how the division is made, taking in each one of the respective lines that make it up, as you have described them before?

A. The Grand Trunk Railway gets 64 per cent.

Q. Of the total money?

A. Yes sir; from Detroit to Boston.

Q. The next is the Central Vermont. How much does that get?

A. My recollection is 58 per cent of the balance, and I do not know how the balance is divided; the 47 per cent is south of White River Junction. That is divided on mileage as I understand.

Q. That is to say—supposing there are \$100 earned on freight from Boston to Detroit on this all rail line, how much does the Grand Trunk Railway get?

A. Sixty-four dollars.

Q. How much does the Central Vermont get?

A. Fifty-three per cent of \$36.

Q. How many dollars is that?

A. Nineteen dollars and eight cents.

Q. And what is left is divided between the lower roads. That is, the Northern, Concord and the Boston & Lowell?

A. Yes sir.

Q. According to mileage?

A. So I understand.

Q. Supposing it were divided according to mileage as between the Central and the Grand Trunk Roads, how would that compare as to mileage with the share of the lower roads?

A. I should think it would compare about the same; I have not figured it.

Q. Do you know the distance by the Grand Trunk R. Co. from Detroit to wherever the Grand Trunk connects with the Central—at St. Johns, if that is the point?

A. Six hundred and eighty-eight miles.

Q. How far is it from St. Johns to White River Junction, which is the end of the Central Vermont at that point?

A. One hundred and sixty-two miles.

Q. How far is it from White River Junction to Boston?

A. One hundred and forty-four miles.

Q. How far is it from White River Junction to St. Albans?

A. One hundred and twenty-two miles.

Q. How far is Burlington from White River Junction?

A. A little more than a hundred miles.

Q. How far is it to Montreal by Portland and the Grand Trunk Railway—a good deal further, is it not?

A. No sir; not a great deal further—405 miles.

Q. It is further to Montreal, a good deal, by Portland from Boston?

A. Yes; it is further.

Q. And it is further from Boston to Montreal by the Passumpsic and the Southeastern Railway?

A. I think not. I think they are about equal distances.

Q. Is not the Central Vermont a little shorter than any other railroad line from Boston to Montreal, or Boston to St. Johns either?

A. Boston to Montreal?

Q. Or St. Johns?

A. I had an idea it was about the same by the Passumpsic.

Q. "About the same" is not what I am asking you, but whether you know?

A. I don't know; I had an idea they were the same. I never measured.

Q. Won't you tell us as to how the money is divided from Detroit to Boston by the Lakes, Ogdensburgh, and the Central Vermont, and these same lower lines, take the same \$100, to keep the equation even?

A. The steamer gets \$40—well, I don't know,—I'll take that back,—I don't know; I am not certain.

Q. What do you believe they get—you were consulted about the business?

A. I had rather have Mr. Owen testify to that.

Q. But I would rather have you; tell us what you think yourself.

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A. I have no positive knowledge on the subject.

Q. Have you any general business knowledge, which you have acquired by your consultations, which you have stated you had in making these rates?

A. I have the idea that we got 40 per cent, and forty cents a ton.

Q. Who got?

A. That the boats got 40 per cent, and forty cents a ton.

Q. Forty per cent of the hundred dollars?

A. Yes sir.

Q. And forty cents a ton besides?

A. Yes sir.

Q. How much would that make out of the given hundred dollars?

A. I can figure it.

Chairman Cooley.

Is that on all classes of freight?

A. Yes sir.

Mr. Hoar:

Is that for dockage?

A. Yes sir; and in addition to that there is agency expenses.

Q. The hundred dollars I am speaking about is freight money?

A. That comes out of the \$100; there is twenty cents, I think, two cents a hundred, and two cents for dockage, making four cents a hundred, to come out before prorating on the \$100; but I don't give those positively.

Q. How much of what is left of the \$100 does the Central Vermont get from Ogdensburgh to White River Junction?

A. I do not carry the figures with me, and I cannot tell; I should have to refer.

Q. Can't you state with substantial accuracy?

A. I don't think I could.

Q. Can't you get within \$50 of it out of a given hundred?

A. Yes.

Q. Try it, and do the best you can.

A. I have stated that this matter of division of rates is left entirely to, and arranged by, Mr. Frank Owen, of Ogdensburgh; and I am not very well posted on it; I have no positive knowledge of it.

Q. Would you be willing to give the knowledge you have—positive or general?

A. It might be so far out of the way.

Chairman Cooley.

I think it would be well to call it out from other witnesses who know it. If it becomes necessary, you can recall Mr. Porteous.

Q. How far is it by the steamers from Detroit to Ogdensburgh?

A. About 450 miles.

Q. How far is it from Ogdensburgh to Rouse's Point?

A. It is 142 miles from Ogdensburgh to Rouse's Point. No—that is to St. Albans. It is 118 from Ogdensburgh to Rouse's Point.

Q. That is the dividing line between New York and Vermont for railroad purposes?

A. Yes.

Q. And from Rouse's Point to St. Albans is how much?

A. Twenty-four miles.

Q. Now, tell us—if you can, a little more about the composition of what is called the National Despatch Line. Did I understand

you to say, in answer to Mr. Hoar, that there was no agreement in writing on the subject?

A. None that I have seen.

Q. Did you ever hear of any being in existence?

A. I never did.

Q. Have you ever seen or heard of any correspondence on the subject which would show anything in respect to the nature of the relations existing between these various lines making up what is called the National Despatch Line?

A. Nothing further than through rates and division lists.

Q. That exists in correspondence?

A. Yes; it is in print.

Q. Have you a print here?

A. No sir.

Q. Where is it?

A. It is at all the principal offices of the line.

Q. Is it not in your office, in your personal charge?

A. Yes.

Q. Could you furnish those papers to the Commission for the purposes of this case?

A. I believe I have already furnished the division lists to the Commission.

Q. If they are not already furnished, will you furnish them?

A. If the Commission requires them.

Chairman Cooley.

We shall require them. Have you anything to show what the arrangement between the roads is as to this Fast Freight Line, considered as a line by itself—how it is compensated for what it does?

A. Nothing further than the tariffs and division lists.

Q. Did you say that the tariff is made up without consultation between these various roads, through their authorized agents?

A. They would be if I did not know I am acting there for the through line, and know what is necessary to be done to conduct the business properly, and what they will agree to, and what they are furnished with, either before or after the rates are published.

Q. When the rates are thus published they are published by their authority, are they not?

A. They are supplied with copies of the tariff; and if they do not object, they participate.

Q. And it is your business to make up those tariffs in respect to the line you have described?

A. Yes sir.

Q. Who agrees upon the division list?

A. The members of the line.

Q. Name again the members of the line; take the water line to begin with—that is, the Central Vermont Line of steamers and the Ogdensburg & Lake Champlain R. R. Co., and the Central Vermont Railroad; that carries you from Detroit to White River Junction?

A. Yes sir.

Q. Then who makes up the rest of the line?

A. The Northern Railroad, and Concord Railroad.

Q. Who operates the Northern Railroad, and the Lowell & Nashua?

A. I am not sure about that now.

Q. Some of the managers?

A. Some time ago the Boston & Lowell, but I am not sure now—I am not certain just now.

Q. You say these division lists, which you will publish, are made up by these various corporations and concerns that make this line from Detroit to Boston?

A. You are speaking of the National Despatch?

Q. Yes.

A. Yes sir.

Q. And taking the water line, which is not the National Despatch line, is it?

A. It is not.

Q. How are those division lists made up?

A. I don't know; I have taken no part in division, or the arranging of divisions, and I don't know.

Q. Is there a division as far as you know?

A. There must be.

Q. When are those division lists agreed upon, of the National Despatch—after the money is earned, or before?

A. Before the money is earned.

Q. The rates of course, are made before the money is earned?

A. Yes sir.

Q. And the division of the income of the traffic is agreed upon before the money is earned?

A. It is.

Q. What else is there that the National Despatch Line has to do, except to do the things which you now describe?

A. Nothing else except to get the trade.

By **Mr. Fiffeld:**

Q. Are you the agent of the National Despatch Line?

A. General manager.

Q. What is this National Despatch Line?

A. A fast freight line.

Q. How many cars has it?

A. Four thousand.

Q. Who owns them principally?

A. The National Car Company.

Q. Is that a corporation?

A. I understand so.

Q. A Vermont corporation?

A. I understand so.

Q. Has any of these roads any interest in these cars, or ownership in them?

A. None that I know of. The Grand Trunk Railway has 700.

Q. So that you are the agent of the National Despatch Line of cars?

A. Yes sir.

Q. What is your business?

A. To solicit traffic.

Q. To gather it together?

A. Yes sir.

Q. And what is your motive about it in this regard?

A. Motive?—to get as much as I can.

Q. And to keep your cars running?

A. Yes sir.

Q. Who issues the bill of lading?

A. My agent.

Q. Is it done at your office?

A. Yes sir.

Q. Do you have a general office in Boston?

A. Yes sir.

Q. Is there one in Chicago?

A. Yes sir.

Q. Have you agents elsewhere in the United States?

A. Yes sir.

Q. These are the agents of the National Despatch Line?

A. Yes sir.

Q. And you say that you issue a tariff?

A. A west bound tariff.

Q. When you issue that tariff saying that you take through traffic from Boston to Chicago for 44 cents a hundred—do you do such a thing?

A. Sixty-five.

Q. When it gets at the end of the destination that money is collected?

A. It is, I suppose.

Q. And divided?

A. It is.

Q. Between this line of cars and the roads?

A. Yes sir.

Q. What part is taken out for the cars?

A. The car service.

Q. What is that?

A. Three quarters of one cent per mile.

Q. And is something taken out for the roads?

A. Yes sir.

By the **Chairman**:

Q. Something taken out for your services first, is there not?

A. Well, I am paid; I don't know how.

Q. What is taken out before the division is made for the roads?

A. There is the car service.

Q. What else?

A. The salaries and expenses of the line are made up by monthly vouchers; it is practically taken out of the earnings; but it is done by monthly voucher, not by the billing.

Q. That is taken out of the gross earnings, is it?

A. Yes.

Q. Is the car service taken out of the gross earnings?

A. Yes sir; out of the gross earnings.

Mr. **Fifield**, resuming:

Q. You say you issue a bill of lading for the National Despatch Line; see if that is the bill of lading?

A. Yes sir.

(Offered in evidence, and filed with the clerk).

Q. Is that the west bound tariff? (handing same to witness.)

A. (Examining same.) Yes sir.

(Offered in evidence and filed with the clerk).

By **Chairman Cooley**:

Q. You say you make up these tariffs?

A. I do.

Q. What do you make it up from? Do you make it up on your own judgment? How do you arrive at the figures?

A. We sometimes discuss the matter before they are made up, sometimes not.

Q. I speak now of the tariffs you make up as the general manager of the National Despatch Line: Do you make those up on your own judgment exclusively?

A. There are guides; the general executive committee, of New York, issue a tariff for the other line; and after that is issued, I make up a tariff for the National Despatch Line.

Q. In other words, you have the tariff of those lines or roads before you, and your tariff is made up from that?

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A. Yes.

Q. It must conform to that?

A. It must not, but it does.

Q. You would not be at liberty to issue a tariff that would make the rates lower than are made by the railroads?

A. I do.

Q. Upon the same class of goods that they carry?

A. Yes sir.

Q. Do you carry all kinds by the National Despatch Line that are taken by the railroads?

A. I do.

Q. All kinds?

A. Yes sir.

Q. And you make rates independent of them?

A. Yes sir.

Q. And sometimes lower than they make?

A. Always lower.

Q. And they accept them?

A. They accept them; I am speaking of west bound traffic.

Mr. **Fifield**, resuming:

Q. Tell the way you do it?

A. By arrangement.

Q. Go into the details and give the Commissioners all the facts about it?

A. We have had such an arrangement for twenty to twenty-five years, to make differential rates with the Boston & Albany, Fitchburg, New York Central, N. Y. & Erie, & Pennsylvania Central; Baltimore & Ohio, and latterly with the West Shore R. R. and with the Delaware, Lackawanna & Western R. R.

Q. Are those called the trunk lines, the Pennsylvania Central, etc? Name them.

A. N. Y. Central. N. Y. & Erie, Pennsylvania Central—

Chairman Cooley. We understand what the trunk lines are.

Q. Have they been accustomed to make rates for west bound traffic by convention of their agents for twenty-five years past?

A. I should say so.

Q. In that connection state if this line through here where the National Despatch cars run—do they claim to make a rate much less than the rates fixed by the trunk lines?

A. They have.

Q. What was that differential?

A. 10. 9. 8. 6. 5. and 4. Those were the original differentials, they have been modified since.

Q. To what extent?

A. 10. 8. 6. 4. to points beyond Detroit and Toledo, and 8. 6. 4. 3. to Detroit and Toledo.

Mr. **Edmunds**. Less or more?

A. Less; lower rates.

Chairman Cooley. Rates on the National Despatch Line are lower than on the lower roads?

A. Yes; lower than the trunk lines.

Q. And these trunk lines in convention fix the rates for west bound traffic?

A. Yes sir.

Q. Then what do you do?

A. I issue my tariffs less the differentials, that is the way.

Q. These differentials are things assented to by these petitioners, as well as the trunk lines?

A. Yes sir.

Q. Why has this been assented to?

A. Because of the long line; it is a much longer line than the Boston & Albany R. R.

Q. If the shipper in Boston had to pay the advertised rates the same as those of the Boston & Albany, which way would the traffic go?

A. By the Boston & Albany.

Q. You would get nothing?

A. No sir.

Q. That is one reason—the traffic would all go away from your road?

A. Yes; by the shorter line.

Q. Any other reasons?

A. Yes; during the winter season it has a worse climate to go through.

Q. Further north?

A. Yes sir.

Q. More expensive in the operating expenses?

A. Yes sir.

Q. On the other hand, what is the distance by all rail to the lake at Ogdensburgh; take our line from Boston to Ogdensburgh—what is our rail length?

A. Four hundred and five miles.

Q. What is the distance from Boston to Buffalo by the Boston & Albany, their rail line to Buffalo?

A. Five hundred and five miles.

Q. So that we have the longest run from Boston to Chicago, but we have the shortest line by rail via Ogdensburgh?

A. We have.

Q. How much difference?

A. One hundred miles.

Q. Is that a computation of distances on these lines out of Boston for Chicago (handing a paper to witness)?

A. Yes; but the president corrects me; that is 418; it should be 405; these tables of distances were made up in my office.

Q. Is this computation correct?

A. It is so far as I know.

(Offered in evidence and filed with the secretary).

By **Mr. Hoar**:

Q. What source is it made up from?

A. From the time table.

Q. From this book, The Official Gazette?

A. Yes sir.

By **Chairman Cooley**:

Q. When I asked you if you made up these tariffs independent of the railroads, you replied that you did; and that you made the tariff lower than the tariffs of the railroads—Do you mean the tariffs over the very roads over which your line operates? My question was whether you made up this tariff independent of the roads over which your line operates?

A. No sir; by consultation.

Q. When you sit down to make up this tariff, do you have before you the tariffs of the roads over which your line operates, and must your tariff conform thereto?

A. No sir; I never looked at it.

Q. Do you mean to be understood that if a man along the line of one of these roads offers to you freight, that you may receive that freight, and carry it, and charge less for it than he would be charged if instead of offering it to you he offered it to the regular agent of the road for the same distance?

A. I will explain it in this way: If a shipper was to take traffic to the Boston & Lowell R. R. to go to a point west of St. Johns, or in Canada, west of St. Johns, the agent of the

Boston & Lowell Road would refer him to me for his bill of lading.

Q. Would he have no rates to the same points?

A. Yes sir.

Q. He would have the rates to bill by?

A. Over his own road. Yes sir.

Q. Are those the same rates you would give him if he came to you?

A. He would not give him rates.

Q. He advertises rates, does he not?

A. I advertise the rates.

Q. I want to get at whether there are two sets of rates advertised; one by the railroad and one by you, the rates not agreeing?

A. I will explain that by saying that the Boston & Lowell R. R. Co. advertise the rates from Boston to White River Junction, or I suppose they do; they may, I never saw one; They issue a tariff for White River Junction, but for traffic passing from Boston to St. Johns, or points west. The National Despatch Line issues the tariff, and if the shipper went to the Boston & Lowell R. R. for a bill of lading, he would be referred to my office in the city; and in making up the National Despatch tariff I never inquire what is the tariff from Boston to White River Junction, or Boston to St. Albans, or Boston to any other point.

Q. Take it from Boston to Detroit—you make a tariff on freights from Boston to Detroit over certain railroads that you have specified; do I understand you that those roads do not in their tariffs give rates to Detroit from Boston?

A. I so understand it. I have never seen any.

Q. And the only rates given at all over those roads are over this National Despatch Line?

A. Yes sir; I have seen no other tariff.

Q. How it for the return freight? Do I understand that you have no tariffs for that?

A. No sir; I haven't.

Q. But you receive freight from Detroit?

A. Yes sir.

Q. And from other western points for Boston over these roads?

A. Yes sir.

Q. What is the guide there?

A. The Grand Trunk Railway tariff.

Q. They do make a tariff the other way, but not west?

A. Yes sir.

Mr. Fifield, resuming:

Q. You say this differential practice has been in force how long?

A. Twenty-five years.

Q. Has the Boston & Albany made any objections to it?

A. My own impression is that they agreed to it; and that they agreed to it this last March, to the differentials in force in that tariff.

Q. Then just tell the Commission what was done last March.

A. There was a meeting of the General Executive Committee of the trunk lines at New York; I was present at it.

Q. You say these agents of the trunk lines got together last March and made a rate for west bound traffic?

A. Yes; from Boston to Detroit, and New York to Detroit.

Q. And you issued a tariff with the differential rate?

A. Yes sir.

Q. In respect to east bound traffic, do you adhere to the rates of the other lines?

A. Yes sir.

Q. What did you do at that meeting?

A. I attended by invitation; I am not a member of the line; we do not belong to the Executive Committee, but by invitation I attended the meeting.

Commissioner Schoomaker. Did you take part in the proceedings?

A. I think I did.

Commissioner Walker. Was this line a member of the Trunk Line Association prior to April last?

A. No sir; it was a good many years ago.

Q. Down to what time?

A. I can't say.

By **Commissioner Schoonmaker:**

Q. Did you take any part in the action of that meeting?

A. I was there. Yes, I took part because we had a discussion and we did not agree.

Q. You say you attended that meeting. What were you there for?

A. By invitation.

Q. What was going on? What was the object of the meeting?

A. The meeting was for the trunk lines to agree on rates, and I wanted to find out what they agreed to.

By **Mr. Fifield:**

Q. What for?

A. So as to know how to make up my own tariff.

Q. Did the Boston & Lowell participate in that meeting?

A. I am not certain.

Q. Did the Concord R. R.?

A. No sir.

Q. Did the Northern?

A. No sir.

Q. Did the Central Vermont?

A. Mr. Turner acts for the Northern R. R. If he was there he did not take any very active part in it. He may have been there; I don't know.

By **Mr. Edmunds:**

Q. Who did you act for?

A. I acted for the Central Vermont R. R.

Q. Anybody else?

A. No sir.

Mr. Strout. I would like to have it appear that neither the Boston & Lowell, Northern, Concord, or Central Vermont were members of the trunk line or had anything to do with it?

A. No sir.

By **Mr. Fifield:**

Q. Was the Central Vermont represented there as one of the Commission?

A. No sir.

Q. Who did you represent there?

A. Myself.

Q. And the National Despatch Line, of course?

A. No sir; I don't know as I did. I was there by invitation and I went, and I was asked certain questions, and I answered them. I wanted to get information to make up my tariffs for the National Despatch Line according to the old arrangement in force for the last twenty-five years.

Chairman Cooley:

Q. Will you state in what position held by

INTER S.

you were you invited there; you were not invited as an individual?

A. No sir; I represent the National Despatch Line.

Q. Was it because of your representing that line, or as manager of the Central Vermont?

A. It might be either or both.

By **Mr. Edmunds:**

Q. Were you invited by letter?

A. Yes sir.

Q. How was it addressed to you?

A. I don't know; very likely to John Porteous, Boston.

Q. Were you the agent of the Central Vermont at that time?

A. I was general manager of the through freight department.

Q. And General Manager of the National Despatch Line?

A. Yes.

By **Mr. Fifield:**

Q. Who makes this tariff between Boston & St. Albans?

A. Mr. Chittenden.

Q. In connection with whom, if anybody?

A. The roads between St. Albans and Boston.

Q. Do you taken any traffic between St. Albans and Boston by the National Despatch Line?

A. We do not.

Q. From New England to points west of St. Johns, do you take it?

A. Yes sir.

Q. Are your cars used exclusively for that class of traffic?

A. I believe they are used occasionally, when they are short of cars, used for anything. They belong to the National Car Company, mainly; and they take a car when they can get it for any purpose.

Q. You have said that these roads make up a tariff between Boston and St. Albans. What is that paper now handed to you?

A. Central Vermont tariff, No. 18, between Boston and St. Albans.

Q. And the roads between those points make that?

A. Yes sir.

Q. Does the National Despatch have anything to do with making that tariff?

A. No sir.

Q. Are they consulted about it?

A. No sir.

Q. Are you consulted about it, except by invitation?

A. This tariff is made up by Mr. Chittenden for the Central Vermont R. R. And in consultation with the general freight agents of the other roads south of St. Albans.

Q. Is all of the traffic between those points done independently of the National Despatch Line?

A. Yes sir.

(Tariff last above referred to put in evidence, and filed with the clerk.)

Mr. Fifield. I desire to call attention to the fact that since the filing of the petition of the Boston & Albany R. R. Co. this rate from Boston to St. Albans has been reduced. It used to be 60 cents first class from Boston to St. Albans. On the 6th of July it was reduced to 55 and 48 cents. That was before the petition of the State Grange was filed.

Q. Please state what that is (handing a paper to the witness).

A. Shipping papers, Boston & Lowell R. R. Corporation. It is the receipt and bill of lading. (Offered in evidence and handed to the clerk.)

Q. Is that the thing that it is customary for the Boston & Lowell to issue for freight between Boston and St. Albans?

A. Yes sir.

Q. Look at that paper (handing it to witness), and say what that is.

A. Bill of lading, Central Vermont R. R. Line.

Q. Is that the bill of lading for points between Boston and St. Albans?

A. I do not know sir; I never saw this before. It looks like it, like a bill of lading.

Q. Will you see if that is the tariff made by the Central Vermont line of steamers? (Handing it to witness.)

A. That is the tariff made by the Central Vermont Line of steamers.

Q. What traffic do they take, and from where to where?

A. From Boston to points taking Boston rates, to Cleveland, Detroit, Port Huron, Milwaukee, and Chicago.

Q. Who makes the tariff between Boston and Ogdensburgh?

A. Mr. Frank Owen, in consultation with the members of the line from Boston to Ogdensburgh.

Q. Under that bill of lading, is property taken from Boston to Ogdensburgh?

A. Yes sir.

Q. Who issues the tariff for business, originating in New England destined for points west of Ogdensburgh and to points on the lake?

A. Mr. Frank Owen, of Ogdensburgh, general freight agent, and agent of the Central Vermont line of steamers.

Q. Is there a difference between the Central Vermont Railroad and the Central Vermont line of steamers?

A. Yes sir.

Q. They issue that tariff in respect to rates beyond Ogdensburgh?

A. Yes sir.

Q. Do they make any tariff beyond Ogdensburgh, from Boston?

A. No sir.

Q. What is that I hand you?

A. Central Vermont freight tariff, Ogdensburgh & Lake Champlain division for rates of freight from Boston, and stations on the Boston & Lowell Railroad.

Q. That is the tariff we have been talking about between Boston and Ogdensburgh?

A. Yes sir.

Q. And this I now show you is the bill of lading of the Central Vermont line of steamers?

A. Yes sir.

Q. You have stated that your business is to collect together the traffic?

A. Yes sir.

Q. And your object, as agent of the National Despatch Line is to keep your cars running?

A. Yes sir.

Q. And the object of the roads is to have traffic taken over the roads?

A. Yes sir.

Q. When it gets to the destination of the car,

and the freight is paid, it is divided on a proportion agreed upon between yourselves?

A. It is divided.

Q. In that division, is the Grand Trunk mileage put in at less than it really is?

A. Yes sir.

Mr. Edmunds. How much less?

A. It is the difference between the distance from Boston to Ogdensburgh, and the distance from Boston to Prescott via St. Johns. My impression is it is thirty-five to forty miles.

Mr. Edmunds. That is, the mileage of the Grand Trunk Railway is called thirty-five to forty miles less than it really is?

A. Yes sir.

Mr. Fifeled, resuming:

Q. What is the terminus in the east on this line complained of?

A. The Boston & Lowell Railroad.

Q. Is that a Massachusetts corporation?

A. Yes sir.

Q. What is the length of the road?

A. About twenty-six miles.

Q. What is the distance to White River Junction?

A. One hundred and forty-four miles.

Q. What is the length of the road next in succession?

A. Fourteen miles.

Q. Is the Boston & Lowell Corporation managed by its own board of directors?

A. I so understand it.

Q. And the next road in the succession is the Concord Railroad?

A. Yes sir.

Q. A New Hampshire corporation?

A. Yes sir.

Q. Where does that run from?

A. Nashua to Concord.

Q. What is the length of it?

A. Thirty-seven miles.

Q. What is the next road in that line?

A. The Northern Railroad.

Q. Where does that run from and to?

A. Concord to White River Junction; that is just at the line of the State.

Q. Is that a New Hampshire corporation?

A. Yes sir.

Q. Is it under a lease to the Boston & Lowell?

A. Yes sir.

Q. What is the next in succession?

A. The Central Vermont commencing at the State Line, White River Junction, and running to St. Johns, or rather to St. Albans.

Q. From St. Albans is there a branch to the right?

A. Yes.

Q. Up to Highgate, or the Canada line?

A. Yes sir.

Q. What is the length of that?

A. About thirteen miles.

Q. What is the next road in the succession from the Canada line?

A. On the other side of the Canada line? On this side of the Canada line—The Montreal & Vermont Junction Railroad.

Q. Is that in the United States, or in Canada?

A. I don't know. From Highgate to St. Johns is in United States territory, I think.

Q. They connect with the Montreal & Vermont Junction Railroad?

A. Yes sir; from St. Armand, in Canada, to St. Johns in Canada.

Q. Where does our road run, branching to the left?

A. From Rouse's Point to Ogdensburgh.

Q. To the line of the State between New York and Vermont?

A. Yes sir.

Q. What is the length of that line?

A. About eighteen miles.

Q. What is the length of the Central Vermont proper, independent of its leased lines?

A. One hundred and sixty six-miles.

Q. Does that connect with the Ogdensburgh & Lake Champlain Railroad at the State line?

A. Yes sir.

Q. That is under a lease to the Central Vermont?

A. Yes sir.

Q. And then there is a line of steamers through the lakes to Chicago?

A. Yes sir.

Q. Controlled by the Ogdensburgh Railroad and the Central Vermont?

A. Yes sir.

Q. Aside from that, is there any common control over the roads or any management that you know of, to Boston?

A. No sir.

Q. Is there any arrangement for a continuous shipment except what the joint tariff makes?

A. None that I know of.

Q. To repeat, then, now that we have our roads marked out—the joint tariff west of St. Albans, for traffic going west of there, is made by the National Despatch Line; and the tariff from, or between Boston and St. Albans, and intermediate points, is made by the roads between those points?

A. They are.

Q. And so on, on the other line, the rates between Ogdensburgh and Boston are made by the roads between those points, and to Chicago by the lakes is made by the Central Vermont line of steamers?

A. Yes sir.

Q. Take these maps, and explain them to the Commissioners, pointing out the lines of road that compete for west bound traffic from Boston?

(The witness then took the map and pointed out the various lines, saying:)

There is the Canadian Pacific Railway, from Boston over the southeastern division to Montreal; that goes out of Boston over the Boston & Lowell R. R. out of Boston; and here, from Boston to Portland and over the Grand Trunk Railway to Montreal.

Mr. Hoar. How does that go out of Boston?

A. Over the Boston & Maine R. R. and by steamer.

By Mr. Fildes:

Q. There then are the foreign railroads competing for Boston west bound traffic. What about the water routes?

A. There is a line of steamers running from Boston to St. Johns, and Boston to Halifax, and then over the Inter-Colonial R. R. to Canadian points and to Montreal.

Commissioner Schoonmaker. Is that a competing line?

A. It is a possible competitor.

Q. What other water ways are there?

IN THE S.

A. There is from Boston to Montreal by water direct.

Q. I am speaking of west bound, the Erie Canal, for instance?

A. Then there is Boston to New York and up to Montreal by canal, and by rail, by the Delaware & Hudson Canal Co.

Q. That is for Montreal?

A. Yes sir.

Q. What other water line is there from Boston to Chicago?

A. There is from Boston around the St. Lawrence and by the Erie Canal to lake ports.

Q. Are those maps correctly made up as you suppose?

A. Yes (The maps were then put into the case and filed with the clerk.)

Q. Is there a water line from Boston to Chicago which touches along at points on the great Lakes?

A. There is the Erie Canal.

Commissioner Schoonmaker. Do you mean an actually competing line, or a possibly competing line?

A. It is possible, and I am not sure but they are actual. I know their rates from New York are thirty-five to fifteen cents; and they take lower rates than that; I understand they take it from thirty to fifteen cents per 100 pounds from New York City.

Commissioner Walker. Is there any through rate from Boston to the West by the Erie Canal?

A. I don't know that there is.

Commissioner Schoonmaker. Is there any joint tariff made from New York to Chicago by that way?

A. Yes sir; but if you are speaking of any joint tariff from Boston by way of New York and Buffalo, I have not seen that.

By Mr. Fildes:

Q. Do the New England manufacturing companies have their agents in New York to sell goods delivered in New York at the New England prices?

A. They do.

Q. What is the effect on your line?

A. The effect is that they are very strong competitors for the business.

Q. Have you lost any business in consequence of that?

A. We have lost considerable business.

(Recess until 2 o'clock.)

Afternoon Session, Sept. 1.

Examination of Mr. Porteous, resumed.

By Mr. Fildes:

Q. State what lines there are from Boston to Montreal that are competitive with the Central Vermont Line?

A. The Portland Steam Packet Company, and the Grand Trunk via Portland; the South Eastern Division via Concord; the International Steam Packet Company via St. Johns, and the Canadian Pacific from there. The Halifax Steam Packet Co. via Halifax, and the Inter-Colonial from there to Montreal.

Q. How about Lake Champlain via New York?

A. That is New York competition, as against Boston; the rates from New York are on the forty-five cent basis, the same as they are from Boston; the Montreal merchant does not require to go to Boston to buy his goods; he goes where

he can buy the cheapest; if the value of the goods are the same in Boston as in New York, he will prefer Boston, if the rate of freight is the same. There is the canal. The rate on freight from New York to Montreal is very low; much lower than from Boston to Montreal.

Q. And that gets up competition and it is lost to your line?

A. Yes sir.

Q. Is there a large amount of western traffic over the Grand Trunk Railway?

A. Yes sir.

Q. Whether there was a large amount of western traffic forwarded east over the Grand Trunk Railway, and the Central Vermont, destined for transportation abroad?

A. A very large quantity.

Q. What has happened to that since the passage of this Act?

A. It has principally gone to Montreal.

Q. And is exported from there?

A. Yes; from Montreal.

Q. Down the St. Lawrence River?

A. Yes sir.

Q. Have you attempted to make a revision of your tariff rate since the passage of this Act?

A. We have; but we found that we lost Montreal when we came to look at that; for if we made the rates higher from New York to Montreal than the rates to St. Albans, we would not get the business. We have endeavored to conform to the Interstate Commerce Law as far as we knew. I would like to say to the Commission that with regard to the lake and rail business the rates of insurance are much lower from Buffalo than they are from Ogdensburg, so much so that it requires a lower rate of freight from Ogdensburg than it does from Buffalo, and that enters into the cost of running goods to Cleveland and other western lake ports.

By **Chairman Cooley**:

Q. You have spoken of the export trade falling off largely since the passage of this Act. Is that the cause of the decrease?

A. The Interstate Commerce Law?

Q. Yes. What is the connection between the falling off of the trade and the Law?

A. The rates are lower to Montreal than they are to Boston.

Q. But what is the connection between the decrease in the trade and the Law?

A. I cannot state any more than that the rates are lower.

Q. Is the state of things that exists now different from what it was formerly in that regard?

A. Not that I know.

Q. Then how do you explain it? What is the connection between the Law and the falling off?

A. The result is that we lost the business.

Q. But you spoke of the passage of the Law having some connection with it; explain that.

A. The question, as I understood it, was whether we had lost the business since the passage of the Interstate Commerce Law.

Q. You do not point out any connection between the two events, do you? (Not answered).

Commissioner Morrison. How did the Interstate Commerce Law make the loss of business that you did lose?

A. Before the Interstate Commerce Law we

competed for it. We quoted the same rates via Boston as they did via Montreal. We cannot do it now.

Chairman Cooley. I do not see that you explain it, now.

Witness. Previous to the Interstate Commerce Law, we quoted such rates as we thought proper. We don't, now; we have now to publish a tariff; that is to say, our connections west are to publish a tariff to Boston, and adhere to it. They have to establish a tariff. We did not have to publish any tariff and adhere to it previous to the passage of the Interstate Law.

Q. Before the passage of the Law then, you could adhere to your rates or not, as you pleased?

A. Yes sir.

Q. Now, you speak of competition at St. Albans, in the business from Boston and New York; what did you say about that?

A. In connection with Montreal it was: I said that the rates from Boston to Montreal could not be higher than the rates from New York to Montreal. For instance, take the Delaware & Hudson R. R. Co., they made rates from New York on a forty-five cent basis to Montreal. It was impracticable for the line from Boston to Montreal to make a higher rate because the Montreal merchant would go to New York to purchase goods instead of coming to Boston, unless he bought his goods cheaper in Boston than he did in New York.

Q. Is there any fast freight line operating from New York by way of St. Albans?

A. Yes sir; the National Despatch.

Q. Your own line?

A. Yes sir.

Q. Is it this same organization from New York, by way of St. Albans, but over different lines?

A. Yes sir.

Q. It is this same organization?

A. Yes. I am the general manager. It goes from New London, instead of from Boston.

Q. Does not your Company fix the rates by both those routes?

A. I do.

By **Mr. Edmunds**:

Q. The Central Vermont controls the New London route, does it not?

A. Yes; but not the Connecticut River, which is part of that line.

Q. Your line operates to New York City?

A. Yes that way; and from New York City.

Q. By way of St. Albans?

A. Yes sir.

Commissioner Schoonmaker.

Q. That is by the way of New London?

A. Yes; by water from New York.

Q. Have they any all rail track from New York City?

A. No sir.

Q. It is by water to New London, and thence by rail?

A. Yes.

Commissioner Walker. There is a rail route direct from New York to Montreal by way of the D. & H. C. Co., but that you have nothing to do with?

A. No sir. There is a joint line of the D. & H. C. Co. through the State of New York not subject to the Interstate Commerce Law, from New York to Rouse's Point, over the New York Central, or West Shore, and over the

Delaware & Hudson Canal Company. That goes into Montreal from Rouse's Point by the Grand Trunk Railway. They make a rate from New York to Montreal and publish a tariff. They make a rate on the forty-five cent basis, so that our route from Boston to Montreal has to be on the same basis in order to compete.

Commissioner Schoonmaker.

Q. Does the Delaware & Hudson Canal Company run cars over the New York Central R. R. from New York to Albany?

A. Yes sir; it is a joint line; they form a line to Rouse's Point, and thence to Montreal and other points in Canada, and their rates to Montreal are on the forty-five cent basis, the same as ours from Boston to Montreal.

By **Mr. Strout:**

Q. I confine your attention, Mr. Porteous, to the routes that are complained of in this petition. If I understood you the rates complained of were fixed in this way: The trunk lines met March 5, before this Act became operative, in New York, and there they discussed through rates, and agreed upon them; you were there by invitation, you heard the discussion, you knew what rate they substantially agreed upon there, and you fixed for the National Despatch Line a rate the same as that rate, less the differentials as stated by you?

A. Yes sir.

Q. That is all there was to it?

A. Yes sir.

Q. Now I want to get at the connection of the Boston & Lowell—. Does the Boston & Lowell own any stock, or is it connected in any way with the National Car Company that you know of?

A. No sir.

Q. Has it any control or management of the National Despatch Line, or its officers that you know of, as a corporation?

A. Not much!

Q. Does it appoint you as the agent? Can you say to this Commission that you are appointed by the Boston & Lowell as the agent of the National Despatch Line?

A. They were not consulted so far as I know.

Q. Do they pay your salary, as a corporation?

A. I think not.

Q. Was the Boston & Lowell present at that meeting on the 5th of March?

A. I think not.

Q. Is the Boston & Lowell a member of that trunk line organization?

A. No sir. I never knew it to be.

Q. Or had they any representative upon the general committee to establish these rates which you say form the measure from which you established the rates by the National Despatch Line?

A. They were not represented.

Q. You came back and established your tariffs, did you?

A. Yes sir.

Q. Do you issue your through bill of lading?

A. Yes sir.

Q. Were those rates shown to the Boston & Lowell; or were they consulted before you established your rates, and issued your bills of lading?

A. I have no recollection of it.

INTER S.

Q. Is not this the only connection that the Boston & Lowell had with it? You having established your tariffs in the manner you have stated, the Boston & Lowell carry the cars of the National Despatch Line Company over their road, and accept in division a certain portion of the through rate?

A. That is all.

Q. And that is all they had to do with it in any way, shape, or manner?

A. That is all.

Q. I understood you to say to the Commission that there was no written arrangement or agreement?

A. Not that I know of.

Q. And the Boston & Lowell was not a party to any written agreement or arrangement to your knowledge, was it sir?

A. Not to my knowledge.

Q. When the rates are changed do the Boston & Lowell R. R. control such change in any way that you know of?

A. I have never consulted them.

Q. They run to White River Junction. Is it within your knowledge that the rates charged by the Boston & Lowell R. R. to White River Junction and intermediate points are less than the rates charged to St. Albans, and points beyond St. Albans to the west?

A. I have been so informed.

Q. Is it within your knowledge that after the passage of the Interstate Commerce Act, the Boston & Lowell R. R. made their rates conform in every particular to that law?

A. I have been so informed.

Q. Is it not true that this Portland Steam Packet Company, having a line of ocean steamers from Boston to Portland, from that point forward freight over the Grand Trunk Railway Co. to Montreal, Detroit, and other points west, and is it not true that they adopt the rates charged by the National Despatch Company?

A. They do.

Q. And do they compete with the National Despatch Line Company?

A. They do.

Q. And do not they compete with the National Despatch Line for freight at those identical rates?

A. They are prepared to compete.

Q. They do compete, do they not?

A. Yes sir; all the freight that is offered them they take at National Despatch rates.

Q. I have confined myself to the Boston & Lowell. Is not this same statement of fact true in relation to the Concord R. R., one of the parties defendant here; that is, as to any participation in making the rates?

A. The Boston & Lowell R. R. and the Concord R. R. are the same.

Q. Is it not true as to the Northern?

A. I so understand. I have never consulted them.

Q. Is it not true that the Northern R. R. has been under a formal lease to the Boston & Lowell, and is operated by it as a matter of fact?

Mr. Hoar. We do not deny that.

A. So far as the tariff of rates are concerned, they have never been consulted about making the rates of the National Despatch tariff, by me.

Q. And as a corporation, has the Grand Trunk Railway been consulted as to the rates, by you?

A. I have no recollection of any conversation with any of the officers about it; I understood the basis upon which the tariff was to be made up, and made up the tariffs and supplied them with copies.

Q. Do I understand you to testify to the Commission that those rates that were established on the 5th of March, and the differentials, that they were agreed to by the Boston & Albany R. R., the petitioner in this case?

A. I so understand it; on that day, and before, for many years before.

Q. I am dealing with this case before the Commission, as charged in this petition?

A. I so understood it at that meeting held at New York, that the Chesapeake & Ohio R. R. Co., the line passing over there, and the line known as the National Despatch Line were at that meeting allowed certain differentials on which the tariff of through rate by the National Despatch Line was made up, and that the Boston & Albany R. R. was there represented.

Chairman Cooley. I should like to know about the organization, etc., of this National Despatch Line.

Mr. Strout. We claim that there is no organization, but that the whole matter consists in simply what the witness has stated.

Chairman Cooley. Let me ask a few questions of the witness.

By the **Chairman:**

Q. Will you tell us what you understand the organization of this fast freight line is? How is it formed? What is the organization of the line? How is it made up? How did you get your authority in the matter?

A. I was appointed for the National Despatch Line by Governor Smith.

Q. Who is the National Despatch Line?

A. It is a fast freight line.

Q. Who composes it, and how do they become members of it?

A. There is no organization, it is a trade mark.

Q. Trade mark! There must be some persons to it; a trade mark does not do all this business?

A. It is all done through me.

Q. How did you come to stand for a trade mark?

A. I communicate with the parties in interest.

Q. How do you come to be in a position where you do communicate, and represent the National Despatch Line?

A. Before I became manager of the fast freight line—

Q. How did you become manager?

A. I was appointed by Governor Smith.

Q. Did he create this despatch line?

A. He created my appointment.

Q. He gave you the appointment?

A. Yes sir.

Q. In giving you the appointment, what or whom did he represent?

A. I never asked him.

Q. Did you go and take possession of a great number of cars without ascertaining whether the person telling you, had authority? Don't you understand that there is some def-

inite authority back of you that has the right to put you in this position?

A. Governor Smith has. He has the right.

Q. What was his authority?

A. The National Car Company authorized him.

Q. Do the National Car Company own all these cars?

A. They own a large number.

Q. Who represents the others?

A. The Grand Trunk Railway Company have 700 cars.

Q. Does any other railroad company have any?

A. Yes sir.

Q. In giving you authority did these roads have any voice in the matter, the other owners of cars, besides the car company?

A. They ought to have, but I have not consulted them.

Q. You don't know whether they were consulted in regard to your appointment?

A. I understood that they were.

Q. That is, that all these owners of these cars concurred in your being selected for this place?

A. Yes sir.

Q. So that you act for them all?

A. Yes sir.

Q. How long have you been the general manager of this line?

A. Eight months.

By **Mr. Strout:**

Q. As I understand, the National Car Company is a distinct corporation?

A. Yes sir.

Q. And that is the owner of these cars?

A. Yes sir.

Q. Will you state who owns the cars operated by the National Despatch Line?

A. The National Car Company, and the Grand Trunk Railway Company most of them.

Q. Who owns the balance?

A. The Chicago, Pekin & South Western Railroad own fifty.

Q. Neither the Boston & Lowell, nor any of these defendants own any, do they?

A. None.

Q. Not at all?

A. No sir.

Q. Now, is it not true that that National Car Company desire to have occupation for their cars?

A. Certainly.

Q. And is it not further true that the stockholders, whoever they are—do you know who they are?

A. I know but very few of them.

Q. But they run their cars under the name of the National Despatch Line, do they not?

A. Yes sir.

Q. And you are appointed by Governor Smith as the agent of that line?

A. Yes sir; and I get the traffic for them.

Q. You get the traffic that pays the compensation for the use of the cars?

A. Yes; that is how they live.

Q. Is Governor Smith a large stock holder in the car company?

A. I don't know whether he owns a dollar.

Q. That is an independent organization, and if it is a carrier, it is a different carrier from any named in this petition?

A. Yes sir.

Q. And the Boston & Lowell issue this forwarding receipt which is in evidence?

A. Yes sir.

Q. And this forwarding receipt states upon the receipt that it forwards it and delivers it to the next carrier, and that its liability ceases, and that they become a delivering agent, do they not?

A. Yes sir.

Q. And do they occupy any other position?

A. No sir.

By **Mr. Hoar**:

You say that you make the rates for the carriage of freight to the west over the Boston & Lowell R. R.

A. Yes.

Q. And you do that, as I understand without any consultation with any of their officers?

A. I do.

Q. From whence do you derive your authority to charge tolls over that road, or charge rates for the carriage of freight over that road?

A. From the National Despatch Line.

Q. Of which they are a part?

A. I cannot say that; the goods are delivered at the Boston & Lowell depot; that is all I can say.

Q. Suppose the Boston & Lowell R. R. objected to the rates you made, what should you do?

A. I don't know; that is a conundrum I can't answer; I know what I would do, but I don't want to say it before the Boston & Albany people.

Q. What is that?

A. Find some one else.

Q. Is it not therefore a fact that you stand in such relation to the Fitchburg R. R. and the Boston & Lowell R. R. that you, in effect, dictate what rates they shall take?

A. I never undertake to dictate.

Q. Well, settle the rates?

A. I arrange the rates, I make the rates, and they have been always carried out.

Q. But you do not consult with either of those terminal roads?

A. No sir.

By **Commissioner Walkers**:

Q. This bill of lading issued by the Boston & Lowell that has been put in evidence is that used upon freight received by the N. D. Line at all?

A. Yes. (Taking the bill of lading, and indicating) This upper part, here, down to the word "shipper" is left with the Boston & Lowell road by the shipper for way billing purposes; this lower part is handed to the shipper and signed by the agent and that is taken to the National Despatch Office, in the City of Boston, or elsewhere, and they get a National Despatch bill of lading; this document will carry the freight to White River Junction, there to be handed over to the Central Vermont R. R. and the shipper won't be satisfied when the freight has to go to Montreal, say; so he comes to our office and hands us this document and we give him a National Despatch bill of lading to satisfy him.

Q. What is the course of business upon freight that you solicit that comes to your office first?

A. It is the same; we solicit it, and go and

tell them to deliver it at the Boston & Lowell R. R. freight depot; he does so and gets this receipt and comes with it to our office and gets his bill of lading; they do not solicit business, that is, the Boston & Lowell do not solicit business.

By **Mr. Hoar**:

Q. It is the employees of the Boston & Lowell R. R. that attend to the way billing of the freight over their road?

A. Yes.

Q. None of your employees are concerned in handling the freight?

A. No sir.

Q. The employees of the National Despatch Line are solicitors for the freight?

A. Yes sir.

Q. But do nothing about handling it upon the railroads?

A. No sir.

Q. And the way bill is issued by the Boston & Lowell Railroad?

A. That way bill is made by them.

Q. Is that the way bill (indicating)?

A. No sir; it is a way bill that accompanies the freight; it is the National Despatch Line way bill.

By **Mr. Schoonmaker**:

Q. These railroads making up the National Despatch Line, do they have officers and officials along the line at any point?

A. They do at the principal points, Montreal, Detroit, Toronto, etc.

Q. Along the line of the roads between Montreal and Boston, do the officers of the various railroads act as officials of the Despatch Line?

A. Yes sir.

(The witness took a list of agents of the National Despatch Line, and marked the word "no" against those who are not railroad agents.)

By **Mr. Hoar**:

Q. If a shipper whose freight has not been solicited by the N. D. Line goes to the Boston & Lowell Station and tenders freight to be carried over their line and connecting roads to the West, What happens to him in the way of documents?

A. The shipper is allowed to leave his freight and he is furnished with a receipt for it, and he is sent to the National Despatch Line office for a bill of lading.

Q. And they quote the rates which are the National Despatch Line rates, to him?

A. I don't know what they do.

Q. They cannot send it over your line, except upon those rates?

A. No sir.

Q. And it is way billed at those rates?

A. Yes sir.

Q. By the Boston & Lowell R. R.?

A. By the employees.

Q. You have spoken about the Delaware & Hudson Canal Company as being a competitor with you for Montreal business?

A. Yes sir.

Q. Is that letter in your writing (handing letter to witness)?

A. Yes; that is my writing.

Q. At its date?

A. Yes sir.

(Letter read aloud, put in evidence and filed with the secretary.)

Q. Was that agreed on between you and them?

A. No sir.

Q. What rates did you thereupon make?

A. Forty-five cents.

Q. You suggest fifty-three cents, etc.?

A. Yes, for them, for Mr. Crawford, between New York and Montreal.

Q. What rates did you thereupon make?

A. I made on the forty-five cent basis.

Q. Instead of fifty-three cents?

A. Yes sir.

Q. Was that a rate under the rate made by the New York Central to go by the Del. & Hudson Canal Co.?

A. No sir.

Q. At that time?

A. No sir.

Q. What was their rate?

A. Forty-five; they never had over forty-five cents.

Q. At what date do you fix it that the New York Central rate was forty-five cents?

A. I fix it then, the 5th of April; I suggested to them to put them up, so as to have fixed rates, and so as not to compel me to put them down; if their rate was forty-five cents, and I had to make a differential of 8 cents to get part of the business, I should make my rate thirty-seven cents; I wanted them to go up to fifty-three cents so that I could get my share of the business.

Q. They made a rate of forty-five cents?

A. Yes sir.

Q. You made the same rate?

A. The same rate was made before, and I did not change it.

Q. So that your rates were identically the same?

A. Yes sir.

Q. Have they changed theirs?

A. Not that I know of.

Q. In answer to a question by Mr. Fifield, you said your all rail route to the West is the longest route?

A. I said it was a longer route.

Q. And that was the reason you charged the differentials?

A. Yes sir.

Q. The basis of the charging of differentials was that you had the longest route in mileage, was that it?

A. The basis was because the trunk lines allowed the differentials.

Q. What was the basis on which you claimed it? Because your own was the longest line?

A. Claimed it! I was not in the discussion when it was allowed to us, the original discussion.

Q. Do you understand it was based upon the fact that you were the longest line?

A. Yes sir.

Q. And that you took a long time to carry the goods?

A. Yes sir.

Q. Is that the fact?

A. I have no doubt of it.

Q. Longer than the trunk lines?

A. Yes sir; longer than the complainant, the Boston & Albany.

Q. Did you know of the issuance of that circular about the time your fast train made

over that route? (Handing a printed circular to witness.)

A. This is 1886; I may have seen copies of that; probably I did.

Q. Does that correctly represent the time occupied?

A. I don't know; I don't think so.

Q. Does it make it too long or too short?

A. Too short; I wish we did make that time; I would get more business.

Q. Do you solicit freight under these advertisements?

A. No sir; I haven't seen this, I don't know that I ever saw it. I have not seen it lately. I know.

Q. That makes it in about four and a half days?

A. Yes sir; that does not come under my business, but if they would keep up the time, I would get more business.

Q. How long have you been connected with the Central Vermont Railway?

A. Eight months.

Q. You were connected with the Grand Trunk Railway before that time?

A. Yes sir; for thirty-two years and a half.

Q. You were the general freight agent of the Grand Trunk Railway?

A. I was for ten years.

Q. Can you give me the rate—you say a forty-five cent basis, what do you mean by that? I suppose you mean that is first-class.

A. Yes sir.

Q. Can you give me the rates the New York Central made to be carried over the Delaware & Hudson Company for the other classes of freight, other than first class?

A. It would only be approximate; I have only got it in my mind now.

Q. Let me read them: 45, 40, 35, 30, 25 and 23, is that right?

A. Yes; I think it is.

Q. You do not follow that rate through the classification?

A. No sir.

Q. When you say you adopted the 45 rate you adopted that on first class?

A. Yes sir; and took the differentials on the other classes of tariff.

Q. What was the rate on the second-class; where theirs was 40. What did you make?

A. 40, 30, 23, 20, 18.

Q. Then you did not as a matter of fact make the same rate; whenever they adopted a 45 cent basis you took the differentials out on all classes under second—on all the four lower classes?

A. Yes sir.

By Mr. Edmunds:

Q. In those rates you are now speaking of besides this rate as printed, did you allow any rebates, discounts, or drawbacks, or anything of that nature, to the shipper?

A. No sir.

Q. So that he actually and finally pays without contrivance to make it easier for him, exactly what is stated in that print?

A. Yes sir; or other prints; this as far as it goes.

Q. So that that is the positive sum that the shipper has to pay finally, for good and all, and

without any benefit back to himself, in any shape?

A. If it has not been amended.

Q. That is, it is that way, if it is not otherwise?

A. Yes; as it is published and printed.

Q. You have said that you do not get any foreign freights now to speak of since this Law came into operation; what was the rate last year from Detroit to Boston for exportation?

A. Whatever we could get. All the money we could get; it would vary.

Q. What was the highest rate?

A. On grain the highest rate would be nineteen and a half cents.

Q. What would be the lowest rate?

A. Twelve and a half.

Q. What has been the highest rate this year from Detroit to Boston, on grain?

A. Nineteen and a half.

Q. So that you get down this year to exactly where you were last year when you were at concert pitch?

A. Yes sir.

Q. We desire a copy of this way bill put in evidence. Now, suppose, Mr. Porteous, that your National Despatch fast freight line concern gets a train load of your fast freight thrown off the track between Boston and Lowell; who foots the bill to the shipper?

A. I would collect from the Boston & Lowell R. R. Co. The bill would be sent to me by the shipper or consignee; he would send the bill, and I would do what I could to collect it from the Boston & Lowell R. R. Co.

Q. Do you hold yourself responsible?

A. Not much!

Q. If anybody was to be sued, it would not be you?

A. I hope not.

Q. It would be the National Despatch Company, would it not?

A. I think it would.

Q. Who would be served with process in that case?

Mr. Strout. How does he know? If the gentleman will refer to the Mass. reports, he will see.

Q. Suppose you thought it was an unjust claim, what would you do?

A. Decline to pay it.

Q. Has there ever been an instance in which you, or any officer of the National Despatch Line, or the line itself have been sued for the loss or injury of freight?

A. Personally?

Q. Just as I put the question, personally or as a corporation?

A. I don't know that we allowed our cases to go to suit.

Q. Is there any other officer of this National Despatch Company, or line, except yourself, and those employed under you?

A. I have an auditor and claims agent.

Q. Do you appoint him?

A. He was there when I went there. I suppose if a successor was to be appointed that I should appoint him.

Q. Is he under your orders?

A. He takes orders from me.

Q. Is he under the orders of anyone else that you know of?

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A. No sir; he is there independent. If he is not under my orders he is independent.

Q. Well, take your claims agent; who appoints the claims agent?

A. That is the same man; auditor and claims agent.

Q. Is there any treasurer?

A. I don't know him.

Q. Is there any treasurer, I asked. Do you know whether there is any treasurer or not?

A. I don't know of any such officer.

Q. You have never heard of such a one?

A. No sir.

Q. Is there any president?

A. I don't know.

Q. You never heard of one?

A. No sir.

Q. Is there any board of directors?

A. I don't know them.

Q. Then all that there is of it on the face of the earth are those railway corporations mentioned, and their officers, and their line of cars, whoever owns them, that run?

A. Yes sir.

Q. Now, about the cars. You say the National Car Company, a Vermont organization, or corporation is the owner of a very large number of cars. Who pays that company for their car service?

A. The roads over which they run.

Q. You do not?

A. No sir.

Q. You do not keep the accounts?

A. No sir, they keep them themselves.

Q. The roads over which the cars run, then, form the National Car Company?

A. They loan the cars to the railroads, and they run them over their roads for hire. The National Car Company send their cars over the roads for hire.

Q. Do they pay for the use of the road, or does the railroad pay for the use of the cars?

A. I should say they got pay for the use of the cars.

Q. Then the railroad companies pay the car company for the use of the cars that are used on their roads?

A. Yes sir. I should think so.

Q. And so with each of the roads that constitutes a link in the connection between Detroit & Boston?

A. I should say so.

Q. And the same is done with the Grand Trunk Railway as far as it owns cars, I suppose?

A. Yes sir.

Q. And with everybody else that owns cars?

A. Yes sir, as I understand it.

Q. I understood you to say before, in answer to a question of mine, that while there were no written contracts between these roads in the line doing this through business there were division lists on paper between them.

A. Yes sir.

Q. What is a division list?

A. It shows the various proportions of the through rates.

Q. Have you one of them?

A. No sir.

Q. Can you get one?

A. Yes sir, a hundred thousand.

Q. Will you get some and bring them here for the Commission?

A. Mr. Fifield is going to produce them.

I will supply them if the Commission require it. (Mr. Strout objects that the divisions are immaterial).

Mr. Edmunds. It would have a tendency to show to the unsophisticated mind something about this car company or this National Despatch Line.

Mr. Strout. (After discussion.) We withdraw any objection to the papers going to the Commission for their use.

Chairman Cooley. We think it very proper to have the papers, the law contemplates entire publicity in regard to rates— We think we are entitled to call out this evidence, and that we are entitled to have this information ourselves, without reference to this suit.

By Commissioner Walker:

Q. Whether or not these 3,750 cars are enough to do all the business that the National Despatch Line takes under this bill of lading, or whether you use other cars?

A. We are not particular; we use what we can. If our cars happen to be west, and we want other cars, we get them.

Q. Whom do you get them off?

A. Anybody that has them.

Q. The Boston & Lowell, or any other road where the goods are taken?

A. Yes, wherever they are wanted.

By Mr. Strout:

Q. I suppose that is simply upon the general principle obtaining between railroads; when your cars are all in use you take other cars and pay the car service?

A. We take other cars.

By Mr. Hoar:

Q. You say you get them; who gets them, do you do it?

A. Sometimes.

Q. Don't you leave it to the Lowell Road as to which car this freight shall be put in?

A. I have never had any correspondence with them about it.

Q. Don't you leave it to them?

A. I have not said anything about it; I have had no discussion with them about it.

Q. They put it into such cars as they may have upon the track?

A. As far as I know.

By Mr. Edmunds:

Q. You spoke about some paper in existence, or papers, respecting the transactions between these various companies concerning this business, besides the division lists?

A. The tariff rates,—they are in; the commissioners are supplied with copies of the tariff.

By Commissioner Bragg:

Q. If a shipper in Detroit should offer the National Despatch Company there a shipment from Detroit to any point on your line, he could get it shipped, could he not?

A. Yes sir.

Q. If he wanted to ship from Detroit by the National Despatch Company to points in New York, between Ogdensburgh and New York, could he do it?

A. No sir; it would be a difficult matter to do it. It could be done, but it is not usual, not by way of Ogdensburgh.

Q. It could be shipped from Detroit or Chicago to points in New Hampshire and Vermont?

A. Yes sir.

Q. A shipper in New York could get freight shipped to points in Vermont?

A. No sir, it is not in his line of business.

Q. Whose?

A. The agent of the National Despatch Line.

Q. He could ship by way of New London?

A. No sir; not by any line; the National Despatch agent would not do it.

Q. Would not give a rate from New York?

A. No sir.

Q. From New York to Montreal, would he give a rate?

A. Yes; but you said to points in Vermont.

Q. From the City of New York to any point in Vermont or Connecticut, they would not give him a rate?

A. No sir.

Q. Why not?

A. He is not the agent.

Q. He is the agent for Montreal shipments, but not for any intermediate points?

A. No sir.

Q. How is it from Boston to points in Vermont?

A. Our line is not from Boston to Vermont; it is from Boston to Montreal.

Q. Don't they go through Vermont?

A. Yes sir.

Q. That is what I am talking about. Don't it seem to you a little funny, Mr. Porteous, when shippers in Detroit and Chicago can get freight shipped over your line to points in Vermont, that if he lived in Boston he could not do it?

A. I don't understand you; he can.

Q. I thought you said just now that he could not?

A. You were talking about New York.

Q. I am talking about Boston. If a shipper in Boston offers freight by the National Despatch Line to any point in Vermont, or south of St. Johns, you won't take it?

A. No sir; we don't take it by the National Despatch Line.

Q. You will take it for west of St. Johns from Boston?

A. Yes sir.

Q. Don't it seem a little funny that when a shipper in Detroit or Chicago can do these things anywhere along your line, and all over your line, that a man in Boston can't do it with west bound freight?

A. It does not seem funny to me.

Q. You say that after the passage of the Interstate Commerce Act you went to work and conformed to that Law with your rates?

A. Yes sir.

Q. What changes did you make in your rates at Nashua, N. H., from Boston, to Nashua?

A. We don't run from Boston to Nashua.

Q. Does not your road run by there?

A. The National Despatch Line does not; that runs from Boston to St. Johns, and west.

Q. Does it not go right by Nashua?

A. Yes sir.

Q. When you made it conform to the Interstate Commerce Law, you mean between Boston and Montreal?

A. Yes sir, and others.

Q. But not at other points between Boston and Montreal?

this National Despatch Line with these railroads, are the tariff rates and the division lists, that you know of?

A. That is all.

Mr. Edmunds. We would like you to produce the division lists for a year back, so as to show the relation between the business of last year and this with respect to its operation, and reasonableness.

By Mr. Strout:

Q. Can you ship from Boston to Albany by the Blue Line?

A. Not that I know of.

Q. Or the Red Line?

A. Not that I know of.

Q. This Despatch Line is for through and not for local traffic?

A. It is for through traffic.

Q. And not for local traffic at all?

A. No sir.

Q. And no through line is for local traffic?

A. No sir; it is for through traffic only.

Q. And that is one advantage in shipping by the through line; that you get despatch as to time?

A. Yes.

By Mr. Field:

Q. Do any of the Boston & Lowell cars do this through business?

A. Not that I know of; I do not think they would allow them.

By Mr. Strout:

Q. The Boston & Lowell, Concord, and Northern,—are any of their cars allowed to go West?

A. No sir.

Q. Unless anybody steals them, or takes them?

A. No sir; that is all; they are not built for that purpose.

By Mr. Field:

Q. Are many of those cars refrigerator cars?

A. A large number of them are.

Charles S. Mellen. Called on behalf of complainants; sworn, testified as follows:

Examined by Mr. Hoar:

Q. Are you the General Superintendent of the Boston & Lowell R. R. Co.

A. Yes sir.

Q. Were you in 1886?

A. Yes sir.

Q. Did you sign that time table of fast freight trains to the West. (Handing same to witness.)

A. I did not.

Q. Who put your name on it?

A. I don't know; I have seen the same thing; I do not know where it was printed or published.

Q. What did you do? Repudiate it?

A. No sir; I don't know that it is correct; I should not say that it was.

Q. Do you know whether freight was solicited upon this time table?

A. No sir; I know nothing about it, only that there was such a circular issued, and that a lot of them were sent to me.

LATER S.

do not always succeed.

Q. What is the time in that?

A. Four days and a half; that is calculated to be a schedule of one train each way that is 'M.' and 'B.' freight, refrigerator cars, butter and fresh beef, eggs, cheese, any freight that requires special care, and special temperature; it does not apply to general freight; that does not cover one quarter part of the business.

Q. Now take the general freight, what time do you make?

A. I don't know, I never gave the matter any consideration; our line only runs 144 miles; when we get through we let the other man take it and he gets it through when he can. We are only interested as far as White River Junction; I could not tell you what time a shipment leaving Boston would arrive in Chicago, if you should ask me, or if any customer should ask me. That was calculated to be a particularly fast train; the ordinary train would be a day or a day and a half longer. That is only an estimate, and not from any particular knowledge.

Q. How long have you been connected with the Boston & Lowell Railroad Company?

A. Since October, 1880.

Q. How long a time has the National Despatch Line existed?

A. Ever since I have been connected with railroading; it was there before I came there, eighteen years ago, in 1860.

Q. What is the connection of the Boston & Lowell Railroad with it?

A. It is one of the roads that it runs its traffic over.

Q. What authority do they have to make a rate over your road?

A. None; except that they have done it and we have not prevented it.

Q. You have assented to it?

A. Substantially so.

Q. It is on an understood or agreed division?

A. It is on a division that we had no part in making.

Q. You take it?

A. Yes; we take it. I have never been able to understand it; I know how we arrive at our proportion; I know what it is, but I don't know how the parties who originally agreed what that proportion should be, arrived at it; it was there when I came on the road eighteen years ago.

Q. Is that a fair proportion for your road?

A. I never felt so.

Q. Have you objected to it?

A. Yes, and tried to get more and have got more at different times.

Q. When you made that objection, to whom did you make it?

A. The Central Vermont Railroad Company.

Q. And the authority to raise it came from that railroad?

A. All the divisions so far as proportion this side of St. Johns, that is the connection with the Grand Trunk Railway, are all arranged between us and the Central Vermont; that is the road we deal with entirely.

Q. When freight is brought to your station

in Boston for shipment West if it is prepaid you receive the whole money?

A. Yes sir.

Q. What do you do with it?

A. We account to the Central Vermont Railroad for it, and they account in turn to the Grand Trunk Railway and they to the Chicago & Grand Trunk Railway, and so on to destination.

Q. Do you pay any part of the expenses of the National Despatch Line?

A. No sir.

Q. You do not contribute to Mr. Porteous' salary?

A. No sir, not at all.

Q. And do not pay any of these agents?

A. No sir.

Q. Is not the cost taken out in any way out of the money?

A. Not out of us.

Q. And it is not taken out of the gross receipts?

A. No sir. The expenses of the line, so far as they come under my knowledge are not made in the division way bills.

Q. The gross amount received from the shipment, from the consignee or shipper, on delivery, or at destination, is subjected to this charge for car service, and nothing else?

A. The roads pay the car service; they do not necessarily pay it out of money received for the freight, because if freight is taken at a less rate we should have car service to pay, whether we got anything or not; the freight money goes into the general treasury and the car service is paid out of the treasury; we have nothing to do with the expenses, and pay no part of it.

Q. How are they provided for?

A. I don't know; they are provided by somebody besides us.

By Mr. Strout:

Q. Is not this the fact that those expenses are made up upon vouchers (I mean salaries and expenses and everything else) and paid by the roads west of the Vermont Central, and perhaps including the Vermont Central?

A. You are asking me a question I could not answer; prior to 1881 we used to pay our proportion of the expenses, since that time we have had nothing to do with them; they have been assumed by somebody; I suppose I know; I have an idea.

Mr. Edmunds. They are paid out of a railroad treasury somewhere?

A. Unquestionably.

Mr. Hoar, resuming:

Q. There is a route over your road via the southeastern?

A. Yes sir.

Q. What is the comparative bulk of Montreal business by that road and by the Central Vermont?

A. I rather think the line by the Passumpsic Railroad would take full the larger proportion; 50 or 60 per cent of the tonnage to Montreal.

Q. Who fixes the rates by the Passumpsic Railroad?

A. They are all fixed by agreement of all the roads in the line; Mr. Webber acts as the agent in fixing the business.

Q. They are the same as the Central Ver-

mont—you do not make any competition in rates?

A. No sir; we are interested in both lines and like to keep the rates even.

Q. I suppose it is the fact that the greater volume—almost the entire volume of Montreal business from Boston goes by one of those routes?

A. I should assume 9-10 and perhaps 90-100 by those two routes; but I don't know; that is a matter of assumption only.

Q. You never knew of any business to go round by Prince Edward Island steamers and the InterColonial Railroad?

A. I don't know from personal knowledge of any; I would not say that there was not any; it is not an impossible nor an improbable thing; I never had any personal knowledge of it.

Q. Did you ever make any estimate from figures or examination into the question of division of the bulk of the business between the two routes operating over your road?

A. I have at one time.

Q. When?

A. I could not say; I am always figuring to see about the business—how it is going, and how we stand; I could not tell the specified time; it is my impression that a little more than 50 per cent goes by way of the Passumpsic Railroad, and there might be a slight percentage in favor of the Central Vermont; it is very even I should say; my impression is that it would not exceed 60 per cent by the Passumpsic Railroad, and it might be forty-five and fifty-five; I should call that pretty nearly even.

By Commissioner Walker:

Q. That is to Montreal?

A. Yes sir.

Q. How is it west of that?

A. Oh, the Central Vermont do 9-10ths of it; the other line does very little.

By Mr. Fifield:

Q. Does the Grand Trunk Railway form part of this Passumpsic Line to Montreal?

A. No sir, not now; it has until recently; it goes by the way of the Canadian Pacific.

Q. That is an English corporation?

A. Yes sir.

By Mr. Strout:

Q. The Canadian Pacific have no roads within the United States at all?

A. Not that I am aware of.

Mr. Edmunds. The Grand Trunk—part of its main line is in the State of Vermont, and in New Hampshire and Maine. I suppose the Commission will take notice of all such general facts as that.

Mr. Strout. So far as United States business is concerned we stand on all fours with the United States roads.

Mr. Fifield. These corporations in the United States that the Grand Trunk Railway controls—are they American corporations or English?

Mr. Strout. I will tell you how it is. The Atlantic & St. Lawrence Railroad extends from Portland to Island Pond. That was incorporated by the Legislatures of Maine, New Hampshire, and Vermont. The Grand Trunk Railway took a lease of that road, and operates it under a lease; it also operates a road from the Junction to Lewiston.

Mr. Edmunds. Is not this lease really a mere technical form to observe corporation laws and jurisdiction?

Mr. Strout. No sir; it is a lease in the ordinary form, the same as any railroad lease; it is authorized by the Legislature of Maine.

Mr. Edmunds. A set of different stockholders who receive the dividends?

Mr. Strout. Yes, entirely; and the organization is kept up.

Mr. Fifeild. The Grand Trunk Railway Company is a foreign concern?

Mr. Strout. Yes.

By Mr. Hoar:

Q. Where is the Southeastern; is not that partly in the States?

A. No sir; it is not at all in the States; it is Canadian. They lease a road that runs to Newport. It is a divided road; on account of the contour of the country, ten miles of the Southeastern Road has to be connected by a road in the States. They run down into Vermont and back into Canada. The Newport & Richford Road is in between two sections of the Southeastern, and they arrive at the eastern terminus,—it carries them to Newport.

Q. When you say that the Southeastern is a foreign corporation, you make it with this qualification: that they operate part of the road in the United States?

A. Yes; the Southeastern is entirely in Canada, and entirely a Canadian corporation.

Mr. Edmunds. What is the name of the road from Newport?

A. Newport & Richford. That is also in two sections; part of the Southeastern joins that.

Mr. Edmunds. It is one management by the Southeastern to Newport?

A. Yes sir.

Mr. Edmunds. What of the Passumpsic?

A. The Boston & Lowell have a lease of the Passumpsic.

By Mr. Strout:

Q. You are the General Superintendent of the Boston & Lowell?

A. Yes sir.

Q. And you have the general control and management of that road to-day?

A. Yes sir.

Q. Now, Mr. Mellen, I want to ask in relation to the National Despatch Line. As I understand you to say, to start with, the Boston & Lowell Railroad haul the cars of the National Despatch Company over its road to White River Junction?

A. I stated that from the fact that we have had, until last July, a lease of the Northern Railroad. We haul the cars forty miles from Boston to Nashua. There we deliver them to the Concord Railroad. They haul them thirty-five miles to Concord. There they are delivered to the Northern, and they haul them seventy miles to White River Junction, to the Central Vermont Railroad. Prior to the first of July we hauled to Nashua, and they took them to Concord; and then we hauled them to White River Junction.

Q. You have a line that did connect, prior to the first of last July, by way of Hancock Junction?

A. Yes sir.

Q. To Peterboro?

A. Yes sir.

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Q. And so to Concord and by the Northern?
A. Yes sir.

Q. With the exception of hauling the cars of freight over our line and delivering them to the next carriers, and receiving the differential part of the through compensation for hauling that freight, has the Boston & Lowell, directly or indirectly, anything to do with it, or is it any part of the National Despatch Line?

A. I do not understand that the Boston & Lowell Railroad is any part of the National Despatch Line at all; I do not understand that the National Despatch Line is anything but a name, or trade mark. I do not understand that it has any organization, president, directors, treasurer, or anything. It is merely a name under which the business is done. That has been my understanding of it, and therefore we could not be part of a name.

Q. Is there any agreement, to your knowledge, existing by which the Boston & Lowell Railroad forms a part of the National Despatch Line, or any organization by that name?

A. Not by that name at all; no sir.

Q. I think you have stated that we had nothing to do with paying Mr. Porteous?

A. The only way that we have any connection in the business of the National Despatch Line is this: When a bill of lading is issued from Mr. Porteous' office, we bill the freight and make the way bills, making the divisions so far as they are made on the way bills, load the freight into a North Division car, if we have one, and send it along to our next business connection, with the way bill and charges. On the return, when the freight arrives at Nashua, the Concord Railroad delivers to us the east bound freight, and we take it to Boston and collect the charges. We pay to the Central Vermont Railroad any balance that there may remain, over and above our proportion in the division of the freight earnings, on the freight we collect.

By Mr. Hoar:

Q. Do you not always wait for this bill of lading from the National Despatch office if the freight has arrived?

A. We wait for the bill of lading, I understand, I do not personally do this; before the freight goes forward we receive the bill of lading, and when the rates were special. We have not done that since the first of April, but when the rates were special we noted them; but we should now way bill it, because there is an established tariff now, and there did not used to be.

Q. This is done through whom?

A. Mr. Turner, the agent at Boston.

Q. He is the general traffic manager?

A. Yes sir.

C. Did you have to do, or did the Boston & Lowell have to do with fixing these rates, or maintaining these rates that are now in force?

A. The only thing I could say that we did, was this: At the time we fixed our tariff, to go into effect April 5, we made our rates to White River Junction on our road; we notified all the parties that we were in business with that we would bill no freight and receive no freight for billing to any point beyond that that was not as high or higher than the rate to White River Junction, which was our term-

inus, thereby complying with the fourth section of this law; we assume no responsibility for any rates beyond our road and we have nothing to do with making them.

Q. Do you have anything to do whatever, or did the Boston & Lowell have anything to do with fixing the rates beyond St. Albans west, or beyond Ogdensburgh west, as complained in this complaint?

A. The only thing we could have to do with them would have been to insist that they should be in excess of our terminal point, in excess of rates in force at that point.

Q. Do I understand you to say to the Commission that when you fixed your rates to White River Junction, that you fixed such rates as should be within the terms of the fourth section of the Interstate Commerce Act?

A. They are progressive. There is no point south of White River Junction but what is at an equal or less rate than the White River Junction rates; that is, there is no rate in excess of the rate for White River Junction for any point south of that place, now.

Q. Can you give the Commission, for the purpose of a comparison with the rates named in this petition, can you give the rates on the six classes of freight established in accordance with this Act, as you have stated, by the Boston & Lowell?

A. I could not, but if there is a tariff here it will show.

Q. Do you know, take the highest and lowest, whether our first highest class is thirty-six cents and the lowest 12½ cents?

A. I do not. I should not undertake to state any rates in figures. I merely know that fact that the rates are not less on freight to White River Junction from Boston, than they are to any intermediate point; that is, they were not at the time I was in consultation when the tariffs were made up, and that we did not take any business in excess of that; if it has been done it is without my knowledge.

The Chairman. I do not understand that any such claim as that is made.

Mr. Hoar. We do not make any such claim as to that.

Mr. Strout. I desire to have it appear that when the Boston & Lowell Railroad made up its rates to White River Junction and points intermediate between White River Junction and Boston over that line, that it did not make those rates at a less figure than any rate that is charged beyond, either to St. Albans or Detroit; we conform to the Law, that is what I want to show.

Mr. Edmunds. What I wish to know is this—Mr. Mellen has stated what their rates are as put forth by his road. I want to ask him in that connection:

Q. Suppose, taking the first class, or second, or any of it, supposing the rate to be thirty cents, or whatever it may be to White River Junction; what do you actually get for carrying the same kind of freight to White River Junction when it is going on to Detroit; and when you come to divide it on these division lists that have been spoken of, with the other roads, what is your share?

A. You say if the rate is thirty cents from Boston to White River Junction, and then if the

same rate was extended from Boston to Detroit. I want to understand you.

Q. No sir; what I mean is this—supposing under your published rates you carry a car load of chairs, for illustration, made in Boston, to White River Junction, there to be unloaded and go into consumption at that point, you would get a certain sum?

A. Yes sir.

Q. Now, in the same train you have another car load of chairs over the National Dispatch Line, this fast freight concern consigned to Detroit. When you come to get your share of the freight money for carrying those chairs from Boston to Detroit, how much do you get for the Detroit car load of chairs as compared with the White River Junction car load of chairs?

A. For an estimate I should say from 10 to 15 per cent of what we should get if it went to White River Junction.

Q. That is to say you would get a great deal less?

A. Yes sir; not a quarter as much beyond any question; if the rate was \$100 on a car load of chairs to White River Junction, it might be \$100 say, to Detroit; in the case of the Detroit shipment we might get \$10; while to White River Junction we should get the whole \$100.

Q. So that your road does carry the same sort of freight under the same physical conditions that is to be delivered at points west and north of White River Junction and beyond Montreal, for a great deal less than it would carry it to White River Junction if it is to be delivered, and stop there?

A. In one case we get our division of the rate, and in the other we make the rate.

Q. I am not on the question of that, but what money you get for the service. You have performed just the same services, burned the same amount of coal; you have the same number of tons of chairs; the tracks are the same, drawn by the same locomotive, the same train hands, etc. Now if it is for White River Junction you get \$100; how much do you say you would get for hauling it if it was going to Detroit?

A. Ten or twelve, or fifteen, somewhere along there.

Q. Is it not true that in order to get the haul upon that freight, you consent in your division with the other roads to take that amount, so far as you and the other roads are concerned?

A. Yes sir.

By Mr. Strout. And is not that true of all roads and all through lines?

A. All that I have had any experience with.

Q. You do not establish the rate, but you take that as a division?

A. Yes sir.

Mr. Edmunds. **Q.** That division is agreed upon among you all?

A. It is practically a mileage division whatever the through rate may be; we each take out our proportion based on the number of miles; we have had contracts to that effect in years gone by.

By Mr. Strout:

Q. You say this is true of other roads—do you know of any instances of the petitioner in this case—the Boston & Albany?

A. Yes; it is a similar method with the Boston & Albany on freight going from Boston to Detroit—just the same.

Q. And that is the practice on all roads, is it not?

A. It is on roads that do any through business.

Q. They have their own arrangements as to division, I suppose?

A. Yes sir.

Q. Whether or not the Boston & Lowell Railroad Company have had to make a large outlay in the provision for doing this through business, and have made special terminal facilities?

A. They have, of course; quite a considerable outlay. They have erected freight houses, and provided terminal facilities.

Q. At Mystic Wharf?

A. Yes sir.

Q. Amounting to \$3,000,000 or \$4,000,000 as alleged in the petition?

A. Yes sir.

Q. Now is that a part of the business of the Boston & Lowell R. R. that they desire to retain; that is, is it some profit to them?

A. Oh yes, there is a profit in it.

Q. Suppose that the prayer of this petition were granted, and suppose that you should put up the rate through, would or not that cut off competition with the Boston & Albany for this through business, and are not they the shorter route?

A. We should have to do one of three things, put up the through rate, or reduce the local, and either one would amount to a loss equally large; we should have to do one of those two things, either increase the through freight which would mean to go right out of the business, which would mean a loss of the income derived from that source, or reduce the local rates, so that the locals would be inside of the through freight rates, and that would mean an equally large loss; in either case it means a loss.

By Mr. Edmunds. But in either case you would make a profit.

A. I don't know; I don't know what the effect would be. I should estimate it a large loss.

Q. Pursuing the same idea that I had, take these roads that go to the west from Boston; the N. Y. & New England, Boston & Albany, Fitchburg, Boston & Lowell. Take the Fitchburg, do they carry at the same general tariffs that you do?

A. They do, and accept differentials; they bill to N. D. points. The differentials apply to any business going by the Fitchburg if it is going by National Despatch Line, but not if it goes through the tunnel.

Q. State to the Commission just what difference there is between this line which goes up through New Hampshire, Northern Vermont, and around through Canada, and the shorter line from Boston, by the more southern route; what difference is there in carrying merchandise; what preferences have shippers for one over the other, and what are the reasons?

A. The shorter line is able to give better dispatch, and of course accommodate customers better. There must be an offset to that in order for the longer line to do the business. Then the physical difficulties in haul by the long

line are greater than they are by the shorter lines, the Fitchburg, and the Boston & Albany; and in the absence of a corresponding advantage, by the longer line, they would be practically shut out from the business. That corresponding advantage has already been considered, and conceded by the trunk lines, and it has resulted in the allowance of differential rates in order that the longer line could have a fair proportion of the business. They were allowed to take freight at less rates than the other roads. That difference was agreed upon, and its allowance compensated for their other difficulties that they had to contend with; and by that means they hold their proportion of the traffic.

Q. Does the Boston & Lowell belong to the trunk line?

A. They have nothing to do with it; anything of the kind that has been done through any attendance has been through the National Despatch Line.

Q. State to the Commission who it is that really dictates the rates on freight—through freight?

A. It is, as I understand, the trunk lines, the N. Y. Central, Pennsylvania and the other Trunk lines; and we adopt those rates less the differentials from Boston.

Q. If you did not adopt them, you would lose the traffic and cease to become a competitor?

A. That is it, precisely.

Q. Has the Boston & Lowell Railroad anything to do with fixing the rates on freight from Ogdensburgh west over the line of steamers?

A. No sir.

Q. Does it form any part of it in any way?

A. We haul the business between Nashua and Boston, forty miles.

Q. Have you anything to do with it from White River Junction, west?

A. No sir; not at all.

Q. Who does make the tariff from White River Junction, west?

A. The Central Vermont Railroad in connection with the steamer line running from Ogdensburgh. Just where the authority rests that fixes the rates, I don't know.

Q. Do you control it in any way?

A. Not the slightest. We have nothing to do with it; we take our proportion, and if we did not it would go to some one else. It is to take it or leave it.

Q. By some one else, I suppose you mean the Fitchburg?

A. Yes sir.

Q. State to the Commission as to St. Albans. Do you have anything to do with fixing the rates from White River Junction to St. Albans?

A. We never have until the meeting in March, when the rates were fixed at White River Junction. And then I notified Mr. Chittenden verbally that he must make his rates either White River Junction rates or in excess or else we could not do the business with him.

Q. Why?

A. Because we understood the rates must be as much or greater than White River Junction, in order to comply with section four.

Q. Was that after consultation with counsel that you fixed those rates?

A. Yes sir.

Q. To comply with the fourth section of the Law?

A. Yes.

Q. Have you anything to do with fixing the rates on freight west from St. Albans?

A. We have nothing to do with any rate beyond White River Junction. We have no authority in the matter. We use the Central Vermont tariff for all points. It is not a joint tariff; they make it up without consultation, and they never consulted us about White River Junction rates until the 5th of April, as I have stated.

Q. Have you ever published any rates?

A. No sir; we have not been a party to any publication for any points on the Central Vermont Railroad. We use a tariff furnished by the Central Vermont and sent to our agent. On the Ogdensburgh & Lake Champlain Railroad it is the same, and the National Despatch takes everything beyond the Central Vermont, in the all rail line.

Q. And you neither fix them nor are consulted?

A. We have nothing to do with them, except to bill such freight by them as is brought to us.

Commissioner Walker. This is the fact: They give you a rate from all the points on the line of the Central Vermont to Boston, and to points on your road; and you take that, and you work it in the reverse order the other way?

A. Yes sir; they work the business done by the same tariff, and we work it back to them, furnish a tariff and give all the rules as to how the business shall be done.

Mr. Edmunds. And each of you have a local rate within your own State?

A. Yes sir.

By **Mr. Strout:**

Q. I hand you a map for identification containing the different lines leading out of Boston, and where there either is, or may be, if the rates are raised, competition. Was that prepared in the Boston & Lowell office?

A. I don't know where it was made.

Q. Whether or not that contains substantially in different colors the different lines?

A. The Fitchburg Line is not there; and there are quite a number of lines omitted, I should say.

Mr. Strout. Then I will withdraw this for the time being.

Q. You do not make joint rates between Boston and St. Albans?

A. We use the tariff that the Central Vermont gives us to bill to any point on that road, but the tariff is made by the Central Vermont, the rules of classification and everything, we only use that and act as their agent.

Mr. Strout. I shall move to amend the answer by striking out the part as to joint tariffs between Boston and St. Albans.

Witness. Prior to the 5th April we used to do so.

By the **Chairman:**

Q. You accepted a tariff and acted upon it?

A. Yes.

The Chairman. Taking and acting upon a tariff would bind a company we should say, as much as if they had taken part in the making of it up.

By **Mr. Strout:**

Q. State to the Commission what change has taken place in the last three or four weeks in connection with the Canadian Pacific and the Southeastern Railway, that makes them an active competitor in this business?

A. The Southeastern has recently completed its bridge across the St. Lawrence River and now comes in direct connection with the Boston & Lowell Railroad by its control of the Southeastern Railway which it takes today as a leased line; it comes in direct connection with the Boston & Lowell; heretofore the Southeastern had to run its business over a portion of the Grand Trunk Railway, and has been subject to tolls and rates that today they are not subject to, so that the competition will become stronger I suppose, from this time on.

Q. Is it not true that a road has been built to Sault Ste. Marie which will form an outlet and trackage connection by which they can run freight down to these points west?

A. Yes sir.

Q. From the Canadian Pacific?

A. Yes sir.

By **Mr. Fifield:**

Q. Does it not take freight from Detroit that way?

A. We have never had any freight from Detroit that way over our road, I am sure.

By **Mr. Edmunds:**

Q. Supposing in the case of the two car loads of chairs I took to illustrate, one is for White River Junction for consumption there, and the other is for St. Albans; how much do you get out of the St. Albans car load for your part of the service as compared with what you get to White River Junction?

A. We get one half, on an estimate, to St. Albans, whereas to Detroit we might get 10 or 15 per cent; to White River Junction, if it stopped there, we should get the whole of it; that is, including the three roads below White River Junction.

Q. Suppose you have two car loads of chairs in the same train; one consigned to White River Junction for consumption there and the other consigned to St. Albans; now, is your actual compensation as you finally get it, different between those two cars?

A. Yes; it would be; we should get the whole of the rate if it stopped at White River Junction, and we should only get half of the rate to St. Albans; therefore there would be 50 per cent difference on it in the amount of money we receive for hauling the two cars; that is we should get half as much if the rates were the same.

Q. I want to know what the fact is?

A. What the rates would be? I cannot carry them in my mind, but I should say the rates would be nearly double to St. Albans.

Q. That is the whole through rate; I am speaking of the amount that belongs to you for your service?

A. We should get less; just exactly how much, I don't know.

Q. So that you actually get more for freights of the same kind and in the same train carried to White River Junction for consumption there than you do to White River Junction if it is going beyond?

A. Our earnings are greater to White River Junction.

By **Mr. Fiske**:

Q. Because it costs more to pick up the local traffic than to send the through traffic right along. Is not that one consideration?

A. That is one consideration.

Q. Take traffic between Boston and St. Albans; what are the distances from White River Junction?

A. One hundred forty-four miles, and 120 from White River Junction to St. Albans; we divide, and the entral Vermont gets $\frac{1}{2}$; we give a rebate of 10 per cent on our proportion to them; that is the same both ways.

Q. The freights are the same both ways until you get beyond St. Albans?

A. Yes; the rates are the same until we get beyond Ogdensburgh and beyond St. Johns, practically.

By **Mr. Strout**:

Q. Is it not true that for freight to White River Junction and to points intermediate you put on a local train and ship by that, and that the through freight you put on to a through train?

A. Not necessarily. It is liable to go in the same train, just as it is most convenient to the men operating the train; he might put the cars in the same or in a different train; we have a local way freight train but lots of other freight goes in the same train that is intended to go further than to local points.

Mr. Hoar. The Boston & Albany rests in both complaints.

Mr. Edmunds:

We stand on the records you have of the rates, as to the evidence given as to the practical operations of the roads, and as to the giving of division lists; that makes part of our case, and the table of distances is in.

TESTIMONY FOR THE RESPONDENTS.

Edmund George Lucas, called on behalf of respondents; sworn, testified as follows:

Examined by Mr. Fiske:

Q. Are you the auditor of the Central Vermont Railroad Company?

A. Yes sir.

Q. How long have you been in the employ of the company?

A. Eighteen years.

Q. About a month and a half ago, did I ask you to answer certain interrogatories I propounded to you in respect to through and local business on this road?

A. Yes sir.

Q. And its earnings and expenses on both net and gross, that you made out of through, and local business?

A. Yes.

Q. Have you made it.

A. Yes sir.

Q. See if that is a statement of it.

A. Yes sir.

Q. State if that is correctly made up.

A. It is.

Mr. Fiske.

I offer it in evidence and ask the witness to read it.

The witness then read the statement, as follows:

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Q. What was the tonnage of through business east and west?

A. East bound 882,259 tons; west bound, 218,717 tons. Total 1,095,976 tons.

Q. What was the tonnage of joint freight east and west?

A. East bound, 161,984 tons; west bound, 54,219 tons. Total 216,158 tons.

Q. What was the tonnage of strictly local freight?

A. 71,325 tons.

Q. What was the percentage of the through to the total?

A. 79 per cent.

Q. What were the gross earnings of through freight?

A. \$652,647.33 or 64 per cent of total freight earnings.

Q. What were the gross earnings of local and joint freight?

A. \$370,636.54 or 36 per cent of total freight earnings.

Q. What were the net earnings of through freight?

A. \$172,844.62.

Q. What were the net earnings of local and joint freight?

A. \$100,466.27.

Q. What was the number of through passengers?

A. 87,206.

Q. What was the number of joint passengers?

A. 115,814.

Q. What was the number of local passengers?

A. 280,401.

Q. What were the gross earnings from through passengers?

A. \$153,945.51, or 88 per cent of total passenger earnings.

Q. What were the gross earnings from local and joint passengers?

A. \$250,149.10, or 62 per cent of total passenger earnings.

Q. What were the net earnings from through passengers?

A. \$50,626.71.

Q. What were the net earnings from local and joint passengers?

A. \$81,579.58.

Q. What do you mean by joint passengers?

A. Passengers coming from connecting roads.

Q. What do you mean by local?

A. Strictly confined to stations on the Central Vermont Railroad, between stations on the Central Vermont Railroad.

Q. That is a statement of the earnings and expenses of the Central Vermont proper for the year ending June 30, 1886?

A. Yes sir.

Q. Between what termini?

A. Rouse's Point and Province Line Wind-sor, and between Essex Junction and Burlington.

Q. It does not take in any leased lines?

A. None whatever.

Q. Did you also make up a statement in regard to the Ogdensburgh Railroad?

A. Yes sir.

Q. That is leased to the Central Vermont?

A. Yes sir.

Q. Is it made up from the books correctly?
 A. Yes sir.
 Q. Will you read it?
 (Witness reads as follows):
 Q. What was the tonnage of through business east and west?
 A. East bound, 267,007 tons; west bound, 36,694 tons. Total 303,701 tons.
 Q. What was the tonnage of joint freight east and west?
 A. East bound, 83,756 tons; west bound, 20,169 tons. Total 103,925 tons.
 Q. What was the tonnage of strictly local freight?
 A. 66,308 tons.
 Q. What was the percentage of the through to the total?
 A. 64 per cent.
 Q. What were the gross earnings of through freight?
 A. \$200,692.32, or 48 per cent of total freight earnings.
 Q. What were the gross earnings of local and joint freight?
 A. \$216,817.51, or 52 per cent of total freight earnings.
 Q. What were the net earnings of through freight?
 A. \$81,867.98.
 Q. What were the net earnings of local and joint freight?
 A. \$87,891.15.
 Q. What was the number of through passengers?
 A. 2509.
 Q. What was the number of joint passengers?
 A. 29,372 and 1-2.
 Q. What was the number of local passengers?
 A. 131,183.
 Q. What were the gross earnings from through passengers?
 A. \$5,203.86, or 4½ per cent of total passenger earnings.
 Q. What were the gross earnings from local and joint passengers?
 A. \$109,510.47, or 95½ per cent of total passenger earnings.
 Q. What were the net earnings from through passengers?
 A. \$1,731.46.
 Q. What were the net earnings from local and joint passengers?
 A. \$35,818.49.
 Q. What was my request of you? To select perfectly impartial years?
 A. Yes sir. I should call this a very fair year; it was the 30th June, 1886.
 Q. Is it made up for the last year yet?
 A. It is now. It was not at the time of your request when these statements were made up.
 Q. Is that a fair illustration of the business since the reorganization in 1883?
 A. I believe it to be; yes sir.
 By Mr. Edmunds:
 Q. This information is up to the 30th of last June, 1886?
 A. Yes sir.
 Q. Can you give us for this year?
 A. I can.
 Q. Will you do so; I wish you would?

A. It will take some little time; about two weeks.

Q. You have given net earnings and gross earnings; by what system do you arrive at it; how do you ascertain net earnings out of gross?

A. I take the entire expenditure I have for the Central Vermont Railroad Company, operating and other expenditures. Then I have taken out of those the several kinds which seem to be clearly applicable to passenger and freight business; the remainder of the accounts I divided according to my best judgment.

Q. So that it is really and finally an estimate?

A. It is finally an estimate.

Q. You do not keep a set of books by which the net earnings to be divided among the stockholders, or paid on interest, or whatever is shown on the records of the Central Vermont Railroad, do you?

A. Yes sir.

Q. You keep that separate as to all your leased lines, each one by itself, do you?

A. Yes sir.

Q. How do you apportion the services of cars, locomotives, train service, etc., between one part of the line and another—by miles?

A. Yes, by mileage. The roads that have no equipment; we charge them for a certain price per mile for every mile run by engineers and engines.

Q. You keep the accounts so that the branch roads and leased lines are only charged with locomotives that actually run over them, hauling this business?

A. Yes sir.

Q. Just in the same way as if each one was a separate and distinct organization, under the management of a common trust or factor?

A. Yes sir; quite separate. They earn their own money and pay their own bills.

Q. Do you keep the wood and coal account separate?

A. We do with the exception of the S. S. & C. Road, and the Waterloo & Magog Railroad. We keep those two together, dividing them upon the mileage. All the other roads we keep separate. We keep the consumption on our road.

Q. Do you keep separate accounts of this through National Despatch business?

A. I have no account on the book of the National Despatch.

Q. Do you keep account of the work that is done?

A. No sir; we do not know anything about them.

Q. Have you nothing on your books that would distinguish as to expenses of running trains, and of the income out of what is called the National Despatch business, and the other business of the road?

A. No sir.

Q. The National Despatch you do not know on your books at all?

A. No sir.

Q. With whom do you keep accounts of the freight that goes beyond your own line?

A. The Grand Trunk Railway Company.

Q. And the other way at the other end?

A. Yes; the Boston & Lowell, or perhaps to speak more correctly, the Northern, just now.

Q. So that your books then would not show how much that part of the Central Vermont business is; how much it actually carries on beyond, on the lakes, or how much it makes or losses, you do not know?

A. No sir.

Q. How can you tell anything then whether the charges attributed to traffic that goes by those steamers to Ogdensburgh or from Ogdensburgh—that is, can you tell anything about that?

A. No sir; nothing about that.

By Mr. Fifield:

Q. Are all of those figures, except the estimates of earnings, net earnings taken directly and correctly from your books?

A. Yes sir.

Q. And your system of book keeping shows all those figures accurately?

A. Yes sir.

Q. In respect to the net earnings, how close a calculation is this? Is it a jump?

A. No sir; it is put together with some care based upon experience and upon methods that have been adopted.

Q. How long have you been in this kind of business?

A. It will be forty years very soon.

Q. Go on and give your reasons for this statement?

A. This is made up upon my own judgment; I consulted no one about it; I divided such expenses as were not directly chargeable to freight or passenger departments, divided them in accordance with my best judgment; subsequently, after I made out that paper, it was suggested to me that a mileage basis for some accounts would be perhaps more accurate as a basis to work upon; and in making up a division on a mileage basis of such accounts as could be figured in that way, as wood, coal, oil and waste, I differed about \$6,000; so that the result would have been, if I had adopted the mileage basis for those few accounts, we should have differed \$6,000 in the result.

Q. So that taking these two methods there is that difference?

A. Yes sir.

By Mr. Edmunds:

Q. What do you include in reaching net earnings? You deduct, I suppose. Are these sums the gross earnings? You speak of sums of money got from all sources?

A. Yes.

Q. Over the line?

A. Yes sir.

Q. Now, to get at the net earnings, what do you charge off against that if anything beyond

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penses be paid from other sources of income.

Q. What was the nature of those other expenses that you mention?

A. Legal expenses for one thing. Of the precise amounts I deducted, first was engineering, insurance, legal expenses, mails and taxes. Those expenses form no part of what I have included as the expenses of passenger and freight departments.

Commissioner Walker. But you did include construction of new cars and engines?

A. Yes sir.

Q. And repairs to the road, and roadbed?

The Chairman. And the general management of the road?

A. Yes sir, everything; I put in taxes only to a small amount, only \$200.

Mr. Edmunds. Interest on public debt you did not put in?

A. No.

Q. And the state tax comes out of the operating expenses?

A. No sir; it comes out of what you may have after you have run your railroad, out of your net earnings.

Q. The roads pay an income tax, do they not, on gross receipts? Now, when you pay the Treasurer of the State of Vermont \$1,000, or something on that tax, what account do you charge it to?

A. The state tax. Ultimately that account would be closed in the income.

Q. Do you mean that when you have figured out other expenses and arrived at net earnings, from all sources, that there is yet, out of that income, a tax that has to be paid?

A. Yes sir, there would be; but it does not come out of there, for the reason that it was not put in.

Q. Then that really shows net income after all your debts are paid, except interest and taxes?

A. Yes sir.

By Mr. Fifield:

Q. What was the tax for the year ending June 30, 1886, paid on the gross receipts of the Central Vermont proper?

A. As near as I can remember, about \$37,000.

By Mr. Edmunds:

Q. Then, as to this statement here, you have either some other resources, or else that statement is not a true statement of what the net income really was, because you had that net income you had paid \$37,000 for state taxes?

A. After I had the income I paid it.

Q. Did you have that much money left, or \$37,000 less?

A. I had the money in the treasury after paying all my expenses; and the remaining money was applicable to other matters, that is coupons and taxes; \$350,000 is the interest, 5 per cent on seven millions.

By the **Chairman**:

Q. How did you apportion the general expenses between the passenger and freight earnings?

A. Divided it half and half.

Q. How did you apportion between through and local business?

A. I took the total amount of freight earnings from the three several sources, through, joint, and local. We earned \$1,023,000. We earned on through freight \$652,000, which was 64 per cent of the \$1,023,000. Now, having earned on that 64 per cent of the gross earnings, I make the expenses chargeable with 64 per cent.

Mr. Edmunds. You charge the expenses to these various accounts in proportion to your gross income received therefrom?

A. Yes sir; from the three classes of freight I give each its proportion, and the same as to the passenger.

Q. That would not necessarily represent the wear and tear of the traffic?

A. It is supposed that wear and tear is taken care of in the general expenses of the road from year to year.

Mr. Porteous, recalled, says: The way bills referred to in my testimony are signed by the Boston & Lowell Railroad Company.

(Adjourned for the day.)

Second Day, Friday, September 3, 1887.

E. A. Chittenden, called on behalf of the respondents, sworn, testified as follows:

Examined by **Mr. Fiffeld**:

Q. Where do you reside, and what is your business?

A. St. Albans; superintendent of the local freight traffic.

Q. State whether in May, at the time this petition was filed, the tariff between St. Albans and Boston was sixty cents per 100 pounds for first class freight?

A. Yes sir.

Q. Whether that tariff was reduced, and if so, when?

A. About the sixth of July.

Q. Before the filing of the Grange petition in this case?

A. Yes sir.

Q. How much was it reduced?

A. Five cents on the first class, from the sixty cent rate to fifty-five cents.

Q. Do you remember as to the second class?

A. Five cents on that.

Q. Did that run through all the classes?

A. There was a reduction, growing smaller till we reached the sixth class. I do not remember that exactly.

Q. Have you been pretty busy trying to adapt yourselves to this Interstate Commerce Law since April?

A. Done nothing else hardly.

Q. Have you succeeded yet in fixing the local rates—by that I mean rates between points in Vermont?

A. No sir; we have been at work on it.

Q. In general terms, how much have your

rates between St. Albans and Boston, and in intermediate points on interstate traffic, been reduced within the last ten years, in your judgment?

A. I should say one third.

Q. That is from time to time?

A. Yes; from time to time.

Q. Is your road now what you call "blocked"?

A. Yes sir.

Q. What do you mean by that?

A. Putting several stations at the same rates.

Q. That is, east, between Ogdensburgh and Boston, it is sixty cents per hundred?

A. Yes sir.

Q. What is the first block?

A. The Ogdensburgh Railroad.

Q. So that, from any point on the Ogdensburgh Railroad to Boston, it is sixty cents a hundred?

A. Yes sir.

Q. When did this block system begin?

A. I cannot tell; it was before my time.

Q. What is the next group or block?

A. Alburgh Springs to Randolph, I think.

Q. So that the rates between those points to Boston are the same in each case?

A. Yes sir.

Q. Alburgh Springs being on the border of New York?

A. Yes.

Q. What is the next block?

A. The next would be one or two stations South of Randolph, and thence to the rate of the Boston & Lowell at White River Junction.

Q. Whether this system of blocking or grouping the distances on railroads in this country is customary or not?

A. It is.

Q. All along the lines?

A. Yes sir.

Q. Is any more charged for the shorter distance from Boston to Ogdensburgh, or points between them than is charged to Ogdensburgh?

A. No sir.

Q. That is, your rates are graded that way, according to the provision of the Interstate Law?

A. Yes sir.

Q. You take that as a dividing line, and your rates are lower commencing the other way for west bound traffic?

A. Yes.

Q. And the same is true to St. Johns?

A. Yes sir.

Q. Do you know whether the people at Ogdensburgh and along the line are satisfied with the rates between Ogdensburgh and St. Albans respectively, and Boston, so far as the Central Vermont is concerned?

A. I believe they are, and I understand they are.

Q. Have you heard any serious complaints in that regard?

A. No sir.

Q. Whether you have seen any communications on that subject from people along the line of the road?

A. I have.

Q. What is the expression contained in them on the subject?

A. They were all very well satisfied.

Mr. Edmunds. The letters had better be produced, if you want to show their contents.

Q. Have you those letters?

A. I have some with me from St. Albans merchants.

The witness then went to get the letters referred to, but was told by counsel not to stop and look for them. The witness then resumed the stand.

Q. State whether the rates between Ogdensburgh, Boston and New England points are reasonable?

A. I believe they are.

Q. Whether you have made any examination of the tariffs of other roads, situated as this road is, and have put them on paper?

A. We have.

Q. What roads have you compared rates with?

A. The Passumpsic, running from White River Junction to Sherbrooke in Canada.

Q. Along the east side of the State on the Connecticut River or the Passumpsic River?

A. Yes sir.

Q. And your road runs on the west side?

A. Yes sir.

Q. And comes out on the west side, at the north end?

A. Yes sir.

Q. Both roads are north and south roads?

A. Yes.

Q. Is there a road running from the lake at Swanton near the north end of the State, diagonally, known as the St. Johnsbury & Lake Champlain, connecting with the Passumpsic Railroad?

A. Yes sir.

Q. They connect with our road at Swanton?

A. Yes sir.

Q. Have you compared our rates with theirs?

A. Yes sir.

Q. Have you compared the rates on the Connecticut River Railroad and the New York and New Haven, for Vermont business?

A. Yes.

Q. How do these rates compare with those? That is, taking your rates from New York and Boston to Ogdensburgh, and intermediate points, how do our rates compare with the rates on those roads?

A. They are lower. The rates between our stations and Boston, considering the distance, are less than the rates between our stations and their line.

Mr. Edmunds. Less per mile?

A. I don't know that; I can't say that.

Q. What do you mean by considering the distance?

A. I mean the rates on their roads for New York business; take for instance New York as the basis, and Boston, that our rates to Boston are less than they are to New York or from New York more to our stations than from Boston.

Q. The distance is greater, is it not?

A. Yes; But they are always considered as markets, and put on about the same basis for trade in our country.

By Mr. Fifield:

Q. Have you compared our rates between St. Albans, Ogdensburgh and Boston, with the rates on the Delaware & Hudson Canal Company?

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A. Yes sir.

Q. On the other side of Lake Champlain running north and south?

A. Yes sir.

Q. How do our rates compare with theirs?

A. They are practically the same.

Q. Have you compared these rates from Ogdensburgh to Boston with the rates on the Chicago and Alton, for like distances on interstate business?

A. Yes sir.

Q. What is the result?

A. Ours is much lower.

Q. How much?

A. Twenty to thirty per cent; the roads I compared run from twenty to fifty per cent.

Q. Have you made a like comparison with the rates on the Chicago, Milwaukee and St. Paul?

A. Yes sir.

Q. What is the result?

A. About the same.

Q. Twenty to thirty or forty per cent less than theirs?

A. Yes sir.

Q. For like distances?

A. Yes sir.

Q. Have you compared them with the Chicago, Burlington and Quincy?

A. Yes sir.

Q. What about that?

A. They run a little higher than that percentage above ours; it was from twenty to fifty per cent.

Mr. Edmunds. Do you mean on commerce passing from State to State? Are these comparisons on interstate business?

A. Yes sir; all of them.

Mr. Fifield, resuming:

Q. Is that the comparative statement you have made up, about which you have been testifying?

A. Yes sir.

Q. Is it made up correctly.

A. Yes sir.

(Statement put in evidence, and filed with the Secretary.)

By Mr. Hoar:

Q. Did you prepare that?

A. Yes sir.

Q. How long did it take you?

A. Some time.

Q. More than thirty minutes?

A. Yes sir.

Q. How long did it take?

A. Several hours; I worked at it at different times as my business would permit.

Q. From day to day?

A. Yes sir.

Mr. Fifield, resuming:

Q. It was stated yesterday by Mr. Mellen that the lower roads had nothing to do with the making of the tariffs between St. Albans and Boston; he is the general superintendent of that road, is he?

A. Yes sir.

Q. Who is the superintendent of traffic, freight?

A. Mr. Turner, H. M. Turner.

Q. So that your relations have not been with Mr. Mellen?

A. No sir.

Q. Who does make the tariff between St. Albans and Boston?

A. The roads in the line.

Q. State how?

A. By deciding what they think are fair rates, and what classification shall govern.

Q. Who decides that?

A. The general freight agents of the road.

Q. Who made that tariff of sixty cents per 100 pounds which is the one complained of?

A. Mr. Prescott and myself.

Q. Who is Mr. Prescott?

A. The general freight agent of the Boston & Lowell.

Q. Who made the modification, reducing the rate to fifty-five cents for first class?

A. The same persons.

Q. Mr. Mellen did not know anything about it?

A. No sir; not that I know of.

Q. When making tariffs between St. Albans and Boston, and Ogdensburgh and Boston, what is the custom in that respect of the agents of the several roads?

A. To meet together and settle upon the tariffs that are to be charged, and the classification to be used.

By Mr. Strout:

Q. Is it not true that Mr. Turner insisted, and has insisted that the rates over the Boston & Lowell should be kept within the Interstate Commerce Law?

A. I don't know; I never have had any discussion with him on that matter.

By Mr. Fifield:

Q. Have they not kept within it between St. Albans and Boston?

A. Yes sir.

By Mr. Hoar:

Q. You say that Mr. Turner is the general traffic manager of the Boston & Lowell Road?

A. Yes sir.

Q. He sat here yesterday while Mr. Mellen testified?

A. Yes.

Q. Do you say that you and the general freight agent, Mr. Prescott, settled the rates to be made between St. Albans and Boston?

A. Yes sir.

Q. Did you have anything to do in settling the rates between Ogdensburgh and Boston?

A. Yes sir.

Q. Did you and he settle them?

A. No sir.

Q. Who did settle them with you?

A. Mr. Owen and the other general freight agent, in the line; he represents the Ogdensburgh & Lake Champlain Railroad.

Q. You represented the Central Vermont, the lessor of the Ogdensburgh?

A. Yes sir.

Q. Who are the other freight agents?

A. I am the other freight agent.

Q. Who are others in the line?

A. Below our road?

Q. Yes.

A. Mr. Prescott, and Mr. Barrett, of the Concord.

Q. So that you four, Mr. Owen, Mr. Barrett, Mr. Prescott and yourself, settled the rates between Ogdensburgh and Boston?

A. Mr. Barrett was not there; I said it was the practice for them to settle the rates; in this

case Mr. Prescott, Mr. Owen, and myself settled the rate and the classification.

Q. Has that been reduced since the time it was reduced to St. Albans?

A. Yes sir.

Q. When were they reduced,—these Ogdensburgh rates?

A. No sir; they have not.

Q. The only rate you have reduced is the St. Albans rate?

A. No sir; the block between Essex Junction and Rouse's Point.

Q. But the block which comprises the Ogdensburgh Railroad has not been changed?

A. No sir.

Q. If you and Mr. Owen, and Mr. Prescott settle the rates between Boston and Ogdensburgh, who settles them beyond that point to Detroit and Lake Ports?

A. I suppose Mr. Porteous, but I don't know anything about that business; I have nothing to do with it.

Q. Not so far as they are carried over your road?

A. No sir.

Q. Never attended any of the meetings?

A. No sir.

Q. The Central Vermont interests are looked after by Mr. Porteous in that respect?

A. I suppose they are.

By Mr. Edmunds:

Q. I think it was stated by Mr. Porteous yesterday that you would be the person who would know about the divisions of these companies for this business?

A. No sir; I don't know that.

Q. Did you make any examination of the tariffs of any other lines than those you have given on this paper?

A. No sir.

Q. How came you to take those particular ones?

A. Because they were leading roads.

Q. You took the Passumpsic?

A. Yes sir.

Q. And the New York, New Haven & Hartford?

A. Yes sir, that is, our line with them; I took that line.

Q. Did you take any other New England roads?

A. No sir.

Q. You omitted the Boston, Hartford & Erie, as it used to be called?

A. Yes sir.

Q. Crossing your line in Connecticut?

A. Yes sir.

Q. That has connections for western business with the Erie Railroad?

A. I suppose they have.

Q. Have you not a reasonable, general railroad knowledge of the fact?

A. Yes sir.

Q. You omitted the Boston & Albany?

A. Yes sir.

Q. And the Fitchburg and Hoosac Tunnel?

A. Yes sir.

Q. You omitted all the other roads in this part of the country except those two that you selected as being the leading roads of New England?

A. No sir.

Q. You took the Chicago & Alton?

A. Yes sir.
 Q. How long is that road?
 A. I can't tell you.
 Q. How far is it from Chicago to Alton?
 A. I can't tell you.
 Q. What are its connections?
 A. With roads into Chicago, and roads beyond.
 Q. It goes into Chicago, does it not?
 A. Yes; and connects with other roads there.
 Q. Did you make any comparison with the St. Johnsbury & Lake Champlain?
 A. Yes sir.
 Q. What are the western connections of that road?
 A. The Ogdensburgh & Lake Champlain, if any.
 Q. That is to say, the road called the Ogdensburgh, and run by the Central Vermont?
 A. I suppose so.
 Q. How far do you live from Swanton where their line crosses yours?
 A. From eight to ten miles.
 Q. You have been round that country some?
 A. Not much this spring.
 Q. Don't you know that the St. Johnsbury & Lake Champlain Railroad has no western connection unless it goes over the road you control, or over the Grand Trunk Railway?
 A. Yes sir; if they do any western business.
 Q. It must be either over the Ogdensburgh Railroad, or the Grand Trunk Railway?
 A. Yes sir; or the Missisquoi, via Richford and the Southeastern; they cross that road at Sheldon.
 Q. Did you compare at all with the New York Central rates?
 A. No sir.
 Q. Have you any idea how they compare with those?
 A. I have not.
 Q. Did you compare with the Rome, Watertown & Ogdensburgh Railroad from Niagara Falls eastward to Lake Champlain?
 A. No sir.
 Q. That arm of the Watertown road would strike Lake Ontario as the Central Vermont & Ogdensburgh would on the lake, only it strikes it at Watertown?
 A. Yes sir.
 Q. And it strikes the foot of Lake Erie, substantially at Niagara Falls, and connects with the Canada Southern, and the Grand Trunk Railway and the Lake Shore Railroad at those points, would it not?
 A. I suppose it would.
 Q. Did you compare with the Erie Road?
 A. No sir.
 Q. Or the Pennsylvania?
 A. No sir; and I have not their tariffs to make a comparison.
 Q. Had you any other western tariffs except the Chicago & Alton and the other ones that you named?
 A. Yes; we had their tariffs.
 Q. How many?
 A. A great many.
 Q. You did not look into others?
 A. No sir.
 Q. You do not know how they compare?
 A. I took the three leading roads; three of the strong roads, west.

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Q. Did you compare with the Delaware & Hudson?

A. I did.

Q. Have you that in here?

A. Yes sir.

Q. Did you compare with the Delaware & Hudson rate for western traffic, or only for the traffic going along on the west side of the lake?

A. I compared the rates on their road with our rates for traffic that I have charge of.

Q. That you interchange?

A. No sir; traffic of a like nature; that is business on that road similar to the business that I have charge of.

Q. What do you mean by that? What do you have charge of?

A. Of the local traffic of the Central Vermont.

Q. By that you include traffic that comes into Vermont from other States, for places in Vermont?

A. Yes sir.

Q. And that which starts in Vermont and goes to other States.

A. Yes sir.

Q. Your comparison with the Delaware & Hudson, then, was between points on that road and Boston?

A. Yes sir.

Q. Going to Boston by what line?

A. Mechanicsville and the Fitchburg, and Eagle Bridge.

Mr. Edmunds. I give notice to counsel on the other side that I shall ask to refer to some large map of the United States to show how, geographically, these roads are situated, what would be the geographical nature of the business they perform, and where the lakes lie, etc.

Q. I notice that this table does not show on its face, apparently, what the dates were of the printed tariffs from which you made this up; it is dated August 17, 1887; is that the date of the tariffs from which you made this up?

A. I don't know whether that was the date of the tariffs or not, but the statement was made up from the tariffs in force at the time we made up the statement; I made up that statement a week or two ago.

Q. Is that in your writing?

A. No sir; it is one of my clerks.

Q. Then this is not your composition?

A. It is by my direction and consideration.

Q. None of these papers are your actual work?

A. Yes sir; some of them are.

Q. You don't know what that date is?

A. That is the date we made up the paper.

Q. State whether the statement was made up from the last tariffs of the roads compared with?

A. Yes sir; from the last tariffs I have.

Q. Do you know how late those tariffs are?

A. Some of them dated within a few days of the time of making up the statement.

Q. Well, take the oldest one.

A. I could not tell you the dates, but the tariffs will show.

By Mr. Haskins:

Q. State whether you have verified these statements since they were made up.

A. Yes sir.

Q. Look at the second statement, a comparison of the rates of the Boston & Lowell over the Passumpsic Railroad to New York and the Central Vermont to New York; now, what is the distance from St. Johnsbury to New York?

A. This says 295 miles, by the way of the Connecticut River, and New York and New Haven line.

Q. How do you get that distance 295 miles?

A. We use the mileage that the tariff gives.

Q. You did not use the mileage shown by the official guide?

A. No sir; it is a mileage that has been adopted.

By **Mr. Fiffeld**:

Q. You say you have verified this statement on the table there.

A. Yes sir; as far as I can verify it any.

Q. You have no doubt of the correctness of it?

A. I have not any doubt; there might be a clerical error, but I do not know of any.

Q. Are you familiar with the roads that Senator Edmunds has referred to, the New York, New Haven, and the Fitchburg, etc?

A. Somewhat.

Q. Do you think it is a fair comparison, the rates they make with the rates we make?

A. I do not think it is fair to compare them.

By **Mr. Haskins**:

Q. Don't you get at that by taking the distance from St. Johnsbury to the most northern station of the New York rate or New York block, for instance Springfield?

A. No sir; there was a tariff No. 18 of the Connecticut River Railroad with the mileage, and we took the distance from that.

Q. Claremont Junction to South Vernon or Brattleboro is one group?

A. Yes, I think so; I don't know exactly, I do not exactly remember.

Q. And from there to Springfield, and then from Springfield to New York is it not?

A. I suppose so; I do not exactly remember.

Q. State whether stations on the western roads are grouped together in the same way?

A. They are on some roads.

Q. Not on all of them?

A. Yes; more or less on all of them.

Mr. S. C. Shurtleff, of Montpelier, addressing the Commission in regard to the Montpelier & Wells River Railroad, said:

The road I represent is not in this petition, and I do not know whether we shall be entitled to be heard in this matter. The road does a local and joint local business. The road was built to open a line from Montpelier to Boston; if the rates on the Central Vermont are lowered, the rates on the Montpelier & Wells River Railroad will have to correspond, or go out of the business. I offer to show what the rates are on that road, and what the road has earned since its re-organization; it is only thirty-eight miles in length.

By the **Chairman**:

Q. What is your relation to the road?

A. I am its attorney and a director.

Q. Do you wish to come in and be made a party?

A. I don't know that I am entitled to.

The **Chairman**. There can be no objection to receiving any testimony, and if you wish to be made a party to this proceeding, by consent all around, it can be done now; I do not see that it will embarrass the proceedings. (Respective counsel intimated they had no objection).

Commissioner Walker. Does your road deliver freight to the Central Vermont at Montpelier?

A. We do some.

Q. And receive some that way?

A. Very little; our Boston freight comes by way of the other line.

Q. Is there any particular point in which your rates are affected by the question made here?

A. In this way; the rate from Montpelier to Boston is fifty-five cents per 100 pounds; if the Central Vermont have to reduce their rate, we shall have to do the same.

The **Chairman**. The matter can remain open until after the recess, and you can intimate what course you elect to pursue.

J. Gregory Smith. Called on behalf of respondents, sworn, testified as follows:

Examined by **Mr. Fiffeld**:

Q. You reside at St. Albans?

A. Yes sir.

Q. How long have you been connected with the Central Vermont Railroad?

A. Since 1858.

Q. I believe these roads originally were the Vermont Central and the Vermont & Canada Railroads?

A. They were.

Q. And for a number of years, from 1856, I believe, they were in very heavy litigation?

A. Yes sir.

Q. They were re-organized in 1883?

A. 1883-4.

Q. They were separate roads in the first instance?

A. Yes.

Q. The Central Vermont running from Windsor to Burlington, and the Vermont & Canada from Essex Junction to the State Line when they were reorganized, under what name were they reorganized?

A. The Consolidated Railroad of Vermont.

Q. What was the capital of this new company?

A. The capital itself was made up of a great amount of the first and second mortgages, amounting to \$1,000,050.00. The first mortgage was put in at twenty, and the second at ten, and the Vermont & Canada at 83½. Then the trust debt was \$7,000,000.

Q. What is the present mortgage?

A. Seven million dollars.

Q. What is the stock of the consolidated company?

A. One million and fifty dollars.

Q. Of the consolidated company?

A. Yes sir; \$700,050 of preferred stock and \$300,000 of the common stock.

Q. And this reorganized company leased their road to the Central Vermont for ninety-nine years?

A. Yes sir.

Q. And then it went to Central and Vermont Vermont Railroad?

A. Yes sir.

Q. What did it cost to build that road, and equip it as it is to-day?

A. The original cost?

Q. Yes; take that view if you please?

A. I have not any data here; I could give you the exact cost if I had; it was between \$15,000,000 and \$20,000,000.

Q. Since its reorganization has the road been able to pay anything more than the interest on its bonds and its taxes?

A. It has not.

Q. You heard the statement read by Mr. Lucas yesterday?

A. Yes sir; I did not quite answer your question correctly; it has only paid its interest and taxes; whatever it has earned more has gone into the improvement of the property.

Q. Then there is the stock of the Central Vermont, which is the lessee; have they paid any dividends?

A. No sir.

Q. What is the amount of their stock?

A. One million dollars.

Q. I was about to ask you if you heard read the statement of Mr. Lucas yesterday, of the income, etc., of this road in 1886?

A. Yes sir.

Q. Whether you believe it to be correct?

A. I do.

Q. We were talking about the Central Vermont. Were they the receiver of, this road for a number of years?

A. Yes sir; the Central Vermont was organized in 1878, and appointed receiver the following year.

Q. Down to what time did they continue receiver?

A. Until the reorganization.

Q. Can't you give the exact date the receivership went out?

A. July 1, 1884, I think.

Q. And it was then that the Central Vermont in its corporate capacity took a lease from the consolidated company of that line of road?

A. Yes sir.

Q. When did this road first commence to do a through business with the Grand Trunk Railway, and what was the condition of the road at that time?

A. The road commenced running, if I remember correctly, in 1851. That was the commencement of the opening of the roads, and opened in connection with the line from Boston to Ogdensburgh. The Ogdensburgh Railroad, the Vermont & Canada Railroad and the Vermont Central were built contemporaneously and completed about the same time. They opened for traffic in 1851. Their only connection then was with the great lakes, and a line of boats was put in to constitute a line from Ogdensburgh in connection with this line, through to Chicago, and the lake ports. That continued to be the only outlet for through traffic until, I think, about 1863 or 1864; I cannot give you the precise date. The management of the Grand Trunk Railway changed, and the manager who came into the position proposed to open a rail line from Boston by

the way of the Central Vermont and the Grand Trunk Railway, and the Michigan Central Railway. The Grand Trunk Railway then terminated at Detroit, and the Michigan Central was its western outlet. It also had connection with the Lake Shore Road. The Grand Trunk Railway at that time was a broad gauge road and the rest of the system was all narrow gauge. Various appliances and methods had been suggested and brought to the notice of Mr. Brydges, then the manager of the Grand Trunk Railway, and myself for the transfer of property, and several experiments were tried. A patent known as the Baukus patent was finally adopted. It was an arrangement for the wheels to slide upon the axle, and adjust themselves by diverging, and in that way making it possible to transport the freight in through cars without change of freight, or changing the bodies of the cars from the narrow tracks to the broad. That proved itself satisfactory to the managers of the line and was a success, although attended with some expense. It was adopted, and the business was done for some time on that basis.

The Grand Trunk Railway was not then in a condition to change the gauge of their road, and pending the period when they would be prepared to change, the question came up of forming a through line across, and what is now called the National Despatch Line grew out of it, which is nothing more nor less than a distinctive name to define the route; there were connected with it at the time the Grand Trunk Railway, the Central Vermont, the Michigan Central, Chicago & Northwestern, Detroit & Eel River and one or two other roads at the west which came into the association. If you please to allow the use of that word and apply it to this; there was a sort of general conference of the managers of these roads who entered into the arrangement to run in connection with this line; the name "National Despatch" was purely a name to distinguish the route, as contradistinguished from the Merchants Despatch; Commercial Express; and the Red, White and Blue Lines, which were running as independent fast freight lines over certain roads; the roads that ultimately came into the arrangement to join with us were pretty much all the roads running from Chicago and Milwaukee west, until now the National Despatch, if you please to continue the designation of the line by that name, has its arrangements through to the Pacific coast, San Francisco, and Puget's Sound, and are running their cars through the roads that come in, except a joint division to the places reached by the line, called the "Billing Points." The western members of the line are the Chicago & Alton, Chicago, Burlington & Quincy, Chicago, Milwaukee & St. Paul, Wabash, Union Pacific, Northern Pacific, and various other roads; the Atchison, Topeka & Santa Fe. They all adopt the bills of lading and way bills of the National Despatch Line under that title, as designating the route the car should take, and its destination, and for the purpose of keeping the accounts for the division of traffic and for the settlement of expenses, and damages, etc., etc., whatever incidental expenses may arise out of a through line; it has no or-

ganization in a corporate capacity, it has no organization as to board of directors; no president, no treasurer, no funds except belonging to the roads over which it runs, out of which car service has to be paid.

The Central Vermont at the outset of its organization was one of the leased lines to Boston; the roads between White River Junction and Boston being at that time four; the Northern, about sixty-nine miles long; the Concord, thirty-five miles; the Nashua & Lowell, fourteen miles, and the Boston & Lowell twenty-five or twenty-six; they were absorbed and engaged in their local traffic and relations, and by consent they gave to the Central Vermont, being the longer line—I call it the Central Vermont, but it includes the Central Vermont and the Vermont & Canada, which was leased perpetually to the Central Vermont—and the line was known as the Central Vermont Line; these roads between White River Junction and Boston, being independent organizations, and all being short lines, by common consent gave to the Central Vermont the control of the business for all points above those roads from White River Junction, north and west, and in all the matters pertaining to the traffic of those roads. The Central Vermont was the main party in developing the business generally, the roads below us sharing in the line and taking their proportion of the traffic for the through business; the joint local business, as I understand it was always a matter of agreement between the roads, what we call joint and local, that is originating at our stations going to Boston, or originating in Boston and coming to stations on our road; that is designated as our joint business and by a little stretch of authority, and for convenience sake, without designating it joint and local, to separate it from the purely local; in that business the roads below have been in consultation as to tariffs, divisions, and settlements; they have been in joint association with the Central Vermont, although the Central Vermont has the principal management of it, or did have until 1881, there was always more or less contention on the part of the short lines about the settling of little accounts and expenses and questions of detail; and the separate roads sometimes could not agree among themselves, and in 1881, we assumed the management of that business and maintained those expenses under an arrangement which was agreed upon between them and us by which practically the four roads from White River Junction to Boston were to treat with us as one road, that there might be one party to settle with, and one party to make our divisions with at White River Junction.

In time it came to the establishment of this through business; they, still being four short roads, committed the management of the business to the Central Vermont Railroad; the Central Vermont, by vote of its directors divided the business, and constituted the departments of it, one to be denominated the through traffic, which was an organization by itself, with an independent arrangement, to be conducted on an entirely different basis from the local traffic which was put into a department called the local department, of which Mr. Chittenden was

made the general superintendent, and that was confined to the business originating on our road going to Boston and *vice versa*; there arose a mixed question between those two departments for business coming from the West on the long haul, to local stations on our road, and *vice versa*; although the amount of traffic from local stations on our road to Chicago and the West was very small as compared with the traffic coming East to be distributed to local points; very little of the products of Vermont go west for a market, most of it goes East, while Vermont finds her largest sustenance in traffic from the West, bread stuffs, grains, meats, etc., etc. To aid and favor the citizens of our own State we varied the rule which had existed, of charging local rates from the west to local, non-competitive points, and all our points on our own road were non-competitive; it seemed to be a hardship upon the people and the farmers of the State—and they constitute the great bulk of the population of the State; and we gave to them, by consent of the lines west of us, what was known as the Boston rate; placed them in the position of availing of the competitive traffic between other lines, so that they shared in the advantage of whatever was the rate through to Boston from the West growing out of railroad quarrels; in other words, making every station on the line of our road, a Boston point, so far as the rate on freight from the West was concerned.

Q. How much of the wheat, flour and corn that is consumed in Vermont comes from the west?

A. I cannot give you the percentage; the grain and flour in Vermont is very small; it is a large dairy State, and there is a small proportion of the bread stuffs, and cereals raised in Vermont; they depend for their support mainly on their dairies, so that the food products brought from the West is very large.

Q. How long has this practice been in force, to bring this western product into Vermont?

A. It started very soon after I came on to the road.

Q. Go on with the statement about the through business?

A. The National Despatch Line was made up by these roads, not by organization but by common consent, using and adopting the name as a distinctive name. As the line increased in importance its business increased, and it became necessary to provide cars for the business. The equipment of the Central Vermont at that time was confined principally to the supply for local use, as was the Ogdensburg, and also the roads below. We had no cars or equipment that we could put into that through service. The difficulty was great and hard to overcome. It was difficult to obtain capital to go into cars to supply them, as was the custom then and is now for the fast freight lines, and trunk lines, to supply their equipments largely by outside car companies like the Blue Line, Red Line, Merchants Despatch. All those lines have cars supplied to take through traffic, the roads paying mileage on the cars. We adopted the same rule, but inasmuch as our cars were subject to the difficulty or necessity for this patent to accommodate them to the broad and narrow gauge it was very difficult to obtain outside

capital to go into the cars, unless the managers of the roads showed their confidence in the system by subscribing themselves; and so the managers of all the roads in the line from Chicago to Boston came forward to encourage the organization of what is known as the National Car Company and took some of its stock. The Michigan Central Railway by some of its officers took some. That I think was in 1867-68. It was started first by association, and afterwards by a charter which was obtained in 1871, into which this was merged. The officials of these roads, the Michigan Central, Detroit & Eel River, Grand Trunk, Central Vermont, Northern, Boston & Lowell, all came forward and signified their confidence in this method by subscribing to some of the stock.

Q. The corporations did not enter into it?

A. No sir; it was in their private capacity. No road in the line felt justified in taxing their corporate funds to invest in that manner. This was still an experiment, although it had been successful so far as it had gone. We all took hold and took some of the stock. I took some myself; and I think every manager and many of the directors of all the roads in the through line, to encourage outside capital to come in and equip the roads with cars to do this through business, took some of the stock. The confidence shown by the managers of the roads in the line induced other capital to come in and equip the roads with cars to do the business; and sufficient funds were raised to start with 2,000 cars. That number has been increased from time to time, the Grand Trunk Railway having changed their grade to the standard in 1870, or 1871, a charter was obtained for this association under the name of the National Car Company. They have nothing to do with the traffic or with the National Despatch Line—have no interest in it whatever. They have liberty to take their cars and put them on any other road, if they see fit to. They run over the Lackawanna Railroad and the Erie, and they are paid for by the roads that use them. It was designed to keep them in the line known as the Grand Trunk and Central Vermont Line.

By Mr. Strout:

Q. Right here, to save any cross examination—is it not true while the directors or some of the officers of the Grand Trunk Railway took this stock, that afterwards they thought it was better for them not to hold it, and that they afterwards sold it?

A. Yes sir.

Q. Is there to your knowledge today any officer, of the Boston & Lowell, the Northern, or the Concord, that has any stock in that Company?

A. I have personal knowledge of the first statement you made as to the Grand Trunk. That road felt, as we all felt, that the officers of the road, if there was any profit in the business, that the officials of the road ought not to be engaged in it. We felt so ourselves; and if we could have done so, we should have changed it. Their directors took the matter up and advised that their officers be purged of any relations outside whatever, and they appropriated money to purchase their quota of cars per mile, dividing it into a mileage basis. That

they should pay for the cars out of their funds, and own their cars, and still keep them in the National Despatch Line.

Q. Have you any knowledge that President Morey, or any of the directors of the Boston & Lowell own any stock?

A. I do not know of my own knowledge. I do not think Mr. Morey or the present managers now do. General Stark did when he was there. I don't know that I have seen the list of stockholders for twenty years.

Q. As this line grew up, whether any controversy arose between it and the Trunk Lines?

A. Each line running from east to west, at that time was running on its own hook, to get what business it could; and the tendency was to demoralize things. Sometimes it happened there were short crops in the West and a falling off in the bulk of freight. The roads hated to have their cars put into sidings. It was at such times considered better to take less rates than to disorganize their lines, and hence rates went down. That increased and intensified the competition for freight, and every road at that time was running for what it could get. That was always so until what was known as the Trunk Line Organization was made up. I think that was in existence before the Boston & Albany was consolidated, while it was the Western Massachusetts.

Mr. Hoar. Before 1867?

A. Yes; I am sure it was before the reorganization of those two lines.

Every road was on the market to get the business, and in the struggle and competition, we being a longer line and occupying more time in the transit of freight, we found it necessary to go below the other roads in rates. If we took freight at a less rate than the shorter lines took it and at what in our minds was a fair differential, they would come down to our rate, and we would fall down with another differential—they would drive us down and compel us to reduce, as they did. This produced disturbances and it led to frequent controversies between the Boston & Albany and the New York Central Line and ourselves, and it led to a great many interviews between the managers of those roads—I had several interviews with Mr. Chapin, president of the Western Massachusetts Road, on the subject of differential rates. It assumed that name as an appropriate one and was always denominated "differential." They felt that we had no right to take a differential; that if we could not stand on an even keel with them, we ought to get out of the way; but we did not take that view.

Then came the Trunk Line Association, composed of the trunk lines. They adopted a series of rules and regulations to which all roads were called upon to conform, such as for instance a union passenger office, ticket office, to have the power to sell all tickets, and no road that sold tickets outside of that was to be permitted by the roads west to share in the business, at the expense of being cut off from connection with that line and the other lines; the pressure brought was very strong upon the Michigan Central & Lake Shore, at that time independent roads, having nothing to do with the New York Central Lines; they were re-

quired to conform to these rules or else they would not be received as connecting roads with the New York Central on the basis of a through ticket arrangement; those roads consented to that and did conform both as to passengers and freight; that led to what was known afterwards and since, as the "rebate" system; the Michigan Central said: We cannot ignore your business, because we take quite a large amount from you, and it is a constantly growing business; we don't want to refuse to take it, and if we adhere to these rules it will virtually amount to that, because you cannot pay the difference between our local and through rate. It was adjusted on the basis that they were to charge us the through billing rates, and that monthly they would settle with us on the basis of our cut rate,—that soon became an open affair, and it led to a vast deal of correspondence between members of the Trunk Line, and of the National Despatch or Central Vermont Line, and led to a great many conferences, and finally resulted in a convention of all the roads, to which the Grand Trunk Railway and ourselves were invited, the first convention we were ever invited to, the first conference with the Trunk Lines; our communications had been with the separate roads previous to that time; that led to so far a recognition of the line, by the way of the Grand Trunk Railway, as to bring an invitation from the chairman of the Trunk Line Association to the Central Vermont and Grand Trunk roads to meet in conference at Niagara Falls on a day set. That was before the organization of the present Boston & Albany, because their road was represented by the then vice president, and Mr. Phillips, then the manager of the Boston & Worcester Road; they were delegates from that line; Mr. Deane Richmond, first manager of the New York Central represented that line; Mr. Corning was then president; Mr. Joy and Mr. Sargeant represented the Michigan Central; Mr. Stone and his superintendent represented the Lake Shore; the roads west of Chicago were all represented. The Chicago, Milwaukee & St. Paul, Chicago, Burlington & Quincy, Chicago & Alton, etc., they were all represented; the policy to be settled was whether we were to be allowed to come in and take part as a trunk line in competition with the other lines, and the basis on which we should be permitted to come in. They were asked by the New York Central Line to refuse to accept us, except upon terms that we should be held to the tariffs that the Trunk Lines agreed upon; we took our position before that convention and as I was requested to take the lead in opening the case, I stated our ground, that we could not maintain equal rates and get the business, at the rates the trunk lines were making, on account of the question of time, which was a great factor in commercial transactions; we were always at a disadvantage in comparison with the other lines in respect to time; even on our ordinary trains we could not make the time they could; so that we must have an allowance—and be permitted to make differential rates; we said if they would fix the rates and fix our—or agree to our differential, we would agree to come in and keep rates on that basis; otherwise we must stand as a free

lance and get what we could. The convention discussed the question at great length, and Mr. Scott, representing the Pennsylvania Railroad, came to me and said he was ready to concede the principle, and that I was just and right, and that he was willing to grant the differential; Mr. King, representing the Baltimore & Ohio, did the same; Mr. Moran representing the Erie Road in the interest of the receivership did the same, and the only question was what the differential should be; that we were entitled to some differential was conceded, except by the New York Central; Western Massachusetts, and the Boston & Worcester; those roads declined.

Mr. Edmunds. Explain precisely what this differential is. Is it that you were to be allowed to carry between the same points for less money than they did?

A. Yes sir, for a certain agreed amount less; the rates were to be fixed and maintained, and then we should not be charged with cutting the rates; that we should be considered as maintaining the rates as long as we adhered to the established differentials. The convention broke up. The New York Central was very indignant at the other roads for conceding the principle, and they declared, Deane Richmond declared, that the whole Trunk Line Organization was broken to pieces, and that they would have nothing to do with it, that they would fight on their own hook; he told me as long as the wheels would hold to the rail they would do their best to drive us out of New England. But from that time it was conceded to us by all the other lines. At a later date the Boston & Albany, and New York Central attended a meeting, and there the Boston & Albany came in and conceded, in writing, to us, the differentials. The first differentials established were ten, eight, six and four.

The Chairman. What are they now?

A. I do not remember exactly; I think it is less than that; the highest is eight, and the lowest four. I understand it is ten to Chicago, and eight to Detroit; we continued on that established basis of differentials, and took the rates they made. I may as well say here, as anywhere, that this line of the Central Vermont and Grand Trunk is never permitted to have any voice in establishing the tariffs east and west bound, particularly west bound; the trunk lines still maintain their organization of which we are not a member, and have no voice in; they make such tariffs as they please, and we adopt them less the differentials. In 1874 a meeting was held in Montreal; there had been a meeting in New York at which it was urged upon us that we could still maintain our business if we would abandon the differentials. We claimed we could not. An arrangement was made at a further hearing at Montreal. We had agreed to maintain the rates as published by them, the tariff rates, and if we failed to get our proportion or percentage of business which was allowed, then the other lines taking it should make up to us what we lost, and equalize matters, so as to get rid of the differentials; they were to make up to us the tonnage; they offered to give us an equivalent in cash which we declined; then they offered to give us our amount in tonnage to be

The Chairman. In brief, the scheme did not work?

A. No sir; Commissioner Fink's report showed there was 17,000 tons our due. We lost our business by attempting to stand on an even keel with them.

The Chairman. What was your percentage of the traffic?

A. Twenty-one per cent.

Mr. Edmunds. How long was that experiment tried?

A. For nearly a year; enough to give it a fair test and show the result of it. It showed a loss of 17,000 tons, which they refused to make up to us. That led to our return to the differentials, and brought this meeting of October 22, at Montreal, 1874. There were present Mr. Bliss of the Boston & Albany, Mr. Rutter of the New York Central, Mr. Hayden of the Boston & Albany, and representatives of the Grand Trunk Railway and Central Vermont Railroad. This is a memorandum of the transactions: (Reading)—

After full discussion, Mr. Bliss and Mr. Rutter assented to the following differential rates on west bound traffic being conceded to the Grand Trunk and Central Vermont routes on Boston and New England freight. 1st, 10; 2d, 9; 3d, 8; 4th, 6 cents per hundred pounds. These figures are based on the Chicago rates which are to govern to other points. The rates from Portland to be agreed upon from time to time, and to be the same by both routes, that the present state of matters shall continue until such time as the proceedings of this meeting have been finally assented to by the various lines in interest, it being understood that where the Boston & Albany Railway have special contracts with parties, the Grand Trunk and Central Vermont Lines shall be at liberty to carry freight at the same rates as the Boston & Albany Railway's contracts less the existing differences, and that there shall be an exchange of special contracts after the proposed arrangements shall have been agreed upon by the various lines interested. On east bound business the Grand Trunk and Central Vermont Companies ask the following differential rates, live stock seven cents; perishable freight seven cents; first and second classes, seven cents; third class, five cents; fourth, nothing. Mr. Bliss offers 6 cents, 6 cents, 6 cents, third and fourth, nothing. Mr. Hickson proposed that if the other lines agreed to a differential of seven cents on live stock, he would meet them on perishable freight, and first and second, and accept six cents per 100. Mr. Bliss offered 6½ per 100, and let the other classes remain as stated by him. After further discussion, it was decided to leave the matter open until Mr.

to it.

Mr. Hoar. We do not concede anything as to this matter; the Boston & Albany may have agreed to something. We do not concede it as the witness states it.

Witness. Subsequently, Mr. Jewett, Mr. Scott, and Mr. King to whom we referred the matter, affirmed the principle as appears by this letter:

Mr. Hoar. This is all rail business you have been talking about?

A. Yes sir.

By Mr. Fiffeld:

Q. How often do these trunk lines meet?

A. I don't know; we are not a member of the Trunk Line Association. I suppose they meet monthly.

Q. From that time down, have the trunk lines dictated these rates?

A. Yes sir.

A. That is, they have made the rates first, and you have accepted them?

A. They make the rates and we accept them, and charge the same less the differential, and maintain those rates.

Q. In consequence of their not making good the 17,000 tons, what happened?

A. As I stated, we returned to the differentials.

Q. And you have continued that down to the present time?

A. Yes sir.

Q. And even last March, who made the rates west?

A. The trunk lines; and we conform to them less the differential.

Q. What was the differential last March?

A. I suppose it was the differential there on that statement you have; I don't know of any change.

Q. You have stated in a general way why you claim these differentials. Explain the character of your road, through what kind of a country it runs.

A. Our road is a mountain road, subject to all the grades and curvatures incident to such a road, and to the climatic influences of a mountain district, snows, frost, ice, etc.

Q. In respect to the taking of west bound traffic, have you got to take it at these rates or leave it?

A. The bulk of the business is east bound, and there is a large percentage of cars return empty.

Q. What percentage is that?

A. I should think more than fifty per cent of the cars go back empty; I don't know but sixty; I cannot say exactly; very nearly that.

Q. Whether you always maintain the rates east agreed upon by the Trunk Lines?

A. Yes sir; we intend to.

Q. You say your road runs through a sparsely settled country?

A. Yes sir; very sparsely. It is a rural, agricultural community.

Q. How is it about the cost of maintaining the road in winter?

A. The cost is in excess of what we can earn.

Q. What is the character of the grades over the Roxbury Heights on the Central Vermont?

A. They are high grades. Those are nearly sixty feet; that is the highest.

Q. Do you have to take extra engines to take your trains over those heights?

A. Yes sir; and the grades are separated over our line, so that we cannot keep auxiliary power to help us over any particular locality. The grades on our Rutland Line are about ninety feet.

Mr. Edmunds. You control the Rutland Road?

A. Yes sir; our grades over the mountain that way are about ninety feet, and the Roxbury grade is fifty or sixty feet.

Q. Do you take this through western traffic at the rates you do except from necessity?

A. No sir; on the east bound we take the established rates, and on the west bound we use the differentials.

Q. Can your roads live without this through traffic?

A. No sir; not and keep up an efficient line.

Q. Can you live with the traffic that is not through traffic?

A. That is what you asked me.

Q. Can you live with the local traffic alone?

A. No sir; that is the proposition; the question is, Can we live without the local traffic? I think we could.

Mr. Strout. You mean local traffic at the rates charged now?

A. Yes sir.

Mr. Fiffeld. What is the state of your road now as compared with what it was when you commenced doing the through business, as to equipment? State whether the road has been equipped and put in good condition to do through business. Compare your road now with what it was when you commenced to do through business. How many engines had you then?

A. I think we had about forty.

Q. How many have you now?

A. About a hundred.

Q. And correspondingly so in cars?

A. Yes, including the national cars.

Q. What is the rail on your road?

A. All steel rails.

Q. Is it in good ballasted condition?

A. Our road is laid with three thousand ties to the mile, and thoroughly ballasted; steel rails of sixty-two to seventy pounds.

Q. Is it adapted to through business?

A. If we were left to depend on local business we could not maintain our road.

Q. What about your equipment?

A. We should have no use for it.

Q. You would have to dispose of it?

A. Yes sir.

Q. You could not pay the interest on your bonds on your local business?

A. No sir.

By Mr. Strout:

Q. Did you say you could live without the local traffic? Did you mean to say that?

A. I answered the question very hastily; I did not quite take in his question. What I intended and had in my mind when I answered the question was this, and I intended to explain before I got through myself without your asking the question: I mean that if we lost, or were compelled to go out of the through business, it must necessarily advance our local business; and if we were to be confined to our local business, we could not sustain our road; that both are necessary for us to carry on and keep up our earnings and meet our obligations. Mr. Edmunds' question was put to me in a flying way, and I answered it without giving it any thought.

By Mr. Fiffeld:

Q. Do you know what the feeling is at Ogdenburgh and along the line in respect to the present rates?

A. I only know from what they say and express themselves to me and to our officials, that they are perfectly satisfied with our local rates; and they realize and appreciate the fact, as they say to me, that if we were to reduce and give up our through business, it would be inevitable that the local rates would have to be raised.

Q. How is it on the Central Vermont Road?

A. I have had no complaints at all. The only one I have had was one that a man brought from Bethel the other day before the Commission, and that I understand has been withdrawn. That is the only complaint I have had, beyond this. The question has often been asked me by shippers of butter and dairy products, why we could not carry freight from St. Albans to Boston as cheap as we carried freight from Chicago to Boston, and I have explained that a good many times to them; and I never found a man yet but that was perfectly satisfied. Even in Convention I have been asked to answer that question, and I have done so. They have withdrawn stating they were satisfied.

Q. Whose money was it that built the roads—the Vermont Central, and Vermont & Canada?

A. It was mostly Boston money.

Q. Very little Vermont money went into it?

A. No sir.

Q. Is there a road in Vermont that has not been foreclosed and reorganized, but one?

A. No sir, I believe not; and on that road they have lost their original stock.

Q. What year was it that you went abroad?

A. 1878.

Q. Did your directors place this matter of through business in the hands of a manager and direct him not to take this through business?

A. One or two of our board of directors thought we could not afford to do the through business at the rates we were doing it; and I always insisted we could not live without it. As I was going away to Europe to be absent some months, we had a discussion on that subject previous to my leaving. Our general manager agreed with the board. I said to them: I shall be out of the way; you can let your manager do as he likes. He cut off the through business. The result was, a telegram

was sent to me to hasten home; that for the first time in the history of the road we had to borrow money to pay our pay-roll. We did not earn enough to pay our pay-roll. It took us a great many months to recover back our business and financial position. They were satisfied the road could not live without the through business.

Q. Have you ever made a computation of the cost of moving through business, after deducting the expenses of it, as compared with the local traffic?

A. I have; I had one prepared;

Q. State what it was, briefly, and state what the result was.

A. A statement was prepared with reference to a hearing before our Legislature, and to settle the question in my own mind as to what we were actually getting on our local traffic, when it was brought up to the condition of our through traffic; I took for example our butter rates from St. Albans and some stations on our road, after deducting the legitimate expenses which do not pertain to transportation. I found, to my surprise, that we were taking butter from our local stations at a less rate per ton per mile than we get on our through butter traffic. When the butter is brought to the condition of the through freight as it passes our stations, we found we were not getting as much for the transportation of butter as we got from the transportation of the through butter; that is, butter from St. Albans to Boston, after bringing it to the point of transportation, did not yield as much as our through rate for butter from Chicago or the West to Boston.

Q. Can you explain why; what basis that was on?

A. Simply on the basis of charging out the actual moneys paid out for maintaining our local stations, and the risks we ran, the work we did, the insurance we paid on our buildings, the maintenance of buildings for the business, clerk hire, stationery, etc., tracking, etc., shunting cars in and out for their loads, getting them back on to the line to where the through freight stands at that station on its way to Boston—deducting these expenses from the price, it did not leave us as much as we got per ton per mile for the same class from the West to the East.

By Mr. Hoar:

Q. I understood you to say that your road was not allowed, you and the Grand Trunk Railway, were not allowed to be members of the Trunk Line Association; did I understand that correctly?

A. No sir; I did not say that; I said the Central Vermont was not.

Q. Is it not a fact that you were often solicited to join, and become members of that association?

A. We were a member for four or five years, and while we have been occasionally invited to be present at some of the conferences as in the case of Mr. Porteous on the 5th of last March, he merely went to learn their action on the Interstate Commerce Law and report to me.

Q. Haven't you been solicited, since you ceased your connection with it, to become members of the association, and declined?

A. No sir; I don't think ever in that form;

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never have been asked, and never have asked leave to go in.

Q. Will you state when it was that you went out of the west bound through business? You stated that you went to Europe, and that your road went out of the west bound through business.

A. I went to Europe in 1878; and was gone from the Spring until the Fall.

Q. And it was during that period?

A. Yes sir.

Q. Were your agencies closed up?

A. Substantially; the business was withdrawn; the soliciting was withdrawn and we practically went out of the business.

Q. You did not transact business to the West over your line at the differentials then existing?

A. I think not.

Q. Are you sure of that?

A. From what they told me I feel sure.

Q. Then it was not a matter within your personal knowledge?

A. I know the result was what I stated, in consequence of their policy in going out of the business; they perhaps did business for some particular customers, and brought some grain from the West.

Q. I am speaking of the west bound business.

A. I speak of both; they substantially went out of it.

Q. The testimony you have given in regard to these differentials has been wholly concerning the all rail business, has it not?

A. The controversy arose as to the all rail business, but it has been applied by us to our water line.

Q. You have testified in regard to the all rail business?

A. Yes; the scope of my business has been in reference to that, although we have applied it in regard to the other; always claimed it.

Q. Was there ever any agreement or consent to your taking differentials on the lake and rail business; and if so, when was it?

A. I do not now recall that the question was ever asked me; and I don't know that any complaint has ever come to me that we did apply it there.

Q. Didn't you, as a matter of fact, agree with the other trunk lines not to take a differential on the lake and rail business?

A. When?

Q. That is another question. Did you or not?

A. Never to my knowledge; I don't recollect of an instance, but I will not say that there was not.

Q. Take the year 1879; didn't you then enter into an agreement to charge the same rates on lake and rail business as was charged by the other lines?

A. So far as my own knowledge is concerned I should say no; but I cannot say what Mr. Millis may have done in some of the conferences. He may for some consideration have agreed to it.

Q. Let me read you Mr. Fink's circular No. 158, minutes of meeting held at Commissioner's office May 2, 1879; present Lansing Millis, H. J. Hayden, manager of freight, Boston &

Albany, etc., etc. (Counsel then read the circular to the witness, but a copy was not furnished to the stenographer to embody in these minutes.) Do you remember that?

A. I do not think it was ever brought to my attention. Mr. Millis was intrusted with a great deal of authority in these matters.

Q. You would not say it was not a matter of agreement at that time?

A. I would not; we had no line, as far as the Central Vermont was concerned in 1879; we had no line that year by the way of Ogdensburgh.

Q. When did your Ogdensburgh line start?

A. A year ago last spring, or two years; when we took the possession of Ogdensburgh Road was the first we had a line.

Q. What was the name of it before that time; what was the name of the route?

A. I think they had nothing but wild vessels in 1879; no regular boats and no line running; I think the Ogdensburgh Railroad Company, being in the management of their own road, trusted to the wild boats, as they might casually come.

Q. No line of steamers was running?

A. I think not.

Q. How did you reach Lake Michigan and Lake Superior ports at that time?

A. Through Sarnia and the Grand Trunk Railway. We were not in affiliation enough with the Ogdensburgh Railroad to make a line with them, although we did some business with these wild boats; but no line was established then.

Q. What lake and rail route were you operating in May, 1881?

A. I think there was no line then.

Q. Do you remember this circular No. 371: Office of the trunk line Commissioner May 24, 1881? (Counsel then read this circular to the witness; no copy was furnished to the stenographer.) What do you say about that?

A. It is barely possible; I do not remember the date that the Ogdensburgh Railroad made arrangements with some boats to run by way of Collingwood, and by rail and water from Chicago to Georgian Bay, and thence by rail to Collingwood; thence by steamer to Ogdensburgh. We were not a party to that at all.

Q. Was not your division at that time increased because you had two lake and rail routes, one via Sarnia and one via Ogdensburgh, so that you took one half of the lake and rail business?

A. I don't remember any such arrangement.

Q. Do you say it was not so?

A. So far as my knowledge extends it was not so; that is the year I think that they had the line via Collingwood; we received freight and had our division, but the line was by Sarnia.

Q. At that time Mr. Millis represented your road and took the entire charge of it so far as these meetings were concerned?

A. So far as the details were concerned.

Q. And in settling the divisions between you and other routes?

A. Yes sir.

Q. You say in your answer, signed and sworn to in this case, that you have brought your road into a high state of efficiency for

the purpose of doing this through business; when did you begin on that? As soon as it was reorganized?

A. We commenced before that, sometime.

Q. As a matter of fact you have very much increased your capacity to do business?

A. Yes sir.

Q. And have increased the speed at which you carried freight?

A. Yes sir; and reduced the cost of carrying it.

Q. And you carry it quicker between Boston and the western points?

A. We have made several efforts.

Q. Haven't you succeeded?

A. To some extent perhaps, we have particularly on refrigerator freight; I do not think the time of our ordinary freight has been shortened any; at the time that table was gotten up I think there was a special effort made; but we never have succeeded in doing the business in four and a half days, except on paper; that special effort was made to accommodate the refrigerator business.

Q. What do you say to day is the rate—speed—that you can make over your road to-day from Boston to Chicago?

A. From six to seven days.

Q. You can carry ordinary freight in six days?

A. We can sometimes, under favorable circumstances.

Q. When this differential of ten, eight, etc. was first established, what then was the rate of speed, or time in which you could transport business from Boston to Chicago?

A. I do not think, with the exception of the refrigerator business that we have varied our time, or changed our speed.

Q. At all?

A. No sir.

Q. Then in the increased efficiency of the road you do not think you have shortened the time?

A. I think we have reduced the cost of operating, but I do not think we have on the ordinary freight, via Montreal, changed the speed?

Q. I understood you to say that you did think so?

A. I said that on our refrigerator freight, we had.

Q. And you can send ordinary freight in six or seven days?

A. Yes; I think we can make a little quicker than that on refrigerator cars.

Q. Is it not the fact that in the lower classes of freight, the rate is more important to the shipper than the speed—on time occupied in the shipment—on the lower classes?

A. Perhaps to some extent that may be true, if you give certainty at your lower speed; that is, to have it uniform—take grain, from there, if it arrives on a regular time, so that they can make their calculations, I do not know that it makes very much difference to the shipper, if he can rely upon certainty in time.

Q. The lake and rail route is longer than the all rail route?

A. Yes sir.

Q. And it occupies a much longer time in transporting freight that way?

A. Yes sir; very much.

Q. And the classes of freight that seek that route are the lower?

A. Mainly.

Q. And they are induced to that not so much by the time as by the allowance on the rate?

A. That is probably the ruling consideration.

Q. Something was said in that circular about the Northern Transit Company; what was that?

A. That was the line I referred to that was organized by the way of Collingwood by the Ogdensburgh Railroad.

Q. And went over your route?

A. Some of it did, but more other ways; they were thinking of making a line by the way of the St. Johnsbury & Lake Champlain Railroad against us.

Q. You did not attend any meeting that was held concerning the fixing of rates this year?

A. No sir.

Q. The only representative of your road there was Mr. Porteus?

A. Yes sir.

Q. And what you know about it, you got from him?

A. Yes sir.

Q. I suppose all the roads that compete with you for the western business are also competitors with each other, as well as with you?

A. Yes sir.

Q. The business is a competitive business?

A. Yes sir.

Q. And the Central Vermont fixes the rates of transportation so far as its lines are concerned, on through business?

A. Only by applying the differential to the other rates.

Q. So far as the other roads that connect with it, are concerned, I mean.

A. Yes sir.

Q. So far as they are concerned, the Central Vermont fixes the rates at which freight shall be carried?

A. A west bound freight; and the roads in the west fix it on the east bound.

Q. That is what I am talking about—the west bound business?

A. Yes sir.

Q. How long a time has that arrangement with the lower roads covered, by which they consent to your fixing those rates and they taking their proportion?

A. It has always been so, ever since we had a line.

By Mr. Strout:

Q. In relation to this matter of differentials, I understand you to say that it depends considerably upon the speed, does it not also largely depend upon the certainty which shippers have, that their freight will arrive within a given time, where it goes over a certain route; say for instance the Boston & Albany, which does not obtain upon the routes where the differentials were allowed?

A. That is one of the elements.

Q. Is there not a likelihood or chance of freight cars being sided, or being stopped with snow, especially in the winter on this route, that there would not be perhaps to the same extent on the other?

A. Yes sir; the lines competing with us were

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in the habit often, at one time, of making what they called time contracts, of guarantying freight to be delivered on that time; and it was so much shorter than it was possible for us to make, that they would take the business.

Q. Is it not true, taking these refrigerator cars for instance that by clearing your track and putting on motive power enough you can get those cars through in a very comparatively short period of time, and is it not true that that does not apply to the general, ordinary freight?

A. Yes sir; we try to make about eighteen or twenty miles an hour with our refrigerator cars, and the rate of ordinary freight is from eight to ten miles an hour.

Q. Is it not also true that so great is the desire for certainty, as well as despatch, with some kinds of freight—provisions, such as wheats, bread stuffs, go by boat, rather than by through rail?

A. The question of time on that class of freight is not what it is on the refrigerator freight.

Q. Is it not still an element with all kinds, that the shippers want their goods through?

A. If they get their supply with certainty, they can adjust themselves on that class of freight to a long time better than they can on the perishable freight carried in the refrigerator cars; on that they demand prompt delivery; the freight by that line of cars is relied upon to arrive daily to supply the market.

Q. This Sarnia line that you spoke of, the through freight there, was divided between the companies—the railroad company and the steamboat company, was it not?

A. Yes.

Q. And between the two routes?

A. Yes sir.

Q. So that, is it or not any parallel?

A. No sir.

By Mr. Hoar:

Q. Have there been any time contracts, such as you speak of, in the last ten years, that you have known of?

A. I should think there had within that time, but I do not know of any recently.

Q. Since 1878, has there been any?

A. I don't know; I could not say that there has.

Q. Will you tell the Commissioners what you carry on the fast freight, west bound line?

A. We carry dressed beef—

Q. On west bound, I said?

A. Oh! fruits of various kinds; there is very little freight west, except of the perishable kind, fruit or whatever it may be, by the fast freight line.

Q. Don't you think of any other commodities than fruit?

A. I don't know, I do not see the cars; I know that is one kind.

Q. You do not carry grain or bread stuffs?

A. There are no bread stuffs, sent west bound; the grain all comes East, it does not go West; what we call our A. and M. trains, are our fast express freight trains; they may carry some merchandise in their trains, I don't know how that is; they will not carry anything that will affect the car, or impregnate it with any odor or dirt, so as to injure it for bringing

butter and dairy products, poultry, etc., from the West.

Q. How many cars do you haul on those trains, on the fast freight trains, west bound?

A. From twenty to thirty.

Q. That runs every day?

A. Yes sir; it goes whether the cars are empty or full; they are not generally full.

Q. What proportion is that to the whole amount of west bound cars that you send on other trains?

A. It is quite limited; we are doing it all on one train; we make but one express train each way.

Q. You take other freights in that train besides fruits and perishable things?

A. Yes sir; but we cannot carry certain classes as I said; we cannot carry boots and shoes for instance in the refrigerator cars, because the odor left would injure the car for its return purposes, the freight that comes East in it.

Q. You take your differentials just the same on that traffic as on the other?

A. Yes sir.

Mr. Schoonmaker. You spoke of Boston rates to Vermont points on east bound shipments; on what articles are the Boston rates given?

A. Flour and grain.

Mr. Edmunds. Anything else?

A. I think not; we bring flour and grain at the Boston rates.

By Commissioner Schoonmaker:

Q. Do you still give those rates?

A. Yes sir.

Q. Grains are not produced here in Vermont?

A. They do not raise more than enough for their own consumption; corn and oats, not much wheat.

Q. There is no grain exported from Vermont east, I suppose?

A. Very little; occasionally barley and oats, but there is nothing to amount to anything; the products of Vermont are mainly dairy.

Q. Have you any rates from Vermont to Boston, on grain?

A. No sir, except as it comes in under the general classification; we have no special rates, I mean.

Q. Butter is produced in Vermont?

A. Butter and cheese, very largely.

Q. How do your rates to Boston on butter and cheese compare with the rates by your line from the West on the same commodities?

A. The rate on butter from Chicago to Boston is seventy-five cents per 100 pounds, and sixty cents from St. Albans to Boston growing less according to the grouping of rates. I would add that I should have included provisions in my last answer, canned beef, etc., in the freights from the West to Vermont points at the Boston rates.

Q. Does that cover canned provisions?

A. No sir; dressed beef, etc., provisions.

Q. You give the Boston rates to local Vermont points on all that class of freight?

A. Yes sir.

The further cross examination of Governor Smith, by Mr. Edmunds, is postponed until morning, by request of Mr. Edmunds; with this

qualification, this closes the testimony of the defendants.

PETITIONERS' REBUTTING TESTIMONY.

Herbert C. Hall, called on behalf of the petitioners; sworn, testified as follows:

By Mr. Hoar:

Q. You represent at Boston the Yarmouth Steamship Company?

A. Yes sir; I am the general agent; or the firm of which I am a member, are the agents.

Q. A line of ocean steamers between Boston and Yarmouth?

A. Yes sir.

Q. Are you familiar with their business, and the rates given on freight?

A. I am.

Q. Do you quote rates via your steamers from Boston to Montreal?

A. We do not.

Q. Do you ever carry any traffic from Boston to Yarmouth to be sent to Montreal?

A. We sometimes bring freight from Yarmouth that is destined for Montreal up over the railroad lines from there.

(Cross examination waived).

W. H. Kilby. Called on behalf of petitioners; sworn; testified as follows:

Direct examination by Mr. Hoar:

Q. You represent the International Steamship Company at Boston?

A. Yes sir; I am the Boston agent of that company.

Q. How long have you been familiar with its business?

A. Twenty-five years.

Q. Where does your line run from?

A. From Boston to Portland, and Eastport, Maine, and St. Johns, New Foundland; and we have another line running from Boston to Digby and Annapolis, Nova Scotia.

Q. Do you ever take traffic from Boston destined for Montreal?

A. We can, but I have never known of any to be shipped that way.

Q. Do you quote rates that way?

A. We do not.

Cross examination by Mr. A. A. Strout.

Q. Your line of boats is really a line from Boston to St. Johns, New Brunswick touching at these different ports?

A. Touching at Portland and Eastport; and we have another line from Boston to Digby, and Annapolis.

Q. Which goes direct?

A. An outside line, yes sir.

Q. Is there any reason why you could not make an arrangement for business from Boston by your boats and so through to Montreal?

A. Oh we could if people would pay enough for it.

Q. If it was not that the competitive rates are so low, you could make money out of carrying goods from Boston to Portland, and, by way of the Grand Trunk Railway, from there to Montreal?

A. Yes sir; it would have to be a pretty sum they would have to pay us to go around; it is so much further.

Q. Only 110 miles by boat, is it not?

A. From Boston to Montreal?

Q. No; to Portland?

A. Yes; but we never take any freight that way.

Q. You do not as a matter of fact; but if there was a rate high enough, if it were not for the fact that the competitive rates keep down the price, you could do it?

A. As a matter of policy we do not take Portland freights because our boats go further East.

Q. You do not carry freights to Portland?

A. No sir; as a matter of policy.

Q. What is the policy?

A. Our own legitimate business; it would compel us to delay at Portland and that we don't want to do; we don't want to delay there any longer than necessary; and we have always been on friendly terms with the steamboat lines running there, and so we have never carried Portland freight.

C. F. Williams, called on behalf of petitioners; sworn, testified as follows:

Direct examination by **Mr. Hoar**:

Q. You are the representative in Boston of the Portland Steam Packet Company?

A. Yes sir; the agent.

Q. Are you familiar with its business?

A. Yes sir.

Q. Do you quote rates from Boston to Montreal?

A. We have never been asked to quote rates there.

Q. You have a tariff from Boston to Montreal?

A. Yes sir.

Q. What are your rates on that tariff?

(Witness produces a tariff, and hands to counsel).

Q. By what route do you go?

A. By steamer to Portland, thence by Grand Trunk Railway; that is the route we should give a rate by.

Q. Now, state what that rate is.

A. (Referring to tariff.) 45, 40, 30, 23, 20, and 18.

Q. That is just the same as the all rail rate, is it not?

A. I cannot answer for the rail rates.

Q. What volume of traffic do you carry from Boston destined for Montreal?

A. It is very light.

Q. Do you know what the figures are?

A. I could not give you the figures; it is very light.

Q. Between January and June it was some 60,000 pounds was it not?

A. I think you might safely call it that amount, although I cannot say.

Q. Of this year I mean?

A. Yes sir.

Q. Was there not some examination made of your books to see just about how much it was?

A. I did look at it.

Q. It was about thirty tons, was it not?

A. I did not see it added up.

Q. It was added up, was it not, by the young man who came there for that purpose?

A. Yes sir.

Cross examination by **Mr. Strout**:

Q. Then there is an actual route over which freight passes from Boston by water to Portland.

land, and by the Grand Trunk Railway, to Montreal, is there?

A. Yes sir.

Q. And the Portland Steam Packet Company is not in any way connected with, or under the control and management of, any railroad; it is not within the Interstate Commerce Act but it is a separate and independent line?

A. Yes sir.

Q. Is it not a fact that you quote rates from Boston; and do you not quote the National Despatch rates from Boston to Montreal; that is, you carry freight at the same rates?

A. Yes sir; that is, we bill at those rates; but I never gave a rate, never have had occasion to, never have had the question asked me to give a rate to Island Pond; that is all done by the agent of the Grand Trunk Railway.

Q. But you bill at those rates?

A. Yes sir.

Q. So that you are in competition at Boston for freight to Montreal, with the Boston & Lowell road, and these other roads, are you not?

A. Yes sir.

By **Mr. Hoar**:

Q. You have described the competition, haven't you, and the rate you give, which is the same as theirs, and the volume you get that way?

A. Yes sir.

By **Mr. Strout**:

Q. What would the effect be if the rates were raised to sixty cents per 100 pounds? By way of the Boston & Lowell Road—it would go by your route, would it not?

A. It would if we kept it lower.

Mr. Hoar. But you would raise your rates, of course?

A. Yes sir; well—of course, that would depend upon circumstances.

Q. You make money out of it as it is, do you not, on what you carry?

A. I can't say how much money we make out of it.

A. M. Graham. Called on behalf of the petitioners; sworn; testified as follows:

Direct examination by **Mr. Hoar**:

Q. You are from Boston?

A. Yes sir.

Q. What transportation company do you represent there?

A. The Kenawa Despatch.

Q. Operating over the Chesapeake & Ohio Road?

A. Yes sir.

Q. How does your route go from Boston?

A. From Boston via the Providence Road to Providence, thence by steamers to Newport News, and thence over the Chesapeake & Ohio.

Q. How does your tariff compare with that of the Baltimore & Ohio Railroad from Boston to western points?

A. Very near the same.

Q. Have you seen the National Despatch Line tariff for west bound freight?

A. Yes sir.

Q. At the time of the filing of this complaint were your rates substantially the same as theirs to most western points?

A. No sir; I think our rates were a trifle higher then, they taking ten cents as a differential, and we taking eight on first class business.

Q. To Chicago?
 A. Yes sir.
 By **Mr. Strout**:
 Q. How much differential is there on first class freight on your road?
 A. At the present time?
 Q. Yes; say to Detroit?
 A. We have nothing to do with Detroit; this is a southern route.
 Q. Is yours the Chesapeake & Ohio, and via rail and water?
 A. Yes sir.
 Q. Now between sea board cities and western points, north of the Ohio River, how much differential are you allowed—are you not allowed 8, 6, 4, 3, 2, on 1, 2, 3, 4, 5 and 6 class freight on the different classes?
 A. Yes sir.
 Q. Do you quote rates to Chicago?
 A. Yes sir.
 Q. What is the extent of your business to Chicago?
 A. Very little.
 Q. Do you know how much it is?
 A. I could not say.
 Q. What is your route to get to Chicago?
 A. From Boston we would go via the Providence Road to Providence, thence by steamer to Newport News and over the Chesapeake & Ohio Railroad to Winchester, then over the Kentucky Central to Cincinnati and by the Big Four to Chicago.
 By **Mr. Edmunds**: How many miles would it be round that way?
 A. I could not tell you.
 By **Mr. Strout**:
 Q. Your business is chiefly southwestern business?
 A. Yes.
 Q. You solicit more for St. Louis and those points than you do for Chicago?
 A. Yes sir.
 Q. But still your route is open, and it is a competitive one, is it not?
 A. Yes sir.
 By **Mr. Hoar**:
 Q. What were your differentials to St. Louis at the time of the filing of this complaint in May?
 A. Eight cents on first class.
 Q. That is also reached by the National Despatch Line?
 A. Yes sir.

B. D. Webber. Called on behalf of the petitioners; sworn; testified as follows:

Direct examination by **Mr. Hoar**:

Q. What transportation companies do you represent in Boston, if any?

A. The Canadian Pacific Despatch.

Q. Over the Passumpsic and Southeastern Railways?

A. Yes sir; it goes over the Boston & Lowell Railroad to Concord, by the Northern, and Passumpsic, the Southeastern, and by the Canadian Pacific.

Q. What are your rates to Montreal?

A. Forty-five, forty, thirty, twenty-three, twenty and eighteen.

Q. The same as the National Despatch Line?

A. I presume they are; they were last winter; Montreal is included in the tariff of the Canadian Pacific Despatch.

Q. Which is the longest line in mileage, theirs or yours?

A. Our route has been changed recently, within a week or ten days; I can't say; I think there might be thirty miles difference.

Q. Before that yours was the longer?

A. Yes sir; I understand so.

Q. Take it at the time this petition was filed, the first of June say, what was the difference in your mileage?

A. My impression is between sixteen and eighteen miles.

Q. Your line then was sixteen to eighteen miles longer than to Montreal by the National Despatch Line?

A. That is my impression it was at that time; at the present it is thirty miles longer.

Q. The length of your line has been increased?

A. Yes sir.

Q. Do you carry freight to western points?

A. Not to the Central Western States.

Q. Do you carry to Chicago?

A. We do not.

By **Commissioner Walker**:

Q. Anywhere this side of the Pacific coast?

A. Nowhere this side of the Pacific in the United States; we carry to California and Washington Territory.

By **Mr. Strout**:

Q. This line has just opened, has it not?

A. Yes sir; the Canadian Pacific Despatch Line.

Q. How long has it been running?

A. Under the name of the Canadian Pacific Despatch Line since the first day of May of this year.

Q. How long have you had your direct communication with Montreal?

A. Only about a fortnight over our own system of roads.

Q. Is it not true that the Canadian Pacific are providing themselves with western outlets running to Chicago, Milwaukee and to points west in Minneapolis?

A. I understand so.

Q. You know they are, don't you?

A. I know the Canadian Pacific Railway are.

Q. And they are opening up a new route by way of Sault St. Marie?

A. Yes sir.

Q. And the reason that you do not now take freight to these western points is simply that the road has not yet completed its arrangements, is it not?

A. I understand that to be the reason.

Q. And the arrangements your line have to go clear through to San Francisco on the part of the Canadian Pacific is to go by rail to Van Couver, and then down the coast to San Francisco.

A. We now have a line to San Francisco by that route.

Q. Is it not true they are making arrangements to put on steam boats, fast and elegant boats to run freight and passenger business?

A. I cannot answer for that.

Q. And when these western outlets are completed they will be a very powerful competitor, will they not, with the National Despatch Line, as a matter of fact?

A. Yes sir; I think so.

Q. There is no doubt about it is there?

A. I have no doubt about it.

Q. And the Canadian Pacific is a foreign corporation?

A. Yes sir.

Q. With the exception of these few roads, it is entirely in Canada, and from the provinces west?

A. Yes sir, it is entirely in Canada as I understand.

Q. They are in the sense of a competitor to-day but not as much as they will be to these western points when they get their outlets completed?

A. I agree to that.

Mr. Hoar. We have a deposition here, taken by the consent of the other side in order that the witness might return. We now offer it, and I will read it.

Said deposition is as follows:

Before the Interstate Commerce Commission.

I, **William J. Farrall**, of Boston, certify that I am the agent and representative at Boston of the Boston, Halifax & Prince Edwards Island Steamship Company. I have been in the employ of that company, and am familiar with its business, and received all of its freight for the last eighteen years.

During all that time it has not quoted, nor does it now quote, nor has it carried, nor does it now carry traffic from Boston destined to Montreal. We have never had any such application to carry traffic destined to Montreal. Traffic to go over our route and reach Montreal must be carried by us to Halifax, then carted across the city, and thence by Inter-Colonial Railroad Company to Montreal.

We have one boat a week.

[Signed] William J. Farrall.

Arthur Mills called on behalf of the petitioners; sworn, testified as follows:

Direct examination by **Mr. Hoar**:

Q. You are the general traffic manager of the Boston & Albany Railroad Company?

A. Yes sir.

Q. How long have you been connected with the freight traffic department of that road?

A. Since 1878.

Q. Do you remember the meeting of March 1887 in New York City, of the joint committee of the trunk lines?

A. Yes.

Q. Were you present at it?

A. I was there.

Q. What was the purpose of that meeting?

A. It was called for the purpose, as I remember it, of arranging our tariffs to conform with the requirements of the Interstate Commerce Law.

Q. Was Mr. Porteous there?

A. Yes sir.

Q. Representing the Central Vermont Railway?

A. Yes sir.

Q. Was there any agreement made at that time by which the Central Vermont Railroad should be allowed differentials on all rail west bound business from Boston to Chicago and other western points?

A. There was a proposition made by the Commissioner of the freight department of the

Trunk Lines Association; his name is Gilfort. There was a proposition made by him that the Central Vermont on its all rail business should accept differentials at the rate of 8, 6, 3, 2, 2, 2, cents per hundred pounds.

Q. That is from Boston to Chicago?

A. Yes sir.

Q. That you say was proposed by Mr. Gilfort?

A. Yes sir.

Q. Was there any action taken by the representatives of the different lines, when he made that proposition? If so, what?

A. There was some little discussion between Mr. Porteous and the representatives of the other Boston roads who were there, and myself, and I do not think we came to any distinct agreement on the matter, but the impression left on my mind was that Mr. Porteous was to publish his tariffs on his all rail business based on those differentials.

Q. Was there anything said at that meeting about any differentials on lake and rail business?

A. Nothing whatever.

Q. What did the Central Vermont Railroad then do as to rates after that meeting?

A. We found it published tariffs all rail, upon differentials of 10, 8, 6, 4, 4, and 3 cents per 100 pounds to Detroit less than our rates.

Q. So that he published a greater differential on the all rail business than was proposed by Mr. Gilfort?

A. Yes sir; and that was what I understood he accepted.

Q. Did he also publish a differential on lake and rail business?

A. Yes sir.

Q. About which nothing was said at this meeting?

A. Nothing was said about that.

Q. What did you then do about that?

A. I was absent from Boston I think for two weeks and more after the law took effect, and I found on my return that our freight agent had written to Mr. Porteous on the 18th of April, calling his attention to the fact that he had published these tariffs based upon greater differentials than we understood he was ready to accept, and he had a reply I think, in which Mr. Porteous said he had not.

Mr. Field. Where is that letter?

A. It can be produced; I presume it is in Boston.

Q. When you came back and found this had been done, what did you yourself then do?

A. I wrote to Commissioner Gilfort as I recollect it, and I wrote to Mr. Hayden, Vice President of the New York Central Railroad, calling attention to the tariff that the National Despatch Line had published, and trying to find out just what the status of the thing was.

Q. Are you familiar with the history of this differential as it has existed in the past, as claimed to be taken by the Central Vermont?

A. Yes sir; fairly so.

Q. And upon what distinction between them and other carriers was it based?

A. It was based on the theory that at the time we agreed that the Central Vermont Railroad should have a differential on all rail business,—on the theory that the Central Vermont route could not make as good time nor give as good service on freight traffic from Boston to

western points, particularly on the upper classes of freight as the Boston & Albany and New York Central could.

Q. You say it was a subject of agreement between the Boston & Albany and its connections and the Central Vermont?

A. I have not any doubt about it; on the all rail business there were four classes of freight in the classification at that time, and I think the differentials agreed upon were ten, eight, six and four. And there was an understanding that if any fifth or special classes should be added to the specification that the Central Vermont differential on those classes should not be greater than two cents per 100 pounds. The idea of the differential then was that we at that time were supposed to have a division of freight traffic from Boston west among the different roads, and the theory under which this differential was given was that the Central Vermont might be allowed to keep up its share of the business. After we found that this differential gave them a greater than their share of the business it was admitted that they were not entitled to it.

Q. Was there any arrangement between the roads as to a division of tonnage?

A. Yes sir; there have been from time to time arrangements with the Central Vermont as to a division of tonnage.

Q. That is, the differential being a fair one?

A. Yes sir.

By the Chairman:

Q. When that allowance of tonnage was made was this differential still allowed?

A. Yes sir; the Central Vermont, as I recollect it, always, on the all rail business, took off a differential in quoting its rates.

Mr. Hoar, resuming:

Q. That is on all rail business?

A. Yes sir.

Q. Was the differential taken by the Central Vermont Railway at the time there existed this arrangement for a division of the tonnage?

A. It was indeed.

Q. Have you the reports of the trunk line Commissioners on that?

A. I should qualify my last statement that there has been different times at which there has been a division of traffic made. I have in mind a division of traffic in 1884; and at that time I will say that the Central Vermont made its rates based on the differentials to the west. That is the time I have reference to.

Q. Was there ever any agreed differential on the lake and rail business?

A. There never has been by the Boston & Albany within my recollection any agreement to allow the Central Vermont Line a differential on lake and rail business.

By Commissioner Walker:

Q. Have you a lake and rail route?

A. Yes sir.

Q. Where do you strike the lake?

A. At Buffalo.

Q. And has the Pennsylvania a lake and rail route?

A. Yes sir.

Q. And the Erie?

A. Yes sir.

Q. How do the rates on those lake and rail routes correspond with the all rail rates?

A. They are less than the all rail rates.

Q. They are less than the all rail rates, but are uniform with each other?

A. The rates by the several lake and rail routes, except by the Central Vermont, are identical.

Q. How much less than the all rail rates?

Mr. Hoar. I will put in a table that will show, if it is not in.

Gov. Smith. I should like to ask Mr. Mills a question if there is no objection. I understand Mr. Mills to say that during the time as I stated that the differential was suspended during the tonnage division, you say you did not suspend it; will you please state to me why it was, and how it occurred that there accumulated 17,000 tons of freight if we still continue to take the differentials?

A. I do not recall the time to which you refer; if you can give me the dates I can tell you whether it is within my knowledge.

Gov. Smith. This was in 1874?

A. That was before my connection with the business.

Mr. Hoar, resuming:

Q. Now as to this service of the Central Vermont, at present, by all rail; does that, in your opinion, entitle them to any differential on all rail business at the present time?

A. I think not on the lower classes.

Q. Can you tell me what time your freight trains make in the all rail route between Boston and Chicago?

A. I think it averages about five days.

Q. In regard to the lake and rail business; what is it that determines the seeking that route? Is it the cheapness of the rate or the time it takes in transit?

A. My experience is that with the shipper who proposes to forward his freight by the lake and rail route, that the question of rate is paramount in his mind; he will not select that route unless he gets a low rate; the matter of how quick his freight gets to its destination ceases to be the chief desideratum.

Q. It has been stated by Mr. Porteous, as a reason for the differentials upon the lake and rail route over the Central Vermont Line, that there was a difference in the rates of insurance as between Ogdensburgh and Buffalo, in favor of Buffalo; how is the fact about that?

A. I am informed that insurance can be effected upon goods either way at the same rate, whether they go by Ogdensburgh or Buffalo.

Q. Did Mr. Porteous ever make that statement to you before he testified?

A. Yes sir.

Q. Where was it?

A. In his own office late this spring or early this summer, at a meeting that we had there.

Q. What did you do then to ascertain the fact?

A. I asked him to go with me to our down town office, which joined his, telling him I thought he was misinformed on that matter; we sent a man down from there to an insurance broker to ascertain whether the statement which I had made was not correct. I cannot recollect whether that man sent back a letter or a message; it is my impression that he put it in writing stating that he was prepared to insure goods at the same price by either route, whether by Buffalo or Ogdensburgh. That

was the water insurance alone from Ogdensburg to Chicago, as compared with the insurance from Buffalo to Chicago.

Mr. Edmunds. In those cases do you insure only for the water transportation?

A. We do not insure; the shipper insures his own freight.

Q. The insurance is only on the water part of the route?

A. Yes sir.

Mr. Hoar, resuming:

Q. Now, Mr. Mills, do not the records of the trunk line Commissioner show that the Central Vermont agreed not to make lake and rail differentials?

A. Yes sir; they do.

Q. Is it not a fact that this year, upon their tariff, as made this year, that they have taken a greater differential than ever before on lake and rail business?

A. I think I am safe in saying it is so.

Q. That is, that the differential they made when the Interstate Law went into force was larger than it ever was before. Do you know what it is now?

A. Certainly.

Q. Was that schedule or table made in your office under your direction?

A. It was.

Q. What does it show, in general terms?

A. It shows the rate to Chicago, Cleveland, Detroit, Milwaukee, and Port Huron, via lake and rail routes, and via all rail routes from Boston. It also shows rates from Boston to Montreal by the National Despatch Line, and by the Quebec, Ottawa & New England Air Line; that is over the Passumpsic and Southeastern.

Q. And it shows the rates of all the lines; all rail, does it?

A. Except by the Kēnawa Despatch, the testimony of which you have.

Mr. Hoar. We put this statement in evidence.

Q. The several defendants in this case have set up in their answer this: that the motive of the petitioner, etc., etc. (See answers.) State what the fact is about that if you have any such motive.

A. I am very glad to have an opportunity of stating that that is not a true statement.

Q. Was there ever any such motive in filing this petition as an attempt or purpose to break down this line as a competitor?

A. There was not.

Q. What was your purpose and motive in filing this petition?

A. The motive and purpose was that we might get enlightenment under this Law, of the precise meaning of this Law.

Q. How are your tariffs arranged from Boston to these western points over the Boston & Albany Railroad and its connecting lines?

A. They are made up on a construction of that 4th section, which seemed to us to mean that in no case must the rate which was charged over the same route in the same direction to the further points fall below that charged to points within that distance.

Q. Is the whole tariff arranged upon that basis, on that line?

A. It is except in the case of two instances, in both of which we believe we have authority from the Commission, as decided or intimated

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in their decision; I refer specifically to the California business. On that business we have supposed, from what has been said by the Commission, that we were justified in making rates through from the Atlantic to the Pacific at less than those charged to some of the interior points between the Missouri River and the Pacific coast.

By Commissioner Walker:

Q. Are there any exceptions between Boston and the Missouri River?

A. Yes sir; I think we are making a rate from Boston to Pittsburgh by the way of the Lake Shore, and Lake Erie & Pittsburgh Railroads. I believe we charge less from Boston to Pittsburgh than we do from Boston to Youngstown, on the same line.

Q. Do you know of any other exceptions to the Missouri River?

A. No sir; I do not.

Q. Do you know of any other, on the part of the other roads composing the trunk lines?

A. I don't recall any.

Mr. Hoar, resuming:

Q. What is the effect upon you as a competitor for the through business if the Central Vermont line takes this same or a larger differential, and at the same time charges higher rates for its local business than it does for its through?

A. The effect upon us is that the Central Vermont, with the differentials it is now making, particularly on its lake and rail business, it makes rates for western business to western points so much lower than ours that we are unable to compete with them on certain classes of freight; notably on the Chicago business from Boston during the past summer. The Central Vermont, with its two lines, rail and water, has carried the preponderance. I believe I am safe in saying that on Chicago shipments from Boston, if we undertook to meet the Central Vermont, in butter for instance, on the lake line, we have got to reduce our rate from Boston to Detroit; under our construction of the Law we must reduce it, and to Buffalo also; and on the lowest classes of freight from Boston to Albany, and I believe as far east as Hinsdale, Massachusetts, on our own road, in order to make as low a rate from Boston to Detroit with our lake line as the Central Vermont makes by its line.

Q. Hinsdale is east of Pittsford on your road?

A. Yes sir.

I claim that on the lake and rail business from Boston to Detroit the Central Vermont at even rates, on such freight as sugar, etc., can carry a fair share of the traffic; and we are entirely willing that they should carry a fair share of the traffic, but if they carry the bulk of it, we feel that we are driven out of the market on certain portions of freight; and we do not desire to be driven out of the market on any classes of freight.

I can illustrate that by showing just what the fact is. The rate from Boston by the Central Vermont Line of Steamers to Detroit is 41, 36, 29, 20, 17 and 14 cents per hundred.

The Chairman: In what class is sugar?

A. Sugar comes in the fifth and sixth class. The rate from Boston to Buffalo, through which freight would pass to go to

Detroit by our lake line—the rates are 44, 88, 304, 214, 184, and 154; in every case higher than the rates by the Central Vermont water line from Boston to Detroit. Our lowest class from Boston to Albany is fifteen cents per hundred pounds; that being one cent per hundred higher than the Central Vermont lake and rail route rate from Boston to Detroit on the lowest class. Our lowest rate runs East on our road to Hinsdale, Massachusetts; so it becomes a serious question with us. Our rates to Detroit, lake and rail, are 49, 42, 33, 28, 20 and 17.

Q. And as I understand you from each of those points, in the computation of rates you have made to those points, and to all the intervening points, your rates are made in accordance with your construction of the Interstate Commerce Law, as you have stated?

A. Yes sir; you will find no rate on our line from Boston to Detroit that is higher than the rate we charge from Boston to Detroit over the same line; that is, no higher rates to intermediate points.

By *Commissioner Walker*:

Q. Your point is that if you reduce your lake and rail rate to Detroit, you would have to reduce all the way through?

A. Yes sir. And I think it is right to state that when we fairly made up our minds what the law was and went to work to conform to it, it became a serious matter to us to what extent we could continue in the through business; and in order to continue in the through business, under our construction of the Law we were obliged to reduce our local rates something like 20 per cent from Boston to Albany so that we might still keep in the business beyond there and not have those rates fall below the rates charged from Boston to Albany; and even then we did not quite accomplish what used to be the status in Boston. It was common to make from Boston, beginning at Buffalo, the same rates as were made from New York to points West. Under our construction we found that we could not quite accomplish that. I think the first point from which we make the New York rates from Boston now is a station on the Lake Shore Road just east of Cleveland. The rate from Boston to Buffalo now is higher than the rate from New York to Buffalo, made so, so that it might fall less than our rate from Boston to Buffalo.

By *Mr. Field*:

Q. Then really the point of your controversy is to raise the through rate via the Central Vermont so that it shall correspond to yours, and so that there shall be no differential, is it not?

A. It is not. If it were simply a question of the Central Vermont and Grand Trunk Railway making in the western markets lower rates than ours, we should deal with that question without troubling this Commission.

Q. You either want to have them raise their through rate, or you want them to cut down the rate to St. Albans and Ogdensburgh, don't you?

A. I want to know whether this Law is to be construed—

Q. Answer that question. (Question repeated.)

A. It is not.

Q. If you succeed, it is either to lower the

local rates or to raise the through rates, so that the differential will disappear, is it not?

The *Chairman*. Perhaps it is to raise his own local rates.

A. There is no alternative; that is, if the construction that the Central Vermont Railroad is putting on this Law is the correct one, it will apply to our case as well as to theirs. We can meet your rates in the western markets and will, and sustain our rates to local stations.

Q. If there is no reason for differentials over this route, if there is nothing why the shipper had just as lieve at the same rate ship over this route as over yours, what is to hinder you from raising your local rates now?

A. I have no desire to raise our local rates. Why should I? They are high enough now.

Q. Then it is simply to get a decision of the Commission as to maintaining the Law?

A. That is the purpose for which we are here.

Q. And that is just what you are here for?

A. Yes sir.

Q. If the Commission decide we are to put up our rates, or make such a decision that would result in our putting up our through rates, what would be the effect upon the freight, —would it not go by your road?

A. I don't think it would?

Q. Do you say that?

A. I suppose you can make as low through rates from Boston to the west as you see fit to make, but you will have to make your local rates conform to them.

Q. Should we not lose the freight, as we have done before?

A. I have never known of any time when the differential was abolished.

Q. You heard Governor Smith's testimony?

A. Yes; but that was before I had charge of any business connected with the Boston & Albany Railroad Company.

Q. You are not a competitor for business at St. Albans, or for that point?

A. No sir.

Q. Nor at Ogdensburgh?

A. We might become so. We have no tariff there. We could make one if we pleased.

Q. You are not now?

A. We have no tariff there on through rates.

Mr. Hoar. You are like the Canadian Pacific, in that respect?

A. That is it, precisely.

Q. Do you quote rates to Montreal?

A. No sir.

Q. You have no business to Montreal.

A. No sir.

Q. And don't expect to?

A. No sir; still I don't know. We have not now.

Q. You have no reasonable expectations, have you?

A. There is nothing to prevent it; as a matter of fact we do not do that business now.

Q. Have you a copy of your tariffs?

A. Local tariffs?

Q. Yes; and through tariffs?

A. Yes sir.

Q. How do you transport goods from Ware, to and from Boston? Do you transport them by way of Palmer?

A. Yes sir.

Q. Are not your rates from Ware to Boston, less than from Palmer to Boston?

A. Not that I am aware of.

Q. How is it to Nashua? Have you any through rates to Nashua?

A. From Boston?

Q. Yes; or from Albany.

A. Yes; we have a tariff. It does not appear there. We have a joint tariff.

Q. Is not the charge ten cents less for the shorter haul on that route?

A. To Nashua, than for the longer one?

Q. Than for the short one.

A. There is not.

Q. Have you got that tariff?

A. No sir; but I will swear to it. That is, I will swear to it, if our freight agent made up the tariffs as he was directed to, and I have no doubt that he did. I have no tariff here, because under the Interstate Law we have had so many tariffs that I did not bring them all up. I brought what we thought would be essential. Mr. Chamberlin has got it.

Q. I suppose you filed your tariffs with the Commission?

A. Yes sir.

Mr. Strout. We claim there is a charge of ten cents different.

Mr. Prouty. As I understand it, the tariff is made for the Worcester & Nashua, from Albany to Pittsfield. The lowest class on your tariff is fourth class, and the rate is fifteen cents a hundred. You have it on your tariff to carry in car loads of 24,000 pounds for ten cents per 100 pounds from Albany to Nashua?

A. I daresay we do; but we do not charge any more to intervening points. I guess I can explain what you have got hold of—two tariffs. One is a special tariff, and the other the regular printed tariff of the road. We have innumerable sheets of special tariffs, all of which we filed with the Commission, and I will assure you that every one of them is made up on the construction of the Law I have stated. If made up on any other basis, it is a misprint.

Q. Upon your construction of the Law, how does this special tariff differ from the regular tariffs?

A. Well sir; we had on our road at the time this Law went into effect a printed tariff in four classes, and our own classification for freight traffic that had been in use on the Boston & Albany Road for a number of years. Through business in each direction, previous to the passage of this Law, was done under a different classification. We were confronted with the fact that we had got to conform to the law. The through classification was made up in six classes, our printed rates on the Boston & Albany were in four classes. We concluded, therefore, that instead of going to the tremendous undertaking of altering every local rate we had on the Boston & Albany we would deal with the classification as applied to those four classes of rates then in force on the road, and simply state that the fifth and sixth were to be taken at fourth class rates. There were a number of articles in the fifth and sixth classes that required lower rates than fourth class, and so we made up a number of special tariffs, for instance, on hay, and various kinds of iron, from points on our road to other points. But every one of those special tariffs make just as low

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rates to the intervening points as they do to the point further distant.

Q. But they differ from your general tariffs?

A. Yes; they take certain articles out of the classification and make a special rate for them. If we did not do that, the existing rates would be higher than we want to charge on those things.

By Mr. Strout:

Q. Is it not true that you make quotations and rates for southwestern points at a less rate than you do to points this side?

A. Such as what?

Q. Montgomery, Alabama?

A. Do you find those rates on that tariff?

Q. I do not find them on the tariff; but do you not quote rates and make rates for those points?

A. I don't know whether we have a tariff in existence for them or not.

Q. Whether you have any tariffs for them or not; don't you make rates for those points?

A. We do not make rates for points for which we have not a printed tariff, and have not since the passage of the Interstate Commerce Law.

Q. And you don't know whether you make rates there, or not?

A. I don't know whether we have any established rates to Montgomery, Alabama, or not; I don't know.

Q. Nashville, or Memphis?

A. Yes; I think we have tariffs to Nashville and Memphis.

Q. On certain classes of freight don't you quote less rates than you do to intermediate points this side of those places?

A. I should not wonder if we did, under the authority of the Louisville & Nashville case.*

Q. How much is that?

A. I don't know.

Q. Is not the New York, and New England Road a competitor for lake and rail traffic, and have not they carried large quantities of sugar this summer?

A. It carries sugar to the West. It has two sugar refineries located directly on its tracks; consequently it carries sugar to the West.

Q. And they carry in large quantities?

A. In considerable quantities; it was sent by your lake and rail route at your differential rates, this summer.

By Mr. Fiffeld:

Q. Has your road a bonded debt?

A. I don't know whether we have or not.

Q. What is your stock worth on the market?

A. Well, I showed Mr. Hoar a quotation from the New York Tribune, at 218; I don't know what the fact is; I have not been on the market, and do not deal in stocks.

By Mr. Strout:

Q. Your road runs through a thickly settled country; the Boston & Albany proper, and the New York Central?

A. Yes sir.

The Chairman. We know all about the nature of the localities through which these roads run.

Q. And you have a very heavy local trade, don't you?

A. Yes; we have a heavy local business.

Q. And a heavy passenger business?

A. Yes sir; a good passenger business.

Q. And you have many thriving and populous towns and cities along your line?

A. I am glad to say we have.

By **Mr. Hoar**:

Q. Now about the grades on your road; have you any?

A. Yes sir; the worst grade is on the line between Springfield and Washington, Massachusetts, of eighty-two feet; another one from Worcester to Springfield, of fifty-one feet. I do not recollect how far it is, but the one between Springfield and Washington is very long; it begins at the Westfield River, and lasts for a considerable haul.

Mr. Hoar. We put in that table of comparisons; also the tariffs from which they are compiled.

By **Mr. Bragg**:

Q. Does the Central Vermont compete actively with your line on east bound business from the West?

A. Yes sir.

Q. It competes actively, does it?

A. Yes sir.

Q. And has been doing so, I suppose?

A. Yes sir; since the road was first put into operation, I believe.

Q. Has your road had a larger share of that business than the Vermont Central?

A. Yes sir; I presume we carry more east bound freight than they do.

Q. But still there is an active competition between the two roads?

A. Yes sir.

By **Mr. Hoar**:

Q. Do they make the same rates on east bound freight that you do?

A. If they maintain the rates, they do.

Mr. Ffield. Don't they?

A. I am not here to complain about their cutting rates east bound.

Q. (Repeated).

A. At times they have not.

Q. When have they not?

A. Prior to the Interstate Commerce Law.

Q. Have they done so since?

A. Not within my knowledge.

Mr. Hoar. There is no differential on east bound?

A. No sir; the rates are the same on both routes.

Mr. Hoar. I think we have no further evidence.

(Adjourned for the day).

Third Day, Saturday, September 8, 1887.

Arthur Mills, re-called.

By **Mr. Hoar**:

Q. You referred to the appearance of Mr. Porteous before the Trunk Line Association last March, when the proposition was made to him that instead of these differentials of ten, eight, etc., that we should accept eight, seven, etc.; and that afterwards, when you found he was making these greater differentials, that you wrote to Mr. Gilfort. Have you the reply of Mr. Gilfort?

A. Yes sir; I have a copy of it here.

Q. Will you please read it?

(The witness then read the letter to the Commissioners. No copy was furnished to the

stenographer, who was informed that it had been handed to the Commission.)

Mr. Strout then introduced copies of National Despatch way bills.

John Porteous, re-called, says:

When these way bills are signed they are signed by the Boston & Lowell, I suppose; I never saw any signed.

By **Mr. Edmunds**:

Q. Don't you know who does sign it?

A. I don't know that I ever saw one signed.

By the **Chairman**:

Q. If it is signed by anybody, it is signed by the Boston & Lowell?

A. Yes sir.

Q. This is given to the shipper?

A. Yes sir.

Q. When the goods go by the National Despatch Line as well as when they are received generally?

A. Yes sir.

(The foregoing refers to exhibit B.)

Q. Mr. Schoonmaker does not understand this as I do; let me ask you—when goods to be shipped by your National Despatch Line are delivered to the railroad company, they give the shipper this paper? (Ex. B.)

A. Yes sir; the shipper signs it here (indicating), and leaves it there with the railroad company, and he tears off the bottom.

Q. This lower part is a receipt; that is given to the shipper by the railroad company, and this is given whether the goods are to go by the National Despatch Line, or to be sent by the company to points on their road?

A. To be sent to St. Albans, for instance, you mean?

Q. Yes.

A. Yes sir; or any Central Vermont station.

By **Commissioner Schoonmaker**:

Q. Suppose the goods are to go by the National Despatch Line, then how is it?

A. Then the shipper gets that receipt, and he takes that to the National Despatch city office and gets a bill of lading; as he hands the receipt to the agent of the National Despatch Line he gets in return a bill of lading of the National Despatch Line.

The **Chairman.** He gets this receipt from the railroad company; is that signed by the agent of the railroad company?

A. Yes sir.

Mr. Edmunds. I want to have put in this bill of lading that is filled out.

Arthur Mills, re-called.

By **Mr. Hoar**:

Q. Please state the proportion of freight going West, in comparison to that coming East; take the year 1886.

A. In 1886, coming East, 2,504,510 tons; going West, 1,001,966 tons; that is the entire tonnage coming East and going West in that year.

J. Gregory Smith, re-called:

We have aimed at carrying out the Law in accordance with the advice we have received, and according to our construction. If the testimony here shows that we have erred, we stand ready to be corrected and to conform to the Law; but in the absence of any specific complaint from these parties, collective or in-

dividual, and of any notice that they have any complaint, we are not here prepared to take up any specific case and show whether it comes within the Law or not. Our rule has been to conform to the Law; and if the circumstances and conditions under which we are placed do not bring us within the Law, and the Commission so indicates, we will endeavor to bring ourselves within, and try and comply. We have endeavored to make our rates reasonable and just, and to conform as well as we could with the provision in the fourth section.

The **Chairman**. Do you mean that you propose to reduce your rates, so that you charge no more for the shorter than the longer distance?

A. I mean we are ready to reduce our rates if the circumstances and conditions developed by the testimony in this case do not justify us in adhering to the present rates. Other than that I claim no specific advantages for the Central Vermont, but we are ready to conform to the general rule you lay down applicable to every road.

Cross examination by **Mr. Edmunds**:

Q. You stated that the money that built the Central Vermont Road was not Vermont money, if I understood you?

A. I did not state it as broad as that, or did not intend to; I said principally from Boston.

Q. Is it not true, Mr. Smith, that from Windsor, which was then the end of your line, and is yet, strictly speaking, to Burlington, and from Burlington to St. Albans, on what was called the Vermont & Canada, that the people all along, from one end to the other, took stock according to their ability—all the leading farmers, merchants, and everybody else?

A. Not as broad as that; there were subscriptions to the stock, in proportion to the aggregate amount of the cost of the road; it was very small.

Q. But in proportion to the aggregate wealth of the subscribers, was it not fair and liberal?

A. I do not think in the whole State of Vermont there was \$100,000 put in; it would not exceed that amount.

Q. (Repeated).

A. I don't know that there was.

Q. Have you all the stock books?

A. I don't know whether they were burned or not; I have not seen them; I don't know that I ever saw the stock book of the old Vermont Central.

Q. There were subscribers in nearly every town, were there not? You stated the stock was all taken?

A. Yes sir.

Q. You stated that the National Car Company supplies cars for this through line. To what extent? How many?

A. It was stated here, I don't know myself, personally; it was stated 8,750.

Q. How many were furnished in the first place?

A. I think those that were put in experimentally; I think it was two or three hundred, put in by other parties than the car company.

Q. Did the car company at one time get a pretty large bunch of cars from the Central Vermont, or whatever the name of the concern

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was at that time, that was operating the concern?

A. No sir; never a car. They were all purchased and made by the Michigan Car Company; the entire equipment both early and late.

Q. Were no cars ever turned over to the National Car Company or to somebody in their behalf that had before that time belonged to the trustees or managers, or receivers, or whatever the operating gentlemen were called?

A. Never a car to my knowledge; I never was asked to turn one over, and never knew that there was.

Q. Then all the cars that the National Car Company have, or had, have been obtained by them directly of outside parties?

A. Entirely.

Q. And with their own funds?

A. Yes sir.

Q. What is the amount of the capital stock of the National Car Company?

A. I do not know that I can state that. I have nothing to do with it.

Q. State as near as you can.

A. I think it is \$2,000,000; I don't know.

Q. How much do you think it is, Governor?

A. I have no knowledge on the subject; I don't know. My son suggests it is \$3,000,000; I only know so far.

Q. Did you ever hear the quantity of the capital stock mentioned?

A. I don't know that I have for years, and I don't remember that I ever did. I remember the capital first fixed was \$500,000; it has been increased since, and I have so little interest in it I don't know.

Q. Did you take any of the increased stock?

A. I think I did.

Q. You paid in on that stock?

A. I suppose I did, whatever was called for.

Q. But you don't know how much.

A. No sir; I don't remember how much?

Q. Did you ever get any dividend?

A. Yes sir.

Q. How many dividends?

A. I think I have received dividends regularly on my stock.

Q. Annually, or semi-annually?

A. I think quarterly.

Q. How much per quarter?

A. It is 4 per cent per annum; it is 1 per quarter; they are paying now 4 per cent.

Q. How much did they pay last year?

A. Four per cent.

Q. How much before that?

A. Four per cent.

Q. Never any more?

A. Yes sir; when the cars were new and the maintenance light, I think they paid as high as ten per cent; then it fell to eight; then six, and now it is down to four.

Q. How many years has it been going? This car company, I mean?

A. I think it was organized in 1871.

Q. About fifteen years?

A. About that.

Q. When was the capital stock increased?

A. That I cannot tell you; I don't know when it was; I think the first stock, if I remember right, was \$500,000; I knew more

about it at that time than I have since; from time to time it has been increased; I should think the last increase was five or six years ago. Then it was carried up to what it is now.

Q. Do I understand you to say—supposing it to be \$3,000,000, now—do you say that the whole of that \$3,000,000 has been paid into the car company treasury in actual cash?

A. I did not say that.

Q. What is the truth about that?

A. The first stock, I think, was issued at fifty cents on the dollar; I state from imperfect knowledge; I think the next stock was at seventy-five cents, and after that it was raised at par.

Q. What is the arrangement in regard to paying that National Car Company for the use of the cars by this line or anybody else who hires them; what is paid, and on what basis?

A. Three quarters of a cent per mile run of the cars; that is per car.

Q. Without regard to whether they are loaded or empty?

A. Yes sir.

Q. Wherever it is going?

A. Yes sir.

Q. Now, in regard to dividing that payment; how much of that is paid by the Lowell road? Is it according to the length of its line—that is, the car service?

A. They pay according to their mileage as every road does, according to the length of miles in its road.

The **Chairman**. Do you mean the length of the road, or the distance that the car runs over that road?

A. The length the car runs over the road; if it runs the whole length it gets the whole mileage of the road.

Mr. Edmunds, resuming:

Q. So that each one pays for the car service according to the service of the car; what it has done on that road?

A. Yes sir.

Q. Who is the president of the National Car Company?

A. James R. Langdon of Montpelier.

Q. One of the managing directors of your line?

A. He is a director but has nothing to do with the management, other than an ordinary director.

Q. Now, about the divisions; is that the book of divisions in force at the time that it bears date? (Handing book to witness).

A. I don't know whether it is now in force; it was at that time (Marked Q.)

Q. **Mr. Porteous** says it was in force at that time; is that so?

A. Yes sir.

Q. I suppose you adopt his statement about that and about these other papers?

A. Yes sir.

Mr. Edmunds. I should like to put this in, that is what we think proper to go in, out of this batch; a lot of them are immaterial; I wish to put in this book of divisions.

Q. Tell us in respect to these divisions on first class freight that you carry from Detroit or Chicago, by the way of the all rail line from Boston, over the Boston & Lowell, how much the share of the Central Vermont is per ton.

A. I have not the slightest knowledge; I do

not carry those details in my department; these divisions are made up by the freight departments of the various roads; I don't know that I ever looked through the book in my life; I don't know that I have ever seen any more of it than I have seen at this moment; I know nothing of the divisions; it is a matter intrusted to the freight agents of the several lines who represent their respective roads, and agree upon divisions.

Q. You don't know then as a matter of general fact, as the chief manager of this road and line, you don't know what the Central Vermont gets per ton per mile for hauling first class freight from St. Johns to White River Junction, that comes from Detroit, going to Boston?

A. I did not say that.

Q. What do you say to that?

A. I do not know anything about their divisions, except in general terms. I don't know that I can state those divisions now; our manager, when he returns from a conference with the others, reports to me what they have done, and his action is either approved or disapproved; but I do not charge my mind with the details of all these divisions, so that I can carry them in my head and repeat them; I sanction or disapprove at the time, knowing what he has done.

Q. I am not asking about the divisions of a particular shipment, but whether you know in a general way what the share per ton is; supposing it is seventy-five cents a ton from Detroit to Boston, if you had a car load of twenty tons, it would be \$15.00; now in that case, suppose it passes over your road from Detroit to Boston over this fast freight line, and \$15.00 have been earned for carrying that twenty tons, now, can you tell in a general way what share of that \$15.00 the Central Vermont road is entitled to?

A. No sir; I cannot tell you in that form what it is; we have our percentage of the Chicago rate; I think we receive 26 per cent, or 27 per cent, that is, as between us and the Grand Trunk Railway; from the whole amount our proportion for the Central Vermont from St. Johns to Boston is taken out by itself, so far as the division of the Grand Trunk Railway is concerned; they receive theirs, then the division which is due between St. Johns and Boston is subdivided, and the percentages of the roads below us are taken out, that leaves the balance to us; just what that balance is, I do not at this moment recall.

Q. Have you any general idea as to what that balance would be?

A. I don't know that I have.

Q. You have no idea, then, in the case that I have supposed, what would be the general proportion or part of the \$15.00 that would finally go to the Central Vermont as its share?

A. The way bills are various, they are changing from day to day.

Q. Tell me whether you know or not, or have any idea?

A. I have an idea, but I haven't the knowledge.

Q. Well, won't you give us the benefit of your idea?

A. My general idea is that we get in division with the roads below us 53 per cent to their 47 per cent.

Q. How much would that leave out of the \$15.00 earned?

A. I cannot figure that.

Q. What is the final share?

A. I do not know.

Q. You say you have a general idea?

A. I said I had a general idea of what we were carrying freight at per ton per mile, but to aggregate it and say how many miles at that rate it would produce, I do not do it; that is a matter of figuring that goes to the auditor and the division clerks.

Q. You have a general idea of what you get per ton per mile; how much is that?

A. It varies from three mills to seven mills per ton per mile.

Q. On what principle does it vary?

A. According to classification.

Q. Take class one.

A. I can't tell you what we get.

Q. Take class two.

A. I can't tell you.

Q. Take class three.

A. I cannot carry all those details in my head.

Q. Take class four, five, or six.

A. I cannot tell you.

Q. You cannot tell on the particular classes, or on any of them?

A. I do not get those details; if the rates go down too low, I figure it out, or have it figured out for me and determine what our proportion is, so that I thus carry along a general run of the business; but I cannot tell you on any particular shipment, or any particular car load on any division what it aggregates.

Q. Nor on the whole?

A. No sir; the aggregate goes into the treasury; I cannot tell what we receive.

Q. You cannot tell in general or in particular what is the amount your corporation gets out of this business?

A. I cannot.

Q. Either by proportions or any other way?

A. No sir.

Q. By what process do you arrive at the conclusion you state in your answer that this through business is profitable to you?

A. By the supervision I give to it, and by the general results.

Q. You say you do not know anything about the general results?

A. Yes sir; I do know whether we are carrying at a loss or at what we regard as a profit.

Q. If you do not know how much you get for it, for what you are doing, how can you tell?

A. I know what we get per ton per mile.

Q. You are getting from how much to how much?

A. Sometimes we carry at a loss; when we get into a big fight and the other roads cut the rates, we are sometimes down to two mills.

Q. On the rates as they now stand?

A. I don't know; I cannot give you the information.

Q. On the rates as they stood last year?

A. I cannot tell you.

Q. Or the year before, when Lucas' statement was made up?

A. I cannot tell you; I examined his statement, and I was satisfied from his reports that his statement was correct.

Q. What officer of your company, if there happens to be such a man, can tell the Commis-

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sion what is the share the Central Vermont actually gets out of any shipments?

A. Our division clerks; they will tell you at any time; Mr. Leard is our division clerk.

Q. Where is he?

A. He is at St. Albans.

Q. Is there anybody here?

A. No sir.

Q. Is Mr. Chittenden here?

A. He is here. I do not know whether he knows or not; he can answer for that, but he has nothing to do with the through freight.

Q. Who is the manager of the lake steamers?

A. Mr. Frank Owen.

Q. Who employs Mr. Frank Owen?

A. The Ogdensburgh & Lake Champlain Railroad.

Q. Who are the Ogdensburgh & Lake Champlain Railroad for all practical purposes at present?

A. It is under a lease to the Central Vermont, although its accounts are kept separate from ours.

Q. Who are the directors of the Ogdensburgh Road, or its president?

A. Mr. William J. Averill, of Ogdensburgh, is the president.

Q. State whether the Central Vermont, through its own agents and employees, manage that steamboat line. You said the Ogdensburgh Railroad; do you mean to stick to that, or is it not under your control?

A. It is under our control, of course.

Q. Don't you employ him and pay him?

A. We employ him and pay him. He takes his directions from us because it is in the general supervision of the Ogdensburgh Road.

Q. The Ogdensburgh Road has nothing to do with him then, except to appoint him. Now, then, what share does the lake steamboat line get out of freight from Detroit to Boston by way of your Ogdensburgh line?

A. If I remember correctly, on Lake Erie ports they get 40 per cent, and Lake Michigan 50 per cent.

Q. Of the gross receipts?

A. Yes sir; then there is something allowed for commissions and dockage besides that.

Q. What share does the Ogdensburgh Railroad get?

A. I cannot say; I never saw it divided.

Q. All that comes into your treasury?

A. Yes.

Q. Does this report of Lucas, made under your direction, of the divisions of the traffic on your road; does that show how much of the gains and profits is contributed by the Ogdensburgh Road water line?

A. I don't remember whether he put in the through freight derived from the water and rail line and the all rail separately, or whether it is altogether as through freight.

Q. Can you tell what the proportion is by taking the figures of the whole?

A. I do not think I can.

Q. Have you any general idea?

A. I do not think I have; I do not think I ever looked it up to see what the general proportion is.

Q. What I want is the proportion you get on this lake and rail traffic for the service done between Ogdensburgh and White River Junction.

A. I don't think I can tell you.

Q. You say you have a general idea what proportion the lower roads get?

A. No sir; I do not; all that information can be got.

Mr. Edmunds. I have asked these questions, if Your Honors please, because this division list of the National Despatch Line does not cover this course by the lakes, and I was in hopes the manager of the line might give us some general idea how much could be got out of it. My hopes are disappointed!

Q. Can you tell how much the rate for a car load of butter is from St. Albans to Boston?

A. Fifty-five dollars; five and a half mills per pound.

Q. That is what the shipper has to pay without rebate or drawback?

A. Yes sir.

Q. Square business transaction?

A. Yes sir.

Q. Can you tell me how much of that \$55 your concern gets for carrying that car load of butter from St. Albans to White River Junction?

A. One hundred and twenty one hundred forty-fourths of the mileage,—that is, after deducting the car service and terminal charges, it is then divided pro rata.

Q. Do you get 120-144ths of the \$55, or does something come out of it?

A. First deduct car service, then the terminal charges, and the balance is divided according to mileage.

Mr. Strout. I think you are in error, Governor, on the figures of division. You say 120-144ths; is that correct?

A. I thank you for calling my attention to the error. The division is 120 and 144, making 264 miles, of which we get 120-264ths.

Q. It does not make any difference whether you get car service or not, if each road pays its own car service?

A. That is simply made up in a different way. The result would be the same.

Q. How much do you deduct for terminal charges on a car load of butter?

A. Thirty cents for the Boston terminus, and twenty cents for the Central Vermont terminus, per ton.

Q. And the \$55 per car, that would be per car of ten tons, I suppose?

A. It would be more than \$55 per car. The rate is fifty-five cents. That gives more than \$55 for the car load. That is \$1.10 per ton, which would give \$110 per car load. Taking out the \$8 there would be \$52 to divide, after taking out the car service.

Q. And that comes to the same thing because each road pays its own car service?

A. Yes sir.

Q. You get your proportion of that amount?

A. Yes sir.

Q. That is true for first class freight?

A. Yes sir.

Q. Is the division the same in respect to the second and third and fourth and fifth class?

A. Yes sir.

Q. Now can you tell us somewhere near what you think you would get for hauling a car load of butter from Chicago that goes down the same day?

A. It is seventy-five cents per hundred pounds.

Q. And you get your proportion out of that going all rail, as stated in that book?

A. Yes sir.

Q. Would not the result of that be, to make it short, that you get a good many dollars more for hauling a car of butter from St. Albans, made in your own neighborhood, to White River Junction, than you do for hauling the car from the West?

A. Not according to my calculation, it does not. It is a question of figures. If you mean what your question asks, my answer is correct. When the local is brought into the condition of the through freight, according to my calculation we do not get so much. Without deducting any expenses incident to the business, if you mean simply for the transportation, we do get more from St. Albans to Boston than our proportion of the through rate,—that is, without deducting any expenses incident to the haul.

Q. I want to know, without making any reference to incidental charges for anything else, but take the butter as it is after it is put into the car at St. Albans. Now, how much more does the shipper of that butter have to pay you for hauling it to White River Junction than is paid to you for carrying a car load of butter from St. Albans over the same line to White River Junction that came from Montreal?

A. I can't tell you how much more it is, but it is more.

Q. Does he not pay as much as \$10 a car more?

A. You can compute it as well as I can.

Q. I think Mr. Mellen stated the proportion they get for carrying a car from Boston to White River Junction that was going to Montpelier for instance?

A. I did not understand his testimony; I was engaged at the time with something else.

Q. We won't take up the time about that, then. Have you ever made any calculations or estimates as to the cost of carrying a ton of first class freight, or any other kind of freight per mile on your road?

A. I have tried to figure it a great many times; there are a great many elements entering into it which make it difficult to get at.

Q. If you have ever come to any conclusion, state it, shortly.

A. My own impression differs from those of some of the subordinate departments in the road; they figure it higher than I do; it will vary from three to five mills per ton per mile. If you mean to apply your question to local freight, it costs us more than that; it costs us more to haul the local freight per ton per mile, than it does freight from Chicago.

Q. You say you think the cost is from three to five mills per ton per mile; do you mean that three is the cost for through freight, and five the cost for local, or what do you mean?

A. No sir; I mean that it varies, according to the speed of hauling among other things, that is one element of variance.

Q. Is not that the principal element?

A. It is a large element.

Q. Would it not be 75 per cent of the total elements?

A. No sir; I hardly think it would be as much as that?

Q. It would be more than half?

A. Yes sir; I think so.

Q. I think you have stated that this National Fast Freight Line makes, or is expected to make, about eighteen or twenty miles per hour, in answer to Mr. Fifield, if I correctly understood you?

A. Yes sir; the fast train.

Q. And that the average rate made by the ordinary freight, local freight trains, was eight to ten miles per hour?

A. Ordinary freight is from eight to ten miles per hour.

Q. Tell the Commission how much more the cost is to haul a freight train of twenty cars, which you say is the average at twenty miles per hour, than it is at ten miles an hour, taking in all the elements?

A. I do not know that anybody has been able to ever solve that matter.

Q. Have you ever tried?

A. Yes; but with very little success. The element of speed is very difficult to ascertain; it is a factor in the case, but I don't know that anybody has succeeded in finding out; that it does cost more, we all know, but how much more I never have found anybody who can tell.

Q. Did you ever find a man who could guess?

A. No sir; I don't know anybody that guesses at those things.

Q. Did you ever try to guess?

A. No sir.

Q. So that you mean to tell the Commission that you have no idea?

A. No accurate idea.

Q. Well, an approximate or general idea?

A. No sir; I have never reduced it to that; I know it costs a great deal more to run a train sixty miles an hour, than it does to run it twenty.

Q. Is it not true that it costs a good deal more to run a train at twenty miles an hour than to run it ten?

A. Not in the same proportion at all; and it is a query what minimum rate of speed will make a minimum rate of cost.

Q. Then why don't you run all your trains at twenty miles an hour and help your customers get their goods to market rapidly?

A. It is not needed, and there is an additional cost in running at eighteen miles an hour, over eight; but whether it would cost more to run at five than it would at eight miles per hour I am not prepared to say.

Q. Have you any tables or knowledge in your possession which will show the gross earnings of the Central Vermont Road per year for the last five years, in the State of Vermont, leaving out the Ogdensburgh, and the Rutland roads; the gross earnings of the Central proper?

A. They will run from \$1,500,000 to \$2,000,000, \$100,000 or \$200,000 per year.

Q. What has been the gross earnings of the Central Vermont and Rutland Railroad and the Ogdensburgh, that you manage, and the Vermont & Canada Junction, all put together?

A. They have not been put together, and I do not know.

Q. What has been the gross earnings of the Rutland?

A. We have the Rutland and Central together, the others have not been aggregated. The Rutland will earn from \$500,000 to \$600,000.

Q. Can you tell about the Ogdensburgh?

A. That will earn, since we have had it, from \$600,000 to \$700,000.

Q. The gross earnings have been increasing on the Ogdensburgh?

A. Yes sir.

Q. And on the Central?

A. Yes sir; this year.

Q. Gradually from year to year?

A. No sir; sometimes they fall behind and sometimes go ahead; there is no gradual increase; they do not go above the maximum, except this year which is an exceptional year; I have given you the highest and lowest sums, between which they will vary, sometimes \$1,600,000, or it will drop as low as \$1,500,000.

Q. You have seen no symptoms of a fall this year?

A. No sir; it has been a good year this year.

Q. What is the distance from St. Albans to Rouse's Point?

A. Twenty-four miles.

Mr. Edmunds. I want to put in evidence this statement that we have had made up. A comparison of charges per mile on other roads. (Marked "R." and filed with the clerk.)

By Mr. Fifield:

Q. You stated the rate for butter from St. Albans to Boston was fifty-five cents?

A. Yes sir.

Q. And from Chicago to Boston, seventy-five cents?

A. Yes sir.

Q. I suppose they don't raise any butter on the streets of Chicago?

A. I never saw any.

Q. It is raised in Iowa, Wisconsin, etc.?

A. Yes sir.

Q. What does it cost to get that butter into Chicago; what are the joint rates from Iowa points to Boston?

A. I can't tell you; I don't know.

Q. What is the rate from Iowa points to Chicago?

A. I can only tell from statements made up by the clerks; it is \$170 to \$180 per car, probably that covers the remotest points in Iowa; what it is from Illinois, or Wisconsin points.

Commissioner Schoonmaker. In your answer to one of the Senator's questions, you said it was \$1.10 per ton; you made an error in your figuring, I think?

A. Yes. \$11.00 per ton, I meant; that would be \$110.00 for the carload from St. Albans to Boston.

L. J. Seargeant, called on behalf of the defendants; sworn, testified as follows:

Direct examination by Mr. Strout:

Q. You are the general traffic manager of the Grand Trunk Railway?

A. Yes sir.

Q. For how many years have you been so?

A. Since 1874.

Q. State to the Commission your knowledge in relation to this matter of differentials, and

what effect it would have upon the through traffic by the way of this line, if it were taken off; state it briefly.

The Chairman. If no differentials were allowed?

Mr. Strout. Yes sir.

A. It so happens that when I arrived in this country from England, in 1874, that the question was under discussion between the then managers of the Grand Trunk Railway, the New York Central, the Boston & Albany and other parties in interest; and it was argued and conceded that it would not be possible for the Central Vermont & Grand Trunk system, to participate in the through traffic unless a differential were allowed in both directions.

Q. For what reason was the differential allowed?

A. The reasons are numerous; but in the first place we have certain customs difficulties to attend to; they are not of a very serious character, but are sufficiently so to throw some impediments in the way of through business. The next reason, and the most serious reason is the distance between the points of origin, and the destination of the traffic by comparison with the other routes. Now, the distance for instance from Chicago to Boston is by this route 1150, as against 1000, I think by the more direct route, a difference of 150 miles against our route which is a serious difficulty. Another reason is that in the winter season we have a great deal of interruption from snow storms; we have almost a continuous winter from the month of November frequently into May, sometimes terminating in April, always lasting to about March; it has been my constant experience during that period, at such time, to see trains embedded in snow to such an extent as to necessitate the employment of manual labor to clear them and get the wheels in motion; often I have seen two engines struggling to release a few cars from a siding; often after a snow storm the difficulties are so great that nothing but the employment of a large force of manual labor will relieve the cars; in that period we get very much demoralized, and it is one of the most serious difficulties that we have to contend with.

Q. Does not the Grand Trunk Railway run through a sparsely settled country from Montreal almost to Sarnia?

A. Yes; more or less; of course there are some large cities on the route, Toronto, Kingston, etc. I think we go through as much of the populous portion of Canada as there is in Ontario, but it is to some extent comparatively sparse. During the time I have been connected with the Grand Trunk Railway, it has been my duty, as vice president of the Chicago & Grand Trunk Railway, as well as traffic manager of the Grand Trunk Railway, to represent our interests at the Trunk Line meetings in New York, and also at the Central Traffic Association at Chicago, which has something to do in the originating of the business. During the whole of that period it has always been assumed to be necessary that this route should have a differential to enable it to procure some portion of the States-to-States traffic; of course we are desirous, if it were practicable, to do without the differential; but it is a necessity of the situation which has

been recognized, not only in the case of the Grand Trunk & Central Vermont, but in connection, and for other reasons, with the Pennsylvania Railroad, and the Baltimore & Ohio, with which gentlemen of the Commission are familiar. The principle is a recognized principle, and it has always been conceded, and for the reasons I have stated. The Grand Trunk system is entitled to, and ought to receive the differential.

Q. Was it so considered at the last meeting in New York, in March last?

A. I was present at that meeting, on the second, third and fourth of March; it then became necessary to readjust our rates, so as to make them consistent with the Interstate Commerce Law; there was a great difficulty in knowing what it really meant, but we had this meeting to do the best we could. In the course of the inquiry the question of differentials arose and was taken into serious consideration; it was then and there conceded that this route should retain the differentials.

Q. State to the Commission whether or not the gentlemen present at that meeting agreed to and consented that this northern line should continue the differentials?

A. A report was presented that appears on the minutes of the proceedings, and was in my hands yesterday; I have not it with me now; that report stated that the differentials should be continued to the Central Vermont, based upon eight cents for first class differential; we had always been conceded ten cents; that report was adopted; that was eight cents differential to Chicago.

Q. Did the Boston & Albany Railroad representatives object to that?

A. No sir; and Mr. Mills was present.

Q. Will you state to the Commission, in brief, what the effect will be and what it has been to your knowledge, if the differential is not allowed?

A. My knowledge is that we had at one time a division of traffic or a pooling arrangement under which we were to have 21 per cent of the business; it was subsequently reduced to 16 per cent when the business was increased by the admission of other companies from Boston to the West.

By **Commissioner Walker:**

Q. That was the east bound percentage agreed upon?

A. Yes sir; in connection with the Chicago & Grand Trunk Railway, and also in connection with the trunk lines.

Mr. Strout, resuming:

Q. Go on and state what was done.

A. Under the pooling arrangement we ran ahead.

Q. How much?

A. In excess to the extent of 17,000 tons; that was subsequently, in 1883.

By **The Chairman:**

Q. When you say you ran ahead, do you mean that you carried more than your proportion?

A. We over carried.

Q. At that time did you have the differential also?

A. Yes sir; the reason that we retained the differential was that we objected to being paid in money or any other way than by actual car-

riage of freight, and the tonnage was kept up; we feared we should lose our connection if we did not do that, and in order to keep up the tonnage it was necessary that we should retain the differential.

Mr. Edmunds. That is, you would rather do the work than receive the profit out of it?

A. Yes sir.

Q. What was the reason you gave?

A. The reason was that we should lose our connection if we did not do the work, so that when the pooling arrangement terminated, having lost our connection, we should have to begin life all over again.

Q. Like a shut up factory, or anything of that sort?

A. Yes.

Mr. Strout. Now, go on with your statement about this matter?

A. We carried an excess of 17,000 tons. Mr. Fink then communicated with me on the subject; I was always in favor, and recommended the plan that where companies ran in excess that way they should increase their rates in order that the traffic should go by the other lines, as commerce will always seek the most economical routes; we therefore raised our rates. The surplus very soon disappeared, the traffic went by other lines, and we began to be in deficit; we were eventually in deficit to the extent of 17,000 tons, which we did not recover. That is, we made up our deficit, or made up to the other lines what we had taken in excess, and ran to the bad 17,000 tons.

Q. How much did you add to your rate?

A. I think we went up to the full rates. We were desirous of trying the principle, and that was the result.

A. When you found you had lost 17,000 tons, did you try to get any pay for that?

A. Yes sir.

Q. Did you succeed?

A. That is a matter of history.

Q. Did you restore your differentials?

A. Yes sir.

Q. Having stated that as a matter of fact, what would be the effect of taking off the differential or raising your through rate so that it is the same as these other lines?

A. We should cease to be competitors, we should lose the business; we could not carry.

Q. Have you any doubt about that?

A. Not the slightest. In the east bound the same thing has happened to us. Mr. Swift had a large traffic of dressed beef over the Grand Trunk Route, but he will not ship by us now, and has taken his cars away.

Q. Why not?

A. Because of the length of the route, and the climatic difficulties, the trouble in getting through so that he preferred the other route.

Q. The route is against you to the amount of those differentials?

A. Yes sir. He says he prefers four days to six in the line.

By the Chairman:

Q. What was the differential you stated you should receive?

A. On the basis of 10 per cent; we have never yielded that since we began to do it; we cannot do it for less; if we can we will.

By Mr. Edmunds:

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Q. Explain what is meant by these arbitraries—I believe Mr. Porteous or somebody said something about "arbitraries"?

A. An arbitrary is a charge that has to be paid whether we will or not. It is a fixed charge. If I charge so much from A. to B. that is an arbitrary which must be paid to me.

Q. In respect to which there would be no division or participation so far as you were concerned?

A. Yes sir.

Q. It was stated that your road was called longer or shorter than it really was; how is that?

A. Yes sir; we do not pro rate on actual mileage; our road is estimated to be shorter than it is I think by thirty-five miles; that is to say we are supposed to calculate our percentages on the short line division.

Q. Then in dividing, you calculate your percentages on thirty-five miles less than the real distance?

A. Yes sir.

Q. Who pays the car service on that thirty-five miles that does not go into the percentage?

A. The Grand Trunk Railway.

Q. So that that part of the car service makes no difference in the line?

A. No sir; we pay $\frac{1}{2}$ of a cent per mile. Our line allows the difference in the mileage between St. Johns and Prescott, and the distance to Ogdensburgh.

Q. You pay on actual mileage and divide on thirty-five miles less?

A. Yes sir.

By Mr. Hoar:

Q. Does your line carry a fair share of the east bound traffic from western points to Boston?

A. No sir; it does not now.

Q. Has it ever?

A. Yes; I think a fair share.

Q. When did you cease to?

A. It has ceased recently.

Q. State what you mean by recently?

A. This year.

Q. Since when?

A. Since about the month of February or March.

Q. Is there any differential between you and the other lines on east bound traffic?

A. Not at present.

Q. How long ago was it that there was a differential?

A. It was before my time; it was agreed to originally, but not in force.

Q. Has there been any differential in force on the east bound traffic, on the lines from the West to the sea board, since you were there?

A. Practically not.

Q. So that you carry traffic from the West over these very lines from the West to Boston, and have, without any differential, during that time?

A. Yes sir.

Q. And until February of this year you had a fair share of the business?

A. During that time I don't think there has been any.

Q. You have had a fair share of the business, I say?

A. We have secured it.

Q. Does not a large portion of the east

bound business require good time in transportation?

A. Yes sir.

Q. At the time you established the differential on west bound business there were only four classes of freight?

A. Yes; when it was agreed to have differentials.

Q. Was it not a part of that agreement that if there should be any fifth, or additional classes of freight, that the differential should be two cents on those additional classes?

A. Mr. Mills stated so, and I take it it was so; I don't know to the contrary.

Q. As a matter of fact you have assumed to take three cents on your present differentials, or four, and three?

A. Yes, I believe so.

Q. Do you know that that differential was ever a subject of agreement between your road and the other lines, that is the fifth and sixth classes, the differential of four and three cents?

A. My recollection is that they were the subject of a recommendation on the part of Mr. Fink.

Q. How long ago?

A. The last three or four years; Mr. Fink commenced in 1879 or 1880, seven years ago; it is intervening between that time and this period.

Q. Do you say that you know it was established by him as four and three cents?

A. That is to the best of my belief; he is a consenting party to the differentials on behalf of the other lines.

Q. Of four and three cents per 100 on those classes?

A. Yes sir; that is my belief.

Q. What time was that done?

A. I cannot say; it must have been about 1884; it is spread over the time between 1880 and the present time.

Q. State to the Commission what the difference is in the carriage over these particular lines of railroad between the east bound and the west bound traffic, that is, in the service that is rendered by the railroads, between the east bound and the west bound traffic, in one of which you have the differential, and in the other not. Now, what do you say is the distinction?

A. It has reference to the class of business. Does your question refer to the actual, physical haulage?

Q. This question refers to the service rendered only?

A. The gradients are varying in both directions.

Q. In which direction?

A. There is much of a muchness about that; of course the haulage would be about the same; I don't know that there is any great difference.

Q. You do not know that there is any difference in the service rendered between the east and west bound haul?

A. I know nothing about the line south of St. Johns; there is one thing of a physical character affecting the question: there are a good many empty cars go West, and few going East; that would alter the haulage and cause the charges to vary.

Q. I suppose the hauling of empty cars is a thing common to all railroads?

A. West bound.

Q. You do not haul any more, in proportion, than your competitors, do you?

A. It hinges upon the traffic; Mr. Fink said to me the other day that the Pennsylvania Company hauled West as many as four cars to what they hauled East.

Q. From Boston?

A. No sir; on their system.

Q. They carry a good deal of coal, etc?

A. Yes.

Q. I am talking about the Boston system; do you know whether or not your road carries any more than its proportion, as compared with the other roads, of empty cars back to the West?

A. I should think not.

Q. Are not the circumstances of competition between the western markets and the sea board substantially the same as from the sea board to the West?

A. Yes; the same competitors of course.

By the **Chairman**:

Q. State what proportion you are now getting of the Boston business from Chicago, east bound.

A. We are getting now, about between thirteen and fourteen per cent of the Chicago business.

Q. And of the Detroit business, how is it?

A. I have no facts as to the Detroit business; I refer to the business emanating from or passing through Chicago, that is, what comes to us from the Chicago & Grand Trunk Railway; then there is the Milwaukee business which comes to us by the Chicago & Grand Trunk and the Wabash.

Q. What I want to know is, what proportion of the Chicago through business are you getting now?

A. My answer to that was 13 or 14 per cent; it is divided into two parts, that includes the whole business; we have connections at the Niagara frontier east over another route, and also through Toronto; passing in this direction the whole of the business, via the Chicago & Grand Trunk Railway, will be about 13 or 14 per cent of the whole Chicago business; that includes business to New York as well as to Boston.

By **Mr. Strout**:

Q. Do you include in your answer to the Chairman all the freight that comes over the Chicago & Grand Trunk Railway?

A. Yes; I referred only to that.

Q. But all of that does not come East by the Central Vermont, and Boston & Lowell Roads?

A. No sir; a large proportion of it goes off at the Niagara frontier.

Q. Does the whole of that 13 or 14 per cent come over your road and by Montreal?

A. No sir; not to Montreal; a large portion goes to New York.

Q. Not more than 5 per cent of it comes by Montreal?

A. I think we have been awarded 25 per cent of the New England business.

By the **Chairman**:

Q. What percentage do you get of the New England business?

A. My recollection is that Mr. Fink gives 25 per cent of the New England business to us.

New England business from Chicago. That thrown into a pool would represent so much of the whole business.

Q. You said you had 18 or 14 per cent of the Chicago business coming East; now, what part of that comes to New England?

A. I should think about 5 per cent of it. That is 5-18 of the whole sea board business from the West by the Chicago & Grand Trunk Railway. That includes everything out of Chicago for this district.

By *Commissioner Walker*:

Q. Do you mean that of the business coming into New England, as between you and the Fitchburg, and the Boston & Albany, you receive a quarter of the whole?

A. Yes sir; of all the business to this district from Chicago.

Q. How much of that goes to Portland?

A. A comparatively small proportion.

By *Mr. Hoar*:

Q. Have you any steamers to connect with in the winter at Portland?

A. Only in the Portland season, from December to April.

Q. You don't go to Portland to the ocean steamers in the summer?

A. No sir; to Montreal in the summer.

By *Mr. Strout*:

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The testimony closed here, and the cases were submitted to the Commission, with arguments by *Mr. Hoar*, for the Boston & Albany R. R. Co.; *Messrs. Edmunds and Haskins*, for the State Grange; *Mr. Fifield*, for the Central Vermont R. R. Co.; and *Mr. Strout*, for the Boston & Lowell R. R. Co. and the Grand Trunk R. Co.

BRIEF OF MR. B. F. FIFIELD, FOR CENTRAL VERMONT R. R. CO.*

By section one of the Interstate Commerce Law, no carrier is subject to the Act unless: first, it is engaged in Interstate Commerce; and, second, unless it is a carrier by railroad, or partly by railroad and partly by water, where they are subject to a common management or control, or between whom there is an arrangement for a continuous carriage or shipment.

The case shows that the Boston & Lowell, a Massachusetts Corporation, is managed by its own board of Directors and by nobody else. So of the Concord, a New Hampshire Corporation. So of the Central Vermont, a Vermont Corporation. So of the Grand Trunk, an En-

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bound business require good time in transportation?

A. Yes sir.

Q. At the time you established the differential on west bound business there were only four classes of freight?

A. Yes; when it was agreed to have differentials.

Q. Was it not a part of that agreement that if there should be any fifth, or additional classes of freight, that the differential should be two cents on those additional classes?

A. Mr. Mills stated so, and I take it it was so; I don't know to the contrary.

Q. As a matter of fact you have assumed to take three cents on your present differentials, or four, and three?

A. Yes, I believe so.

Q. Do you know that that differential was ever a subject of agreement between your road and the other lines, that is the fifth and sixth classes, the differential of four and three cents?

A. My recollection is that they were the subject of a recommendation on the part of Mr. Fink.

Q. How long ago?

A. The last three or four years; Mr. Fink commenced in 1879 or 1880, seven years ago; it is intervening between that time and this period.

Q. Do you say that you know it was established by him as four and three cents?

A. That is to the best of my belief; he is a consenting party to the differentials on behalf of the other lines.

Q. Of four and three cents per 100 on those classes?

A. Yes sir; that is my belief.

Q. What time was that done?

A. I cannot say; it must have been about 1884; it is spread over the time between 1880 and the present time.

Q. State to the Commission what the difference is in the carriage over these particular lines of railroad between the east bound and the west bound traffic, that is, in the service that is rendered by the railroads, between the east bound and the west bound traffic, in one of which you have the differential, and in the other not. Now, what do you say is the distinction?

A. It has reference to the class of business. Does your question refer to the actual, physical haulage?

Q. This question refers to the service rendered only?

A. The gradients are varying in both directions.

Q. In which direction?

A. There is much of a muchness about that; of course the haulage would be about the same; I don't know that there is any great difference.

Q. You do not know that there is any difference in the service rendered between the east and west bound haul?

A. I know nothing about the line south of St. Johns; there is one thing of a physical character affecting the question: there are a good many empty cars go West, and few going East; that would alter the haulage and cause the charges to vary.

Q. I suppose the hauling of empty cars is a thing common to all railroads?

A. West bound.

Q. You do not haul any more, in proportion, than your competitors, do you?

A. It hinges upon the traffic; Mr. Fink said to me the other day that the Pennsylvania Company hauled West as many as four cars to what they hauled East.

Q. From Boston?

A. No sir; on their system.

Q. They carry a good deal of coal, etc?

A. Yes.

Q. I am talking about the Boston system; do you know whether or not your road carries any more than its proportion, as compared with the other roads, of empty cars back to the West?

A. I should think not.

Q. Are not the circumstances of competition between the western markets and the sea board substantially the same as from the sea board to the West?

A. Yes; the same competitors of course.

By the **Chairman**:

Q. State what proportion you are now getting of the Boston business from Chicago, east bound.

A. We are getting now, about between thirteen and fourteen per cent of the Chicago business.

Q. And of the Detroit business, how is it?

A. I have no facts as to the Detroit business; I refer to the business emanating from or passing through Chicago, that is, what comes to us from the Chicago & Grand Trunk Railway; then there is the Milwaukee business which comes to us by the Chicago & Grand Trunk and the Wabash.

Q. What I want to know is, what proportion of the Chicago through business are you getting now?

A. My answer to that was 13 or 14 per cent; it is divided into two parts, that includes the whole business; we have connections at the Niagara frontier east over another route, and also through Toronto; passing in this direction the whole of the business, via the Chicago & Grand Trunk Railway, will be about 13 or 14 per cent of the whole Chicago business; that includes business to New York as well as to Boston.

By **Mr. Strout**:

Q. Do you include in your answer to the Chairman all the freight that comes over the Chicago & Grand Trunk Railway?

A. Yes; I referred only to that.

Q. But all of that does not come East by the Central Vermont, and Boston & Lowell Roads?

A. No sir; a large proportion of it goes off at the Niagara frontier.

Q. Does the whole of that 13 or 14 per cent come over your road and by Montreal?

A. No sir; not to Montreal; a large portion goes to New York.

Q. Not more than 5 per cent of it comes by Montreal?

A. I think we have been awarded 25 per cent of the New England business.

By the **Chairman**:

Q. What percentage do you get of the New England business?

A. My recollection is that Mr. Fink gives 25 per cent of the New England business to us;

of that comes to New England?

A. I should think about 5 per cent of it. That is 5-18 of the whole sea board business from the West by the Chicago & Grand Trunk Railway. That includes everything out of Chicago for this district.

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Q. Do you mean that of the business coming into New England, as between you and the Fitchburg, and the Boston & Albany, you receive a quarter of the whole?

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lish Corporation. These roads, then, being in different States and countries, and not being subject to a common control, are not subject to the Act, unless there is between them "an arrangement for a continuous carriage or shipment."

None exists, unless it is implied from the making of joint tariffs.

I. A joint tariff does not make an "arrangement for a continuous carriage or shipment."

It is a mere advertisement to the public of the rates which will be charged from a point of departure to a given point of arrival. The Boston & Lowell can know the advertised rates which each company charges over its own road between Boston and Chicago. It can aggregate these charges without the knowledge or consent of any of the other roads, and advertise a through rate to Chicago with perfect safety. And the reason is this: it is the legal duty of every railroad to carry to the terminus of its own road, and deliver its cars to the road next in succession, and for such last mentioned road to receive and haul the cars over its own road, and so on, until the car arrives at its place of destination.

Harper's Interstate Law, 114, and cases there cited.

This duty has become binding because of the practice and custom among railroads for forty years in respect to the interchange of cars with one another. It has become the common law governing railroads in this regard.

109 *Ill. Rep.* 185; 18 *Fed. Rep.* 3.

It is also a duty under Acts of Congress.

Harper's Interstate Law, 150; 45 *Iowa Rep.* 388, 351-52.

It is believed that the duty is enjoined by all the States. It certainly is by the States through which these roads pass.

Public Statutes of Mass. 639, § 217; *General Laws of New Hampshire*, 392, § 1; *Revised Laws of Vermont*, 651, § 3399.

"When a railroad enters upon, intersects or connects with another railroad, the managers of each of such connecting roads shall furnish to the others reasonable terms of connection, accommodations, privileges and facilities in the reception, transportation and delivery of cars," etc. *Sec.* 3399, *R. L. of Vt.*

The bills of lading of the Boston & Lowell Railroad and its connections expressly exclude any liability beyond the terminus of its own road.

(See bills of lading.)

No "arrangement" between the roads is necessary for this purpose. It rests upon a legal duty. Doubtless arrangements and contracts may be made between connecting roads. But a joint tariff does not make such an "arrangement."

In *Myrick v. Michigan Cent. R.R. Co.* 107 U.S. 107 (Bk. 27, L. ed. 835), the case is this: The Mich. C. R. R. Co. received at Chicago cattle destined for Philadelphia. They gave a receipt to the shipper indicating the place of destination. He was informed of the through rates, and the joint tariffs posted in the company's office in Chicago indicated them. The plaintiff claimed this constituted a contract to take the cattle through to the place of destination; and the circuit court so ruled, but the supreme court reversed the decision. They

said: "The general doctrine, then, as to transportation by connecting lines, approved by this court and also by a majority of the state courts, amounts to this: that each road confining itself to its common-law liability is only bound, in the absence of a special contract, to safely convey over its own route and safely to deliver to the next succeeding carrier, but that any one of the companies may agree that over the whole route its liability shall extend. In the absence of a special contract to that effect, such liability will not attach, and the agreement will not be inferred from doubtful expressions or loose language, but only from clear and satisfactory evidence."

And speaking of the effect of the joint tariff posted in the office of the company at Chicago, as bearing on the question whether the Michigan Cent. R. R. Co. agreed to carry to the place of destination, the court said:

"Nor" was the common-law liability of the defendant corporation enlarged by the fact that a notice of the charges for through transportation was posted in defendant's station house in Chicago. Such notices are usually found in stations on lines which connect with other lines; and they furnish important information to shippers who naturally desire to know what the charges are for through freights as well as for those over a single line. It would be unfortunate if this information could not be given by a public notice in the station of a company without subjecting that company, if freight is taken by it, to responsibility for the manner in which it is carried on intermediate and connecting lines to the end of the route."

Again the court says:

"Our attention has been called to some decisions of the State of Illinois which would seem to hold that a railroad company which receives goods to carry, marked for a particular destination, though beyond its own line is *prima facie* bound to carry them to that place and deliver them there, and that an agreement to that effect is implied from the reception of the goods thus marked. Assuming that such is the purport of the decisions, they are not binding upon us. What constitutes a contract of carriage is not a question of local law upon which the decisions of the state courts must control. It is a matter of general law upon which this court will exercise its own judgment."

Such is the unqualified and unconditional judgment of the Supreme Court of the United States, which must ultimately determine the construction of the Interstate Commerce Law; and if they have not settled the question that the liability of a railroad does not extend beyond its own terminus unless further liability is assumed by a plain, unambiguous, express contract, and that a joint tariff does not constitute such a contract, it is difficult to see how they can do it. On the other hand it would seem clear that if such joint tariffs do not constitute a contract, as between the shipper and the companies, it does not constitute a contract or arrangement for a continuous carriage as between the companies themselves. The "continuous carriage" results from a legal duty, and the joint tariff is for notice or information to the public.

This construction is favored by section 6, part 5, which requires joint tariffs to be filed with the Commission. The next clause requires copies of all contracts, agreements and arrangements between carriers to be filed. If the joint tariffs constitute an "arrangement," the last clause is tautological. The section contemplates an "arrangement" independent of joint tariffs; and when it does exist then joint tariffs become important in order that the Commission may know whether they are reasonable or not; and, second, they shall not be raised without ten days' notice, which shows that the object of the publication of joint tariffs is an advertisement to the public of what the rates are, and nothing more.

It may therefore be assumed safely that the joint tariffs referred to in the petition do not constitute an "arrangement for a continuous carriage or shipment," within the meaning of the first section of the law; and the defendant roads, except in so far as they are controlled by one another, are not subject to the Interstate Commerce Law. The Central Vermont has nothing to do with the roads south of White River Junction, Vermont, nor they with the Central Vermont, except to deliver to one another freight "for a continuous carriage" by virtue of a legal duty.

Achtson, etc. R. R. Co. v. Denver, etc. R. R. Co. 110 U. S. 667 (Bk. 28, L. ed. 291).

The decision made by Judge Deady on this subject in *Ex parte Kahler* is instructive. It is reported in 1 Interstate Com. Rep. 28. The head notes are as follows:

"The transportation of property from one State to another is Interstate Commerce, whether the carriers engaged in moving it, or the vehicles on which it is borne, cross the line of the State or not."

"This Act does not include or apply to all carriers engaged in Interstate Commerce, but only such as use a railway, or a railway and water craft, 'under common control, management or arrangement for a continuous carriage or shipment' of property from one State to another; nor does it apply to the carriage of property by rail wholly within the State, although shipped from or destined to a place without the State, so that such place is not within a foreign country."

"The O. R. & N. Company carries certain kinds of goods on its steamers forth and back between Portland and San Francisco at special and reduced rates; the O. & C. Railway, under the management of the petitioner, carries the same kinds of goods forth and back between Portland and Ashland and way stations, in Oregon, at special and reduced rates; the O. P. Railway Company carries the same kinds of goods forth and back between certain points on the line of the O. & C. road and San Francisco, via its railway from Albany to Yaquina Bay, and then thence by steamer, at reduced rates, and thereby competes with the O. & C., and the O. R. & N. for business between said points and San Francisco. The O. R. & N. and the receiver of the O. & C. act independently, although concurrently, in making these reduced rates; but no through bill of lading or freight receipt is given, nor is either interested in or liable for the carriage of the goods beyond its own line of transportation. *Held*,

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that the O. & C. road and the steamers of the O. R. & N. Company in the carriage of the goods in question are not 'used under any common control, management or arrangement for a continuous carriage or shipment' thereof, to and from San Francisco, within the intent and meaning of the Act, and that the carriage and handling of said goods, so far as the receiver is concerned, is performed wholly within the State, and therefore specially exempted by the terms of the Act from its operation, *provided* the same are not directly shipped to or from a foreign country."

II. If it shall be held that a joint tariff constitutes "an arrangement for a continuous carriage or shipment," then the inquiry arises, What is meant by the words "same line" in the fourth section of the Law?

It cannot mean continuous trackage, for that would make all the railroads in the country the "same line."

The words must probably be construed with reference to the first section of the Law. The line must be a road or roads, or road and water carriage, subject to a common management or control, or between which there is an arrangement for a continuous carriage or shipment. Nothing less will make a line. The case shows, as before stated, that the Central Vermont is managed by its own board of directors, and nobody else. So of the Concord. So of the Lowell and Boston. So of the Grand Trunk. But joint tariffs exist, as will hereinafter be stated. Now if a joint tariff makes an "arrangement for a continuous carriage or shipment" and so makes a line within the meaning of the fourth section of the Law, another joint tariff, although embracing the roads within the first line, constitutes another and different line, if it embraces other and additional roads making a much longer line. The additional roads do not participate in the shorter line. The two tariffs embrace different distances, different roads, and therefore make different lines, and in the cases at bar are intended to cover entirely different traffic.

One petition is that the Boston & Lowell, Concord, Central Vermont, and Ogdensburgh & Lake Champlain make a joint tariff from Boston to Ogdensburgh for six classes of freight.

If these roads are a line at all within the meaning of the fourth section of the Law, it is by virtue of this joint tariff, and nothing else. There is no common management or control.

The petition also alleges that the Central Vermont Line of steamers make a joint tariff from Boston via the aforesaid roads to Cleveland and Detroit, Port Huron, Milwaukee and Chicago at less rates than are charged by the joint tariff first aforesaid from Boston to Ogdensburgh. Suppose they do; this makes a different line. It is not the same line as the one from Boston to Ogdensburgh. They are not identical, and they must be, to be the same line. Besides, the first line embraces traffic between Boston and Ogdensburgh only, which makes another difference. The consequence is that the rates from Boston to Ogdensburgh are not made over the same line as the rates from Boston to Lake points.

The same is true of the other petition. It alleges that the roads between Boston and St.

Albans make rates to St. Albans from Boston more than National Despatch Line makes from Boston to Montreal and Detroit. But the National Despatch Line does not make a tariff from Boston to St. Albans, nor take traffic, except for points west of St. Albans, for west bound freight; nor does the tariff made by the roads from Boston to St. Albans include points west of St. Albans for west bound freight; but the points west of St. Albans for west bound freight are included in the National Despatch Line tariff, and embrace all large points in the West, Northwest and Southwest.

If, then, the joint tariff from Boston to St. Albans makes a "line," can it be pretended that it is the same identical line as the one made by the National Despatch tariff, which embraces thousands of miles beyond, and when the National Despatch cars belong not to the roads but to a separate organization which makes its own tariff, and issues its own bills of lading, and solicits its own business?

When this matter was under discussion in the senate, the question was put, What is meant by the "same line?" and Senator Dawes put to Senator Cullom certain questions looking to the result as to the Boston & Albany, which is an Interstate Road, and extends from Boston, Mass., to Albany, N. Y.

Suppose traffic is taken from Kansas City to Albany, and then over the Boston & Albany to Boston; also from Chicago to Albany over a different line, and also from Detroit to Albany by another, and from Albany to Boston; in each case over the Boston & Albany, what would be the result?

Senator Cullom answered:

"They, the Boston & Albany, can carry the freight as they agree to carry it; and whatever their agreement may be it does not affect the freight that goes from Albany to Boston on that line, its own line according to its own published rates of freight."

Senator Dawes:

"Suppose it be a different rate from that at which it takes up freight at Albany and carries it to Boston?"

Senator Cullom:

"It does not make the slightest difference in the world; it has nothing to do with it. One is a line of railroad by itself. The other is a line of railroad in conjunction with one, two, or five others, if you please, and the one rate does not control the others. In other words, as I have said over and over again, the percentage which the Boston & Albany Road gets for carrying the products which are brought from the West after they reach Albany, has nothing to do with regulating the rates from Albany to Boston over that road."

If this is a correct interpretation of the words, "the same line," in the fourth section, it is tolerably plain that the tariff from Boston to Albany makes one line, and the tariff from Boston to Detroit via the Boston & Albany and New York Central, and the steamships on the Great Lakes, forms another line, because, under the interpretation given by Senator Cullom, it would be perfectly competent for the Boston & Albany, an interstate road, to charge \$1.00 per 100 pounds from Boston to Albany, and yet by agreement with its connections to charge only seventy-five cents per 100 pounds from

Boston to Detroit. This could only be done on the theory that different tariffs, embracing different roads, different distances and different traffic, make different lines.

And this theory is well illustrated by the case, *Union Pacific R. Co. v. U. S.* 117 U. S. 355 (Bk. 29, L. ed. 920). By an Act of Congress the Union Pacific R. Co. were to charge the United States for transportation of mails and passengers, only what was reasonable, "and no more than was charged to private parties for the same kind of service."

The company presented a claim against the Government for the transportation of passengers between Council Bluffs and Ogden. The regular rate to all persons between these points was \$78.50, but by contracts with connecting railroads the Union Pacific receives from companies who sell through tickets at reduced rates from New York to San Francisco \$54 only for each passenger carried between Council Bluffs and Ogden. It was also found that the local rate was reasonable. The supreme court allowed the company the local rate of \$78.50, and held that the tariff rate from Council Bluffs to Ogden was entirely different from their share of the through rate from New York to San Francisco, although the shorter distance from Council Bluffs to Ogden was within the greater distance from New York to San Francisco. In other words, neither the service nor the lines are identical.

See *Atchison etc. R. R. Co. v. Denver etc. R. Co.* 110 U. S. 683 (Bk. 28, L. ed. 297).

Mr. Easley, in commenting upon the word "arrangement," says:

"If this is the true construction of the Act, then a railway does not become subject to the provisions of the Act unless it owns, uses, or operates, by lease, contract or agreement, roadway in two States, or enters into arrangements with connecting carriers to transport persons or property from one State to another."

"If a railway wholly within a State should enter into an arrangement to carry interstate freights or passengers with a connecting line, it would only be subject to the provisions of this Act *quoad* the line thus formed. It could decline to make the same arrangement or a like arrangement with another carrier and not violate this Act. And such a carrier might enter into an arrangement to carry interstate passengers or freight to and from one point on its line and not others, with out subjecting itself to this Act further than the extent it arranged to carry."

III. But, however these things may be, the circumstances and conditions under which traffic is taken from Boston to Ogdensburg and St. Albans, respectively, are wholly dissimilar from what they are in respect to traffic taken beyond Ogdensburg and St. Albans respectively.

a. There is no competition at Ogdensburg or St. Albans for traffic from Boston, nor between Ogdensburg and St. Albans, and points west of there, for business.

b. The rates are reasonable at those points. The distance from Boston to Ogdensburg is 408 miles, and from Boston to St. Albans is 266 miles. (See Porteous' Mileage Computation.)

The tariffs referred to in the petition are as follows:

Tariff made by roads between Boston and Ogdensburgh:

For six classes of freight from Boston to Ogdensburgh,

1 2 3 4 5 6 classes,
60 50 45 80 25 17 cents per 100 pounds.

Tariff made by Central Vermont line of steamers, via Ogdensburgh:

From Boston to Cleveland, Ohio, Detroit, Mich. and Port Huron, for the six classes of freight aforesaid, 41, 36, 29, 20, 17, 14 cents per 100 pounds.

Tariff made by Central Vermont line of steamers, via Ogdensburgh:

From Boston to Milwaukee and Chicago for the six classes of freight aforesaid, 44, 39, 31, 23, 19, 16 cents per 100 pounds.

Tariff made by roads between Boston and St. Albans:

For six classes of freight from Boston to St. Albans:

1 2 3 4 5 6 classes,
55 45 38 27 24 17 cents per 100 pounds.

Tariff made by the National Despatch Line for points west of St. Albans:

From Boston to Montreal for the six classes of freight aforesaid, 45, 40, 30, 23, 20, 18 cents per 100 pounds.

From Boston to Detroit for the six classes of freight aforesaid, 51, 45, 35, 24, 20, 18 cents per 100 pounds.

c. The Vermont Central and Vermont and Canada Roads, now the Central Vermont Road, were constructed about 1849, and are wholly within the State of Vermont. They depended upon local tariff until 1856, when they went into the hands of a receiver and continued so for a good many years. They were reorganized in 1888. The original capital was lost. They run through a sparsely settled country. If they depend upon local traffic, they cannot pay expenses and interest on their bonded debt as now reorganized, to say nothing of their stocks. As reorganized it is not a powerful and rich corporation, eager to swallow its competitors. It has not paid dividends on its stocks since its reorganization. On the other hand, the road has been brought up to a high state of efficiency with a view to doing a through business. Its track is steel rail and its equipment ten times greater than is necessary for local business. If restricted to a local business two results would follow: the sale of their equipment, and the raising of local rates in order to pay operating expenses. Proper remuneration for the capital invested is a legitimate subject for consideration in determining reasonable rates, as well as extraordinary cost of service over roads like the Central Vermont and Ogdensburgh.

Harper's Interstate Law, 89.

d. But with through business the road manages to live and pay its expenses and interest upon its bonded debt of \$7,000,000. It also relieves the local traffic from an increase of charges, and keeps them down to where they now are. The profit on the through business is small in degree, but is great in its results by reason of the magnitude of the business.

Auditor Lucas' statement in respect to earnings from through and local business is as follows:

Interrogatories and answers in regard to the freight and passenger business of the Central Vermont Railroad Company from Rouse's Point and Province Line to White River Junction and Windsor, and also from Essex Junction to Burlington, covering the fiscal year ending June 30, 1886.

1. What was the tonnage of through business East and West?

A. East bound, 882,259 tons. West bound 218,717 tons. Total, 1,095,976 tons.

2. What was the tonnage of joint freight East and West?

A. East bound, 161,984 tons. West bound, 54,219 tons. Total, 216,153 tons.

3. What was the tonnage of strictly local freight?

A. 71,825 tons.

4. What was the percentage of the through to the total?

A. 79 per cent.

5. What were the gross earnings of through freight?

A. \$652,647.83, or 64 per cent of total freight earnings.

6. What were the gross earnings of local and joint freight?

A. \$370,636.54, or 36 per cent of total freight earnings.

7. What were the net earnings of through freight?

A. \$173,344.62.

8. What were the net earnings of local and joint freight?

A. \$100,466.27.

9. What was the number of through passengers?

A. 87,206.

10. What was the number of joint passengers?

A. 115,814.

11. What was the number of local passengers?

A. 230,401.

12. What were the gross earnings from through passengers?

A. \$153,945.61, or 38 per cent of total passenger earnings.

13. What were the gross earnings from local and joint passengers?

A. \$250,149.10, or 62 per cent of total passenger earnings.

14. What were the net earnings from through passengers?

A. \$50,628.71.

15. What were the net earnings from local and joint passengers?

A. \$81,579.58.

The mortgage on the road is \$7,000,000 at 5 per cent interest. It also has common and preferred stocks.

That a profit is made on the through business is not open to doubt. In the year — the board of directors tested the question by cutting off the through business. The road scarcely earned its expenses. (See Gov. Smith's testimony.)

The trunk lines fix the rates to competing points; that is to say, the Boston and Albany, the New York Central Line, the Baltimore and Ohio, the New York and Erie and Pennsylvania lines on the left, and the Grand Trunk and Canada Pacific on the right, all powerful lines,

which, it is to be presumed, are not unwilling to see the "survival of the fittest." Weak lines are to be swallowed up, competition destroyed, and the very purpose of the Interstate Commerce Law defeated. The rates thus fixed by the trunk lines must be met, or the Central Vermont must go out of the business; and in meeting them another obstacle is in the way. The Boston and Albany Line is about 140 miles shorter to Chicago than the Central Vermont Line. (See Porteous' Milage Computation.)

At the same rates from Boston to competing points in the West, traffic would naturally go by the shorter and quicker line. To meet the difficulty and overcome the inequality thus existing between the lines, it was, as early as 1865, conceded by the trunk lines that this line might charge less than the trunk lines to competing points in the West. This line was obliged to do this in order to secure business, and it was conceded by the trunk lines as a matter of justice. On the other hand, while this line was the longest and slowest, it could; nevertheless, make the lower rate because its line reached the great Lakes at Ogdensburgh by a shorter rail line (118 miles) than the Boston & Albany reached the great Lakes at Buffalo, and also because defendant's cars go West empty, unless they take freight at such rates as they can get. They maintain rates for east bound freight. (See maps and Porteous' Milage Computation.)

All the foregoing applies to the Ogdensburgh & Lake Champlain Road as well as the Central Vermont. See auditor's statement as to earnings from through and local business.

c. The decision in the *Louisville & Nashville Case* (1 Interstate Com. Rep. 378), completely covers this case. That case announces the rule that when the competition is by foreign railroads or lines, competition is of itself a dissimilar circumstance. Also water lines. The principal competitors for Boston west bound traffic are the Grand Trunk, via Portland, and the Canadian Pacific, via the South-eastern, also a Canadian corporation, and a water line by ocean carriage from Boston to Halifax, and thence by the Inter-Colonial to Montreal, and by the other water lines referred to in the maps, answers and testimony.

Especially is this true by the all water line, via New York City, the Hudson River, the Erie Canal and the Great Lakes to Cleveland, Port Huron, Detroit, Milwaukee, and Chicago. New England agents sell their goods delivered in New York, at New England prices. The carriage by water from Boston to New York is trifling. The rates from New York to Cleveland and Detroit are

35 30 25 18 17 15.

And Milwaukee and Chicago,

35 30 25 20 18 16.

The rates of insurance are much less by this line than by the Central Vermont Line of Steamers, via Ogdensburgh; so that in the aggregate the rate is 8 to 10 cents per hundred pounds less than on any other line. A vast amount of New England business that used to go via Ogdensburgh now goes by this route, since the passage of the Interstate Commerce Law.

It is unnecessary to go further. The *Louis-*

ville & Nashville Case covers every point. But since the announcement of that decision, Judge Deady has gone a step further, and held that competition in all cases, whether by foreign or domestic corporations, or by water lines, constitutes a dissimilar circumstance.

Ex parte Koehler, 1 Interstate Com. Rep. 817.

The lines out of Boston that compete for west bound traffic to points in the West are very numerous, and are enumerated in the answers and shown on the maps.

Montreal is a competing point. The Grand Trunk, via Portland, is one line competing there; the water line, via New York and Lake Champlain, is another; the Delaware & Hudson Canal Company is another; the Canadian Pacific is another.

A vast amount of traffic that, before the passage of the Interstate Commerce Law, used to come over the Grand Trunk and Central Vermont, and was exported at Boston, now stops at Montreal, and is exported that way.

IV. a. It is true that the Boston & Albany Company, and everybody else, has a standing before this Commission to complain. But it is observable that this complaint does not come from a shipper who complains of the rates at Ogdensburgh and St. Albans respectively. It comes from a competitor at points on the great Lakes, and that is the real grievance. The Boston & Albany care nothing about the rates at Ogdensburgh and St. Albans. There is not a missionary duty. But the trouble is, they want to get rid of their principal competitor for west bound traffic to competing points in the West.

But it has been generally supposed that the object of the Interstate Commerce Law was to encourage competition and to break down monopolies instead of creating them; and so the Commission announced in the *Louisville & Nashville Case*.

How often has it been held that he who seeks equity must come into court with clean hands. Motives are material. Thus when a stockholder of a private corporation buys the stock of a rival corporation for the purpose of bringing a suit to destroy the rivalry, he will not be heard in a court of equity, when the question is one of discretion.

1 *Redfield on Railways*, 76.

The author says:

"But when the fact is established that under pretense of serving the interests of one company, the shareholders of a rival company, by purchasing shares for the purpose of litigation, can make this court the instrument for defeating or injuring the company into which they so intrude themselves, in order to raise questions and disputes on matters as to which all the other members of the company may be agreed, I cannot consider that in such a case it is the province of the court ordinarily to interfere. In questions of the law of contracts, when there is a discretionary jurisdiction in this court, circumstances affecting the condition of the contracting parties and the origin of their rights in relation to the subject matter of the contract deserve great consideration."

b. The second, third, and fourth sections of the Interstate Commerce Law are merely declaratory of the common law. Unjust dis-

crimination was illegal at common law. So was undue preference; and to charge more for a shorter than a longer distance, for the same amount and class of freight, under the same circumstances, was also illegal.

Atchison, etc. R. R. Co. v. Denver, etc. R. R. Co. 110 U. S. 683 (Bk. 28, L. ed. 297).

The guiding rule at common law was, What is reasonable? And that is the rule, and the only guiding rule, under this statute, where every case involves a question of law and fact, and where every case depends on its own merits.

The petitioners never have been able to break down the defendant's line as a competitor for through business. Is it reasonable that the instrumentality of the Interstate Commerce Law should be used to accomplish that purpose, when the object of the Law was to promote competition?

c. The petition is based on the fourth section. No questions arise under any other section. Petitioners must notify parties of what they have got to meet, otherwise interminable confusion arises on trial.

As to the Petition of the Vermont State Grange.

A.

The Rates to Boston, etc.

V. The rates between Boston and Ogdensburgh and St. Albans, respectively, and other Vermont points are reasonable, and for a great variety of reasons besides those enumerated above. The rates charged compare most favorably with those of other north and south lines. The character of the country through which these roads run, the cost of construction, the cost of operation and the amount of local support will, of course, be remembered. No proper comparison can be made between Vermont Roads and roads running through Massachusetts, between Boston and New York, where there are numerous rival roads and where the roads pass through large manufacturing districts, and are operated at a comparatively small expense. The only fair test is to take other roads, situated like the Central Vermont and Ogdensburgh Roads, and compare their interstate rates. The Passumpsic Road is of this character. The St. Johnsbury & Lake Champlain Road is another.

The rates made by the Central Vermont Road to Boston are less than the rates of either of these roads for the same distances. The rates made by the Central Vermont Road to Providence, Rhode Island, are also less than those of other Vermont lines. The rates made by the Connecticut River Railroad and the New York, New Haven & Hartford Railroad for Vermont business are higher, distances considered, than the rates made by the Central Vermont Road from St. Albans and other Vermont points to Boston, which latter are the subject of complaint. The tables submitted by Mr. Chittenden will show this. The local rates that begin and end in Vermont are,

of course, of no consequence. A few illustrations will be given for argument:

a. Let us take a few of the rates between Ogdensburgh and Vermont points to Boston (which are the ones complained of).

CENTRAL VERMONT RAILROAD.

Points.	Miles to Boston.	Rates per 100 lbs. 1st class.
Ogdensburgh	408	60
St. Albans	264	55
Burlington	248	55
Waterbury	218	55
Montpelier	207	55
Rutland	167	30
Ludlow	142	30
White River Junction	144	36

PASSUMPSIC ROAD.

Points.	Miles to Boston.	Rates per 100 lbs. 1st class.
Newport	250	60
Barton	235	60
Lyndonville	214	55
Ryegate	189	46
Bradford	173	42
Norwich	149	40

ST. J. & L. C. ROAD.

Points.	Miles to Boston.	Rates per 100 lbs. 1st class.
Swanton	302	55

b. As to the rates to Providence, Rhode Island, it will be noticed that the rates given by the Central Vermont are also less than those of other Vermont Roads to the same point.

CENTRAL VERMONT ROAD.

Points.	Distances to Providence.	Rates 100 lbs. 1st class.
Burlington	270	58
Waterbury	240	58
Montpelier	229	58
Rutland	195	33
Ludlow	169	33

PASSUMPSIC ROAD.

Points.	Distances to Providence.	Rates 100 lbs. 1st class.
Littleton, N. H.	233	58
Lisbon, N. H.	222	58
Wentworth, N. H.	186	53
Plymouth, N. H.	170	40
Meredith, N. H.	157	40
Laconia, N. H.	146	36
Tilton, N. H.	137	36

c. As to the rates to New York, it will be noticed that the difference in favor of the Central Vermont is great on the first four classes of freight, and still greater on the last two classes.

INTER S.

Station.	Road.	Distances to New York.	Rates for the Six Classes.					
			60	50	40	27	24	17
St. Albans,	C. V. R. R.	354	60	50	40	27	24	17
Newport,	Passumpsic.	339	68	58	49	35	32	28
Burlington,	C. V. R. R.	338	55	45	38	27	23	17
Waterbury,	"	308	"	"	"	"	"	"
Montpelier,	"	297	"	"	"	"	"	"
Barton,	Passumpsic.	324	66	56	47	35	31	27
Lyndonville,	"	303	62	54	45	34	29	26
St. Johnsbury,	"	295	60	53	44	34	29	26
Ryegate,	"	278	59	50	43	33	28	25
Bradford,	"	262	58	48	41	32	27	24
Norwich,	"	238	52	45	37	31	26	23
Brandon,	C. V. R. R.	264	45	40	35	27	19	16
Rutland,	"	247	30	27	23	18	15	15

The last two rates above are about 40 per cent less, for about the same distances, than the rates from Bradford and Norwich on the Passumpsic Road.

d. An examination of the rates existing between Vermont points and points in Massachusetts on the line of the Connecticut River Road, and between Vermont points and points

in Connecticut and New York on the line of the New York, New Haven & Hartford Road, shows that these rates are considerably higher, distances considered, than the rates from Ogdensburgh, St. Albans, and other Vermont points to Boston, as is shown by the following examples taken from Mr. Chittenden's statement:

Station.	Destination.	Road.	Distance.	Rate 1st Class.
Ogdensburgh,	Northampton,	Conn. R.	369	60
"	Hartford,	N. Y., N. H. & H.	298	60
"	Boston,	C. V. R. R.	408	60
St. Albans,	Northampton,	Conn. R.	237	58
"	Hartford,	N. Y., N. H. & H.	270	60
"	Boston,	C. V. R. R.	264	55
Montpelier,	Northampton,	Conn. R.	170	55
"	Springfield,	Conn. R.	187	55
"	Boston,	C. V. R. R.	207	55
White River Junc.,	Northampton,	Conn. R.	107	44
"	Hartford,	N. Y., N. H. & H.	150	46
"	Boston,	C. V. R. R.	144	36

e. The Delaware and Hudson Canal Company's Road is an instance of a New York Railroad running through a country similar to this. A reference to the table of that company's rates, given in Mr. Chittenden's statement, shows that the Interstate rates to Boston, given by the Central Vermont Road on the east side of Lake Champlain, compare very favorably with those of the Delaware & Hudson Canal Company's for corresponding points on the west side of the lake; and in many instances the rates of the Central Vermont for corresponding distances are considerably less. For instance the Delaware & Hudson Canal Company's rate from Westport to Boston, a distance of 298 miles, is sixty cents, while the Central Vermont's rate from Alburgh to the same point, a distance of 284 miles, is only fifty-five cents.

(See Mr. Chittenden's Statement.)

f. The Interstate rates of the Central Vermont from points in Vermont to Boston and New York, compare most favorably with the rates for like distances of many other roads in the United States which run through farming districts, though the character of the country through which these latter roads run is such that their cost of construction and operation is necessarily small as compared with that of roads of the Central Vermont. A comparison of the rates from points on the Central Vermont Road to Boston with the Interstate rates of the Chicago & Alton Railroad, northwest of Woodhouse, where prices are graduated by distances, shows the following:

Stations on C. V. R. R.	Miles to Boston.	Rates, 1st Class C. V. R. R.	Interstate Rates on C. & A. R. R., for same distance.
Hartford, Vt.,	146	38	60½
Sharon,	157	40	61½
South Royalton,	162	45	62
Montpelier,	207	55	63½
Essex Junction,	240	55	64
Milton,	251	55	66
St. Albans,	264	55	68
Rouse's Point, N. Y.,	288	60	70
[Ogdensburgh, N. Y.]	[408]	[60]	

(See Mr. Chittenden's Statement.)

g. Again, a comparison of the rates of the Central Vermont Road from Vermont points to New York, with the interstate rates of the Chicago & Alton Railroad, the Chicago, Milwaukee & St. Paul Railroad, and the Chicago, Burlington & Quincy Railroad, shows that the rates of the Central Vermont Railroad are much the lowest for the same or corresponding distances, as is indicated by the following table, which will be more fully explained by a reference to Mr. Chittenden's statement:

Stations on C. V. R. R.	Miles to N. Y.	Rates 1st class.		Rates C. & A. R. R. 1st class.		Rates M. & St. P. R. R. 1st class.		Rates C. B. & Q. R. R. 1st class.	
		C. V. R. R.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.
Chester, -	234	30	234	64	228	70	233	60	
Ludlow, -	248	30	248	65	238	70	248	65	
Rutland, -	273	30	273	70	274	75	275	68	
Proctor, -	279	34	279	70	284	75	281	68	
Brandon, -	290	45	290	70	292	75	289	70	
Middlebury,	306	54	306	72	305	75	306	75	
Burlington, -	340	55	340	75	348	75	336	75	
St. Albans, -	380	60	380	75½	378	77	379	85	
Rouse's Point, -	404	60	404	78	404	82	402	90	

(See Mr. Chittenden's Statement.)

B.

Substantially all the corn, wheat and flour consumed in Vermont comes from the West, and is dropped off at all Vermont points at the Boston competing rates. This has been the practice for years, and has been done to encourage other industries in the State.

	1888.	1884.	1885.
Express Companies, - - - - -	\$ 1,393.71	\$ 1,343.36	\$ 1,401.08
Telegraph Companies, - - - - -	597.60	571.40	512.32
Telephone Companies, - - - - -	504.58	1,025.72	1,100.57
Steamboat, Car and Trans. Cos', - - - - -	7,918.26	1,576.67	1,407.79
National Car Company, - - - - -		5,671.16	5,625.84
Railroads, - - - - -	85,516.96	98,386.27	87,445.99
Savings Banks - - - - -	52,771.76	60,759.27	67,936.78
Trust Companies, - - - - -	30,509.67	20,464.80	14,992.22
Home Insurance Companies - - - - -	6,768.84	6,437.70	5,893.63
Foreign Insurance Companies - - - - -	18,355.69	18,585.91	14,870.08
Totals,	\$199,837.07	\$205,231.76	\$200,685.70

C.

State Taxes.

The state taxes assessed and collected by the State Tax Commissioner for the years 1883, 1884 and 1885, were as follows:

Of these taxes the Central Vermont Railroad Company paid:

1883.	1884.	1885.
\$43,901.68	\$53,459.38	\$50,133.69

The other state taxes raised in the same time were the biennial taxes of ten cents on the dollar of the grand lists of 1883 and 1885.

This was in 1883-1884, \$162,710.58 (½—\$81,355.29); in 1885-1886, \$171,011.26 (½—\$85,505.63); making the total taxes raised by the State each year as follows:

1883.	1884.	1885.
\$280,692.36	\$286,577.05	\$266,141.38

THE CONDITION OF VERMONT INDUSTRIES.

The material prosperity of the people of Vermont has been steadily on the increase since the introduction of railroads into the State, as is shown by the following statistics of the population, the wealth, the condition of manufactures, and the condition of the agricultural interests in the State, taken from the official figures of the last United States census.

INTER S.

a. The population of Vermont since 1830 is shown by the following figures:

Year.	Number.	Per cent of Increase in Preceding 10 Years.
1830 - - -	332,236	0.5
1870 - - -	330,551	4.9
1860 - - -	315,098	0.8
1850 - - -	314,120	7.5
1840 - - -	291,948	4.0
1830 - - -	280,652	18.9

Though the percentage of increase shows a tendency to grow smaller in the last 40 years, this is not necessarily an indication of less prosperity, for the density of population in Vermont had about reached its limit for a farming State in 1840. This is shown by the comparative density of population of Vermont and New Hampshire since 1840, which is as follows:

1840.	1850.	1860.	1870.	1880.
32.0	34.4	34.5	36.1	36.4
to square mile in Vermont;				
31.6	35.8	36.2	35.8	38.5
to square mile in New Hampshire.				

Iowa, Michigan and Virginia were well settled farming States in 1880, and the density of population in those States for that year is given as 29.3, 28.5 and 37.7, respectively, to the square mile.

Vermont has shown a steady increase in her population since 1830, while in the States of New Hampshire and Maine a decrease took place from 1860 to 1870; in New Hampshire a decrease of 2.3 per cent, and in Maine a decrease of 0.2 per cent.

b. The value in property in Vermont has also shown an increase since 1850. The assessed and true value of property in the State from 1850 to 1870 is shown by the following figures:

	Assessed Value.	True Value.
1850 - - -	\$ 76,364,289	\$ 92,205,049
1860 - - -	84,758,619	123,477,170
1870 - - -	149,732,929	235,849,553

For the year 1880 only the assessed value is given by the United States Census Reports, and this was \$86,806,775. The apparent decrease from 1870, as well as the extraordinary increase in 1870 from 1860, was partly due to the inflated prices current in 1870. Gold was at an average premium of 25.3 per cent, and Superintendent Walker, of the United States

Census, estimates that the increase of valuation due thereto was 20 per cent. With these allowances the value of property in the State shows on the whole a decided increase.

c. Manufactures have also increased steadily in Vermont. The value of manufactured products in Vermont for the years 1850, 1860, 1870 and 1880, is as follows:

1850 - - -	\$ 8,570,920
1860 - - -	14,637,907
1870 - - -	32,184,606 (\$27,356,909.)
1880 - - -	31,554,366

Allowing 15 per cent as the extra increase in 1870 on account of the state of the currency in that year, the figures for that year would stand \$27,356,909, showing an increase of nearly 75 per cent between 1850 and 1860, of nearly 100 per cent between 1860 and 1870, and of about 15 per cent between 1870 and 1880.

d. The condition of agriculture in Vermont also shows a marked improvement since 1850. The number of farms, the number of acres of improved land, the value of farm lands and the value of improvements and machinery used thereon for the years 1850, 1860, 1870 and 1880, is shown by the following table:

Year.	Number of Farms.	Acres of Improved Land.	Value of Farm Lands.	Value of Imp. and Mach. Used.
1850 - - -	29,768	2,601,409	\$ 68,867,227	\$ 2,739,282
1860 - - -	31,556	2,828,157	94,289,045	3,655,955
1870 - - -	38,827	3,078,257	139,367,075	5,250,279
1880 - - -	35,522	3,286,461	109,346,010	4,879,285

Making the same allowance for the state of the money market in 1870 as has been made above, a marked and almost steady increase is shown.

The number of persons engaged in agriculture in Vermont in 1880 was as follows:

Total persons engaged, 55,251; males, 55,037; females, 214.

Ages: 10 to 15—male, 1,670; female, 10; 16 to 59—male, 44,356; female, 160; 60 and over—male, 24,249; female, 883.

(The membership of the Vermont State Grange is about 2,000, composed of both male and female members.)

The average size of the farms in six States in 1880 was as follows:

Vermont, 137 acres; New Hampshire, 116; Maine, 102; New York, 99; Michigan, 90; Iowa, 184.

The productiveness of Vermont farms compares favorably with that of the farms of other States. Following is given the number of acres of improved land in 1879, in the States of Vermont, New Hampshire, Maine and Iowa; the value of the farm products of each of these States in the same year, and the average value of products per acre:

	Number of Acres of Improved Land.	Value of Farm Products 1879.	Value per Acre 1879.
Vermont - - -	3,286,461	\$ 22,082,656	\$6.73
New Hampshire - - -	2,308,112	13,474,830	5.84
Maine - - -	3,484,908	21,945,489	6.30
Iowa - - -	19,866,541	186,103,473	6.34

Since 1850 the amount of agricultural products annually raised in Vermont has increased. There has been an increase in the number of swine, oats, buckwheat and cattle annually produced; also a marked increase in

the production of butter, milch cows, horses, live stock, hay and barley. The amount produced of the last six named articles for the years 1849, 1859, 1869 and 1879 is given as follows:

	Butter, lbs.	Hay, tons.	Barley, bushels.	Horses, No.
1849 - - -	12,187,980	866,153	42,150	61,057
1859 - - -	15,900,357	940,178	79,211	69,071
1869 - - -	17,844,396	1,020,669	117,333	65,015
1879 - - -	25,240,826	1,051,183	267,625	75,215

	Live Stock, Value.	Milch Cows, Number.
1849 - - -	\$12,648,228	146,128
1859 - - -	16,241,989	174,667
1869 - - -	23,888,885	180,285
1879 - - -	16,586,195	217,088

The amount of Indian corn produced in 1879 is about the same as that produced in 1849. The only leading agricultural products of which the annual production has decreased are rye, hops, wheat, cheese, sheep and wool. The decrease in the case of many of the last named articles, and especially in the case of sheep and wool, is to be attributed to circumstances other than the influence of railroads.

(See *Compendiums of the 9th and 10th United States Census.*)

**ARGUMENT OF HON. GEORGE F. EDMUNDS
FOR THE VERMONT STATE GRANGE.***

I shall, if it please Your Honors, occupy only a very few moments of your time in discussing this matter. First and principally, because I do not believe it necessary to you, or to the just disposition of this case; secondly, because I do believe it necessary that my honorable opponents and I should get the train and go home this evening.

The Grangers.

First, then, as to the grangers, my clients, in respect to whom my Brother Fifield and the gentlemen on the other side have, from time to time, made observations altogether uncompimentary, as to their being "mythical," "non-existent persons," and so forth. All I have to say in reply to that is, that the farmers need no defense from me. They are a good deal more numerous than any other part of the people of the United States. I happened to see in a newspaper this morning an account of a meeting of 45,000 of them in Pennsylvania, the other day. There are a good many of them everywhere, though they do not all belong to organized granges, for the grangers' associations do not embrace all the farmers of the country, any more than the law associations embrace all the lawyers. There are a great many persons who have been admitted to the bar who do not belong to any law association; still we are supposed to be entitled to the same rights and privileges as those who are members of a law association. And the farmers of this country, and of this State, therefore, have the same rights, whether members of the grange or not. They have the right to associate and defend their interests, the same as the railroads, the clergymen, the manufacturers, the Knights of Labor, or any other members of the community, so that I need not take up any time in vindicating them as standing before you and asking justice at your hands under the law for the classes of industry that they represent. You are here as a public tribunal of investigators, before whom any citizen, or any set of citizens, having a well founded ground of complaint, may come and state their grievances. They are entitled to be heard, and if a wrong is being done to them, you are

bound to see that justice is done. So much for that, which I will again say was quite unnecessary for my clients.

Scope of the Interstate Commerce Act.

Let us see where we are. This Act in its first and second sections seems to be couched in language that is very plain to the unsophisticated mind. It appears to be intended to regulate and control, according to good methods, and consistent with justice, the operations of interstate commerce by railways and water communications connected with them. So far as it was possible for Congress, within its constitutional power, to reach every agency engaged in those transactions, it was to be exerted. The object was beneficent and the nature of the Law was intended to reach, and, so far as language can go, I think does reach every operation of interstate commerce that is carried on by no matter how many agents or connecting local lines, so that they are engaged in a continuous transmission of men or things by any "arrangement," as the Law says, between them in relation thereto. There can be no escape from the provisions of the Law by any railroad in the United States, unless it is restricted by its charter and operations to purely local state business. Every road that provides facilities for the business of connecting roads, and engages in the taking of goods out of its own State on to a railroad in another State, by any sort of communication or arrangement, or combination, or understanding, by whatever contrivance or form it is reached, comes within the scope of the operation of this Law. When the States have undertaken to interfere with the abuses and wrongs that have been committed all through the country, the supreme court, much against its wishes and will, I believe, was obliged to decide that it was within the purview of Congress alone. So that I insist the language of this Act shall be given the most liberal and benign construction, in order to work the good effects it was intended to accomplish. It is not to be construed like a criminal statute, but every interpretation and construction that can aid and reach the great object Congress had in view should be given to it. Enough for that, because I am confident Your Honors will all agree with me. I do not need to resort to any strained interpretation to apply it to this case. I only make these observations to state my views of its general purpose and effect.

The Defendant Roads Within the Power and Provisions of the Act.

In this case we find certain facts sworn to by Mr. Porteous, although he seems to know a good deal less when he is on the witness stand than he does when he is off from it—as careful men sometimes do—and his superior officer, Governor Smith, seems to be affected with the same malady, unlike Mr. Mellen, who spoke fully and frankly, as did Mr. Mills, and these other gentlemen. As I said, we have the facts sworn to by Mr. Porteous, as you will see when you read over the reporter's notes, that in respect to the transmission of business between the places on the line of the Boston & Lowell Road (and by that I will include all from Boston to White River Junction,

*From stenographic notes of John H. Mimms, Esq., St. Albans, Vt.

without naming the concerns that compose it), whether from Boston or any place between that point and White River Junction, on business going into the State of Vermont, that the two roads have arranged and agreed upon a basis upon which that business shall be done and the prices which shall be paid for it; an arrangement and understanding was arrived at and consummated between the agent of the corporation of the Central Vermont Railroad Company, on the one hand, and the agent of the corporation of the Boston & Lowell Railroad Company, on the other, and perhaps some of the other roads in the route, but mainly between the two I have named. That arrangement was made in advance as to what rates should be charged for that joint business, and the division that was to be made from the collection of those rates, as shown by the division list put in evidence. If this is not a joint arrangement (which is more than the Law requires), if it is not an "arrangement," to use the very language of the Law, for the carriage of goods from one State into another over a common line, then there is no language that can be taken out of our English tongue that can accomplish it. And I leave that. That is all I wish to say about that.

The National Despatch Line.

Now, as to this National Despatch Line. That is just the same only it is done in a different form. We have learned from the evidence in this case what this National Despatch Line is. As some of the witnesses stated, it is only a name, or a trademark. But the public have never known what it really is. A well known man in this town, who is a large shipper, said to me that he had sent millions of dollars of freight out of this town by the National Despatch Line, supposing it to be a regularly organized corporation, having a body and capital and officers, and somebody to look to if there was any loss or damage to be made good. He was much amused to find that the National Despatch Line was in reality a good deal better and stronger than he supposed it was in that respect, for it had turned out to be composed of the Boston & Lowell Railroad Company, with all its goods, assets and effects; the Central Vermont, with all its goods, assets and effects; the Grand Trunk Railway and all its belongings, and a good deal better. But we find that this National Despatch Line is simply a name by which these three operating railroads transact through business together; by which they convey freight from Boston to the West, and to Montreal and East, from those places to Boston and eastern points. That brings these roads within the Act, I assume. The question, then, is simply whether, in order to bring any one of them or all of them within the fourth section of this Act, it is necessary that they should all combine in the charging of a greater rate for a shorter distance than for the longer one. If it is necessary that they should all combine, then it is clear to my mind, as my learned friend Strout says, that the Grand Trunk Railway Company has not had anything to do in respect of the charges that are to be made between Boston and West Lebanon, or White River Junction, or between Boston and White River Junction, Montpelier, St. Al-

bans, etc.; and the reason it did not combine was that it had no interest in that matter. If you take the proposition. In the reverse, the Boston & Lowell would have no interest whatever and could have nothing to do and would have nothing to do with the question of rates on freight from Toronto or Detroit to Montpelier, although that would have come from a foreign country to the United States. The only way, on that theory of the Law, that you could have the fourth section operate at all would be between two roads in adjoining States who made an interchange, each agreeing that it would charge as a common carrier, so much into the other State, and would collect the carriage money and pay it over. This would bring them within the operation of the Law, I think you will be satisfied, as I certainly am. Take the Boston & Lowell, where Mr. Mellen swears they got once and a half or twice as much for carrying a car load of chairs from Boston to White River Junction, for use there, as they would if the chairs were going to Montreal or beyond. They are hauling the same goods over the same line in the same direction, and the same distance in one case, for less than half what they get in the other. Putting such a construction upon the business as is urged here, there is not a single road in the world, not even between two States, that would be under the provision of section 4, and could not be. But this is the position they take. It is the philosophy and dialectics of sophistry that people who feel the hand of the law and are conscious of doing injustice, resort to—as is fair for counsel if they can persuade anybody to believe it—to escape from a plain responsibility.

The same is true in the reverse order. The Central Vermont will not be liable under that claim, because they have nothing to do with what the Lowell Road gets the moment you cross into New Hampshire, and the Lowell nothing to do with what the Central gets the moment the line of Vermont is crossed the other way. Neither is responsible. It is only necessary to state such a proposition to see the fallacy of it, and make an end of it. Congress has not any power over interstate commerce, if that proposition be correct.

But, if there being any arrangement to do that thing brings them within the jurisdiction and power of Congress, then the doing of it must be within its remedial power of prohibition. And they do it. I will call your attention to the case where the Boston & Lowell, within its own State and its own corporate boundary, makes the rates you have heard in the evidence. It does not charge any more for carrying goods to Manchester than it does to carry them to White River Junction, if it is going to stop there. Mr. Mellen tells you with entire frankness: I get twice as much for doing that thing to White River Junction as I do if it is going to Montpelier. But if it is going to be a purely local, intrastate traffic, then I do not charge any more for carrying a thing to Manchester than to White River Junction; but if it is going to be interstate traffic, then I fly directly in the face of the Law. Although it does not appear on my tables, yet as a matter of fact I make an arrangement by which I get twice as much for my short dis-

tance as I do for the longer distance of which I form a component and "arranging" part.

Excusing Circumstances and Conditions.

Now, then, we come to the only question in this case, that is under section 4, as to whether it is made out that the circumstances and conditions are such that you are bound to find, or ought to find fairly and justly, that these companies ought to be relieved from this duty. I will say something later upon the question under the other part of the statute. The first reason they urge as an excusing circumstance is the length of their line. I respectfully submit that the length of line over the same line over which the freight goes any short distance and long distance is no different as to these roads than it can be on any other line in the country. So that length of line only enters as one element in the matter of competition at some distant point of the system, and in no other respect whatever.

Then you come to the difficulty of weather and climate. Is that an element that makes a special circumstance and condition over the same line? If I live in the tropics, where there is no snow at all, is it to be said that because it is hotter at one place on the line than it is at another point on the same line, there is a reason for making a difference in the rates to those respective points? Of course not. If I live in the Arctic, as we do here in the winter, does it cost a railroad any more to haul a short distance through the snow and get its cars out of the snow banks than it does to haul it a longer distance over the mountains in the winter? It must cost less, under the circumstances, for the shorter distance. The idea, therefore, that the snow or the grades claim has anything to do with this question of charging more for a short distance than for a longer one over the same line, is preposterous, with all respect to the honored gentlemen on the other side.

Two Sides to the Question.

There are two sides to the subject of money making and profits, it might be added. These railroads appeal to you to allow them to make a fair profit, as much as they fairly and reasonably can. That is proper enough. But they owe the same duty to their customers, and you owe the same duty to their customers. The weather is no colder for the railroads in Vermont than it is for the farmer. It is no colder in Vermont in the winter for the railroad, than it is for the manufacturer, or the passenger, or anybody else. They are all under precisely the same conditions on the same line, as of course they must be. Therefore, all those considerations fail, entering for what they are worth merely into the consideration of competition at a distant point.

Now, then, I submit with great respect, and I think it will turn out to be so in the next ten years, not upon any supposed construction of this Law that you may make, or upon any too extended a construction of it, but as a fact in the social economics of this country, resting upon justice which gives to every man his due and fair play to all, that every service that a railroad or any body else does for another under public regulations, and of which he is not

the master (as every man has a right to receive profit from his labor which he can sell at any price he chooses to take, or not), will be regulated according to the value of the services performed and not according to the particular circumstances of the person or the corporation who has to perform it. What right has a miller, for illustration, to charge me ten cents a bushel for grinding wheat because there is a mortgage on his mill? What right has a railroad company, like one out in Ohio, managed by Ives, to put its rates up double because double the amount of its stock has been fraudulently issued, into innocent hands, I will assume; and, therefore, to pay a profit the rates must be raised, and the public made to pay it? What right has a railroad to put up its rates above a fair value for the service performed, because the management has been extravagant or unfortunate, and got itself into debt? I deny the proposition. And I say that in less than ten years, unless the people of the United States have lost their reason, this matter will be dealt with by Congress, as far as they have the power, and you will not be troubled with any question about considerations as to competition. You will only be troubled with the question of what is reasonable according to the value of the service performed, because that stands, and can only stand upon principles that are beyond the reach of any contrivances that men may make.

But we will take it as it is. I say on the construction of this Law itself, fairly and justly, on the special circumstances and conditions, that the fact that there is competition, although it is the strongest that there is, is yet the very smallest of elements that should enter into the consideration of this question. The object and purpose of Congress in making use of that phrase was to guard against some extreme and possible circumstances that could not be foreseen. It was intended that those special circumstances and conditions related to the work and the service to be done, and the relations of the parties between whom and by whom it was to be done, and not the relations either of the shippers to the business, or the railroad to its competitors, its enemies or its friends.

But we will suppose it is not so. We will suppose that competition is an element to be considered. Where would you find yourselves, then, upon any such competition as exists here? Here is this line, and here are the other lines in New England competing for this traffic; the lines from Boston to the West crossing the State of New York, or from Baltimore to the West, from Savannah to the West and East and North and South. Every road can say the same thing and be excused from compliance with the requirements of the Law. As an illustration of my idea, take the Passumpsic line, if that be an independent one. It will form a good basis for example because it is a parallel line to the Central Vermont in this same north country, and a competitor with the Central Vermont. If a charge were brought against the Passumpsic, that road would say: I am in competition. You must not touch me. I must charge more for the shorter than for the longer distance, because there is such a strong competition to contend against. The

Boston & Albany could say: We are in competition with the Fitchburg. Or the Erie could say: We are in competition with the New York Central. And so every one of these corporations could let the other one out by the shuffling of the cards. It would be somewhat after the plan adopted some time ago by the banks in this State, by which the specie used to be circulated when the bank examiner came around. One bank would present its specie to the examiner, who would count it and certify that it was all right, and the specie would at once be hurried off to the next bank to be presented to the examiner as its specie, and so on until it had gone all the rounds.

Every railroad competes with each other; and if the fact of competition is to be an element that is to control this question, there is not a railroad in the United States which reaches out of its own State (that is probably too strong a statement) but there are not ten roads in the country that reach out of their own State. So that they could get out one after another, and all make great prices for short distances and small prices for longer distances at the expense of the shippers of freight, and the public. This honorable body will see the force of that, and you are not going to let these corporations, whom you were created to bring to some sense of justice and fairness among men in this country, manage to evade this law by playing off against each other and getting beyond the control of this Act in that way. It is not a special and peculiar circumstance and condition; it is a universal circumstance and condition in all these long haul cases, and therefore it is not one of the ideas that could have been in the minds of the law-makers when they said that in peculiar and special circumstances and conditions you might be compelled to relieve a railway for a limited or unlimited time from the operation of section 4.

Long Haul Rates for Short Distances Grossly Unjust.

One word more and I am done. Upon the evidence as it stands in this case, even if these short haul rates were put down to the long haul figures, then the short haul rates would still be grossly unreasonable in fact. I say it is proved to be so by the testimony. All the facts that are put in evidence here, as to how these operations are carried on and what they get for the work they do, tend to establish the force of the statement. Governor Smith told you the cost of carrying freight per ton per mile is, on an average, four mills per ton per mile over the line complained of, taking the fast and slow trains together. He has told you about the car service, what that is and how profitable it is to the company owning the cars. The stock of the company whose cars carry this very freight, and have carried it for fifteen years pays dividends from ten down to four per cent and on a watered capital at that. Governor Smith also tells you that they make money in this long haul business, and I presume he has told, as everybody should, all that will be of benefit to his case, although he has not told you how much they in fact make out of the business.

If there is a profit in carrying a car load of corn from Detroit, or a car load of hay or any other commodity from the Canada line to the line of New Hampshire, or to Boston, or *vice versa*, at a rate of less than 30 cents per 100 pounds, or whatever it may be, I do not pretend to get the fractions, but an enormously less rate than is charged for the short distance, then the profits for doing that same kind of work, over the same line at the same time of year, at once and a half or double the charge, must be enormously and unreasonably large. This is demonstrable, when you look at these statements made here as to the rates and take the elements of the cost and the profit on the car service. When you find the same kind of work being done over the same line under the same circumstances, at half the rate and paying the road a profit, I insist upon it, it is made out as fully as it ever can be made out in such cases as this at any time.

When it is demonstrated that there is a profit in the lower rate—the through rate—it is demonstrated that the greater rate for the lesser distance is grossly unjust. And even if the short haul rate should be brought down to the longer haul rate it would still be grossly unjust in proportion to the expense of doing the business. It is not to be wondered at that the profits of the farmer in Vermont, Ohio, Illinois, or anywhere else, are small. It is not to be wondered at that they make no profits at all; their profits are apparently somewhere else. So I say that the short haul rates should at least be brought down to the basis of charge for the longer haul. That is what I insisted upon last night, and I should have been willing, as I stated at that time, in the hope of finishing this matter up for the time being, to have had this matter stand upon the rates being brought down to that basis and let the matter stop there, with liberty, after a reasonable trial, to apply to the Commission for relief. But we could not make any arrangement about it and therefore having to go through the whole case, I insist that on the evidence in this case what I have said and claimed as to the intrinsic unreasonableness of these rates is true, and that they would still be unreasonable, even if brought down to the long haul minimum.

The Proposition.

I think that it is all it is desirable to say for the merits of this case. I only wish to say in closing, that we thank you, as the other gentlemen have done, for your patience in bearing with our somewhat desultory management of the case, and with what I and my colleague have said; I say "colleague," as we have no official relations with the distinguished gentleman who represents the Boston & Albany Railroad Company. In bringing this application we are not actuated by any spirit of hostility to these roads or any others. Quite the reverse. The railway service of the United States is just as important to its welfare and prosperity as any other one of its social enterprises and institutions. But the fact that it is a very necessary element of our prosperity, and ought to be encouraged, furnishes no ground for its being granted unlimited and unjust license to oppress anybody else. That is the proposition.

REPORT AND OPINION OF THE COMMISSION.

Thereafter, on September 20, 1887, the Commission rendered its decision, with the following report and opinion (the head notes being by the Editor):

1. Where, in a proceeding against several connecting railroad companies for charging more for a short than for the long haul, one of the companies claims that its only participation in the alleged offense consisted in its sharing in the low charges on the long haul, which were not in themselves alleged to be illegal, the complaint should not be dismissed as against such company, where its interest and the liability of the low rates on long haul traffic to be affected by changes made in the higher rates on short haul traffic is so great that in case such company had not been made a party, and should ask to be made a party, it would be proper to so order.
2. Where, in a proceeding by one railroad company (here, the Boston & Albany R. R. Co.) against other companies, for charging more for a short than for the long haul, it appears that the rates alleged to be illegal are local rates; that the petitioner does not pay or participate in paying them; that they are not competitive rates to those imposed on the petitioner's road; and there is no allegation that such rates are excessive or unjust, and the sole grievance of the petitioner is that the defendant companies accept through traffic at lower rates than are made by the petitioner and its connections,—such petitioner has no standing to maintain the proceeding.

3. A desire to obtain a construction of the Interstate Commerce Act is not sufficient to support such proceeding.
4. The right to make greater charges for short than for long hauls is exceptional and depends in every case upon the peculiar circumstances and conditions; and a ruling in reference thereto in the case of one carrier would not be applicable to another carrier differently circumstanced.
5. It is not held, however, that a complainant must necessarily have a pecuniary interest in order to entitle him to be heard; and it seems, under the provisions of the Act, that when an infraction of the Act would constitute a public grievance, it may be the duty of the Commission to investigate it, when brought to its attention by a responsible party in a duly authenticated form.
6. Held, that the persons composing the Vermont State Grange of the Patrons of Husbandry had such an interest that it was proper that they, as an association, should raise the question as to the justice of the high rates complained of by them, and that the proceeding was maintainable upon their petition.
7. If several railroad companies join in making the joint tariff which constitutes the lesser charge on the longer haul, while one or more of their number makes the greater charge on the shorter haul, the case is within the fourth section of the Act; and those who make such greater charge are called upon to justify it.
8. By the word "line" in the Act, a physical line is meant, not a business ar-

Note. Following is the letter referred to on page 535 at line 20, 2d column, as in evidence:

New York, April 27, 1876.

Com. Vanderbilt, President.

W. H. Vanderbilt, Esq., Vice Pres't.

N. Y. C. & H. R. R. Co.

Gentlemen

Believing that the existing difficulties in regard to the transportation of east bound traffic are not understood as thoroughly as they should be, and that these differences should be adjusted on a basis of equity to all interests, we have, through telegraphic correspondence, requested Mr. Hickson of the Grand Trunk Line, and Gov. Smith of the Vt. Central, to meet us in New York and talk the subject over, to see whether we could not arrive at some satisfactory basis of adjustment.

We believe that your shorter line between the West and New England ought to make a reasonable concession to the Grand Trunk route, which embraces that line, the Vt. Central, and other connections, owing to its location and climate, and other matters incident to it as a through route.

In order to protect and promote the interests of the various roads of the country as well as the best interests of the public, we trust you may find it to your interest to agree, if it can be arranged, to allow the Grand Trunk route the following scale of differences on east bound traffic to competitive points in New England, which are much less than those heretofore existing, and which we deem under the circumstances to be reasonable.

On live stock 7c; on out meats and perishable property 6c; on first and second class, of which there is but a very limited quantity, 4c.

The Grand Trunk to carry third and fourth class,

INTER 8.

which embraces 90 per cent of the entire traffic at equal rates as fixed from time to time.

The matter of west bound rates from New England to remain as adjusted between your lines and the lines of the Grand Trunk route.

Looking over the whole ground it seems to us that if we can prevail on Mr. Hickson to agree to this schedule, you should agree, as well for your own interests as those of all the other lines in the country, to make this adjustment; and if it is made that the Grand Trunk route should then become one of the eastern trunk lines, and be a part of the organization for making and adjusting rates and classifications from time to time, on the general basis that has prevailed among the four trunk lines during the past year.

By adopting this policy its results must be to protect large amounts of property, owned in this and other countries, from a destruction that we think under the circumstances is not warranted; and we believe that the adjustment of this whole matter rests entirely with you.

The pending consequences, are in our opinion so serious that we must respectfully request you to give us an answer by Saturday morning of this week. If you will address your reply to us to the care of Mr. Jewett, at the Erie Railway office, we shall be glad to co-operate, to the end that an adjustment of existing and anticipated difficulties may be reached, and destructive competition be avoided.

Signed,

Thos. A. Scott, Pres't. Penn. R. R.

H. J. Jewett, Pres't. Erie R. R.

Jno. King, Vice-president B. & O. R. R. Co.

rangement; and one piece of road may be part of several lines.

9. **Through business over the defendant companies' roads was done by the National Despatch Line** (a fast freight line, neither a corporation nor an association of persons, but a name under which business was done), the several roads paying mileage for the cars used, furnished to such line by a car company, and the earnings of such line being divided among the roads in agreed proportions. The tariff for the long haul traffic in question was made by the manager of the Despatch Line, who was the agent for all the roads over which it did business, and was acquiesced in by them. *Held*, that the defendant companies were responsible for the long haul rates.
10. *Held*, that such peculiar facts are not found to exist as will justify the greater charge over the shorter line by the Central Vermont roads.

Cooley, Chairman:

On May 24, 1887, the Boston & Albany Railroad Company presented its petition stating "That the Boston & Lowell Railroad Company, a Massachusetts corporation; the Concord Railroad Company, a New Hampshire corporation; the Northern Railroad Company, a New Hampshire corporation; the Central Vermont Railroad Company, a Vermont corporation, and the Grand Trunk Railway Company, established by the laws of Canada, have issued schedules of joint rates under the name of the National Despatch Line, and under these schedules the rates from Boston to Detroit, Michigan, are: 51-45-35-24-20-18 for the six classes of freight, respectively; and to Montreal, Canada, 45-40-30-23-20-18 for the six classes of freight, respectively; while at the same time the Boston & Lowell, Concord, Northern & Central Vermont Railroad Companies, a part of the roads included in the National Despatch Line, have made and maintained rates from Boston to St. Albans, Vermont, a station on the Central Vermont Railroad, a less distance from Boston than either Detroit or Montreal, in the same direction over the same line as follows: 60-50-40-27-24-17 for the six classes of freight, respectively.

"The National Despatch Line comes into competition with the Boston & Albany Railroad Company and its connections at Detroit and other western points.

"The grievance which this company and its connections have is that the National Despatch Line makes rates to Detroit and other points in the West less than the Boston & Albany Railroad Company and its connections make to the same points; while at the same time a certain combination of roads, including a part of the roads in the National Despatch Line, viz.: the Boston & Lowell, Concord, Northern & Central Vermont Railroad Companies, maintain higher rates to St. Albans and other intermediate points—that is, higher rates for the short haul than for the long haul on the same line in the same direction, on the five upper classes of freight; whereas, if the rates to Detroit and other western points were made the

same—no higher and no lower than to any intermediate point on the same line in the same direction—your petitioner would have no reason to complain."

On the same day the complainant presented another petition representing that "the Boston & Lowell Railroad Company, a Massachusetts corporation; the Concord Railroad Company, a New Hampshire corporation; the Northern Railroad Company, a New Hampshire corporation; the Central Vermont Railroad Company, a Vermont corporation; and the Ogdensburgh & Lake Champlain Railroad Company, a New York corporation, have made an arrangement by which the Steamship Company operated by the Ogdensburgh & Lake Champlain Railroad Company has issued a tariff from Boston to lake ports in the United States at a less rate than is charged at the same time from Boston to Ogdensburgh and other points on the same line at a shorter distance from Boston in the same direction. The rates are as follows:

From Boston to—

Cleveland, O.	} 41-36-29-20-17-14 for the six classes of freight respectively.
Detroit, Mich. Port Huron,	

To—

Milwaukee, Chicago,	} 44-39-31-23-19-16 for the six classes respectively, and from Boston to Ogdensburgh, 60-50-45-30-25-17 for the six classes of freight respectively.

"This line via Ogdensburgh comes into competition with the Boston & Albany Railroad Company, and its connections at Cleveland, Detroit, Port Huron, Milwaukee, Chicago and other western points.

"The grievance which the Boston & Albany Railroad Company and its connections have is that the line via Ogdensburgh makes rates to the above places less than the Boston & Albany Railroad Company and its connections make to the same points, while at the same time the above named roads, viz.: the Boston & Lowell, Concord, Northern, Central Vermont, Ogdensburgh & Lake Champlain Railroad Companies maintain higher rates to Ogdensburgh and other intermediate points; that is, higher rates for the short haul than for the long haul on the same line at the same time in the same direction; whereas, if the rates to Cleveland, Detroit, Port Huron, Milwaukee and Chicago were made the same, no higher and no lower than to intermediate points on the same line in the same direction, your petitioner would have no reason to complain."

To these petitions the several defendants made answer, but it is deemed unnecessary to do more in this opinion than to give one in each case.

The answer of the Boston & Lowell Railroad Company to the petition first above recited, denies that the defendants "have issued joint rates under the name of the National Despatch Company as therein averred; and further denies that the line of railroads, or the railroad which established and maintains any joint rates, or any rates for the carriage of freight between Boston and St. Albans and intermediate points, is the same line or railroad corporation as the line which establishes and maintains the rates of freight between Boston

and Detroit and other western points, as alleged in said petition; and further denies that the same carrier or line of railroads or this defendant charge higher rates for a short haul than for a long haul over the same line in the same direction for the like kind of property in the manner set out in said petition; and further alleges that the transportation of freight between the points named in said petition has not been and is not under substantially similar circumstances and conditions within the true intent and meaning of the Act of Congress.

"And this defendant further says that the Boston & Lowell Railroad, the Nashua & Lowell, the Concord, the Northern and the Central Vermont Railroads are connecting railroads so far as trackage is concerned, from Boston, Mass., to St. Albans, Vt. These roads are not managed or controlled by each other, except that the Nashua & Lowell and the Northern are in fact operated by the Boston & Lowell; nor is there between them an arrangement for a continuous carriage or shipment of property over the same, although it is true that they sometimes make joint tariffs of rates between Boston and St. Albans, aforesaid, and interchange cars. At the time of filing the petitioners' complaint the rate fixed by said joint tariff from Boston to St. Albans was and is as stated in said petition.

"These defendants further say that the National Despatch Line, referred to in the said petition, is a line of cars running from Boston, Mass., to all large points in Canada and in the Western States, west of St. Johns in Canada, via the Grand Trunk line. They consist of 3,750 freight cars, marked National Despatch Line, and they are owned as follows:

"The National Car Company, a corporation chartered and organized under the laws of Vermont, owns 3,000 of said cars. The Grand Trunk Railway Company of Canada, owns 700, and the Chicago, Pekin, & South Western Railroad owns 50. The roads over which the National Despatch Line sends freight, and which use the cars, are as follows:

"Boston and Lowell (and others are enumerated, including some whose lines extend beyond the Mississippi).

"The National Despatch Line have their principal office in Boston, Mass. They solicit freight at Boston and other places in New England for transportation to all prominent points in Canada and the Western States west of St. Johns. They have agencies in Boston and other eastern points and in Chicago and other western points. They do not receive or solicit freight at Boston or other New England points, the destination of which is south of St. Johns, for west bound freight. They issue their own bills of lading; and they also issue and publish their tariff for transportation from New England points to points in the Western States and Canada west of St. Johns. They do not issue bills of lading for west bound freight from New England points to points south of St. Johns, nor do they make a tariff nor profess to be carriers between those points in respect to west bound freight destined south of St. Johns. St. Albans, Vt., is South of St. Johns, and is not embraced in the tariff made by the National Despatch Line for west bound freight. The rates made to points west of St.

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Johns, where there is competition with complainant's line, are made under this tariff by the National Despatch Line.

"And this defendant denies that the joint tariff aforesaid constitutes an arrangement for a continuous carriage, within the meaning of the first section of the Interstate Commerce Law; but if it does, then it alleges that the joint tariff from Boston to St. Albans makes a wholly different line from the one made by the joint tariff of the National Despatch Line, within the meaning of the fourth section of said Law.

"And this defendant further says that the rates from Boston and intermediate points to St. Albans are reasonable; that nobody along the line is dissatisfied with the rates made; that the Boston and Albany line is not a competitor for traffic for west bound freight from Boston or intermediate points to St. Albans, and is in no way interested in the rates that are made thereto. It further says that the Central Vermont road runs through a sparsely settled country that the local traffic thereon is small, and that it was constructed at a great expense through an uneven country with high grades; that the road has been foreclosed and reorganized, and the original capital put into the construction of the same has been lost; that if said road was compelled to depend on local traffic, it could not pay its expenses and interest on its bonded debt, to say nothing of the stocks of the road as it has been reorganized. And this defendant further says that the additional expense of doing through traffic as compared with local traffic is small in degree; that its road is the same whether the traffic is local and small or large by reason of through business; that the profit which it makes out of the through business is quite as important to it as the profit on the local business, by reason of the volume of the through traffic as compared with the local traffic; that the volume of business from Boston to St. Albans is not one twentieth part of what it is to points beyond there, westward. That it has been to very large expense for terminal facilities, among other things, to accommodate such through traffic; and this expense amounts to more than \$3,000,000.

"And these defendants further say that the Central Vermont Road extends northerly from St. Albans to the state line, a distance of about ten miles; that it there connects with the Montreal and Vermont Junction Railroad, a Canada corporation, which extends about twenty-two miles northerly to St. Johns, in Canada, where it connects with the Grand Trunk Railroad, which extends through Canada to Windsor, opposite Detroit.

"It is over this line that the National Despatch cars principally run.

"And this defendant further says that the rate made by the National Despatch Line from Boston to Montreal is, and was at the time of the filing of the petitioner's complaint, the same as stated in said complaint, and for the following reasons: There are many competitors at Boston for traffic to Montreal; there are none for traffic to St. Albans. Boston traffic is taken by ocean steamers to Halifax, Nova Scotia, and St. Johns, New Brunswick, and thence by Cana-

dian Railways to Montreal. It is also taken via Passumpsic and Southeastern Railway to Montreal, the latter railroad being a foreign corporation. Traffic is also taken from New York to Montreal by the Delaware & Hudson Canal Company, which extends from New York City to Rouse's Point, within fifty miles of Montreal, and is a railroad entirely within the State of New York. Halifax and St. Johns, N. B., are foreign cities, and together with New York are competitors with Boston for the sale of goods to the merchants of Montreal. Unless the rate of freight is as low from Boston to Montreal as from the aforesaid cities to Montreal, the traffic will not go over the roads used, as the National Despatch Line. The Grand Trunk via Portland is the strongest competitor for traffic from Boston to Montreal, and is a foreign corporation. The National Despatch Line make the rates they do from Boston to Montreal from necessity and and by reason of competition, and for no other reason.

"And this defendant further says that the rate made by the National Despatch Line from Boston to Detroit is and was as stated in said petition, at the time of filing thereof. There are many competing lines for Boston traffic to the West, and especially to Detroit. The Baltimore and Ohio takes traffic at Boston by ocean steamers to Philadelphia and Baltimore, and thence over their line to all large points in the West. The Boston and Albany Line via the New York Central and Michigan Central Railroads and steamships from Buffalo takes freight westward to all lake points, and more especially Detroit. The Grand Trunk Line via Portland is still another line in competition for west bound traffic to Detroit and all other large points in the West. The Grand Trunk Railway Company is a foreign corporation, and their line runs principally through Canada to Windsor, Ontario, opposite Detroit, and Point Edward, Ontario, opposite Port Huron, Michigan. The defendant's line from Boston to St. Albans, in connection with the Ogdensburgh and Lake Champlain Railroad and the line of boats on the Great Lakes, called the Central Vermont Line of Steamers, constitute still another line which comes in competition with the National Despatch Line at Detroit and other western points. The Canadian Pacific, another foreign corporation, is in competition for this same traffic. Many others might be named, and especially the New York and New England and its connections, also the Fitchburg and the Hoosac Tunnel Line.

"And this defendant further says that these competing lines largely dictate the rates from Boston to Detroit and other competing points in the West; that the defendant's lines must make as low rates to these points of competition as the other lines, or go out of the business; that the through business to competing points is important to this defendant and the other connecting roads, and is a source of large profits to this defendant. And this defendant further says that the circumstances and conditions under which freight traffic is taken and transported from Boston to St. Albans is wholly dissimilar to what it is in respect to freight traffic which they take and trans-

port west of there to points of competition, and more especially Montreal and Detroit. That the rates made from Boston to Montreal and Detroit, respectively, are made from necessity and for no other reason; that the petitioner is in no wise interested in the rates from Boston to St. Albans; that its motive in filing its petition is to break down one of its principal competitors for through business from Boston to Detroit and other points in the West, and from no other motive. And this defendant further says that it has acted in good faith in the premises; that it has given the best construction it could to the Interstate Commerce Law, and under the advice of counsel, and if it has erred it will ask leave to file its petition to be relieved from the operation of the fourth section of said Act."

The joint and several answer of the Central Vermont Railroad Company and the Ogdensburgh & Lake Champlain Railroad Company to the petition secondly above set forth says, that "the Boston & Lowell, the Nashua & Lowell, the Concord, the Northern, the Central Vermont, and the Ogdensburgh & Lake Champlain Railroads, form a connecting line of railroads, so far as trackage is concerned, from Boston to Ogdensburgh, N. Y. These roads are not managed or controlled by each other, except the Nashua & Lowell and the Northern are under lease to the Boston & Lowell, and the Ogdensburgh & Lake Champlain is under lease to the Central Vermont Railroad; nor is there between them an arrangement for a continuous carriage or shipment, unless it may be implied from the making of joint tariffs and the interchange of cars. At the time complained of in the petition there was, and still is, a joint tariff for west bound traffic from Boston to Ogdensburgh over the aforesaid roads, at the rates stated in the petition.

"From Ogdensburgh there is a line of eight steamers which run between there and Chicago and touch at various points on the Great Lakes, and more especially at Cleveland, Detroit, Port Huron, Milwaukee, and Chicago. This line of steamers is controlled by the Central Vermont Railroad Company, and they have a joint tariff with the roads aforesaid, entirely different and independent from the one between the roads themselves, as before stated, from Boston to Ogdensburgh.

"This line is called the Central Vermont Line of steamers. They take no traffic for points between Boston and Ogdensburgh, but only for points west of Ogdensburgh for westward bound freight. They make the rates from Boston to Lake points as stated in the petition.

"The defendants insist that the aforesaid joint tariffs do not constitute an arrangement for a continuous carriage or shipment within the meaning of the first section of the Interstate Commerce Law; but if they do, then they do not constitute the same lines within the meaning of the fourth section of said Law.

"And these defendants further say that the rates from Boston to Ogdensburgh referred to in said petition are entirely reasonable; that shippers do not complain, nor do the public at Ogdensburgh. There is no competition with the defendant's line at Ogdensburgh for traffic from Boston to Ogdensburgh. The Ogdens-

burgh & Lake Champlain and Central Vermont Roads embrace more than half the distance from Ogdensburgh to Boston. They run through a sparsely settled country with high grades, and are operated at unusually large expenses, especially in the winter, by reason of heavy drifts of snow and excessive frosts.

"They have both been foreclosed and reorganized, and the original capital put into the construction has been lost, and if they were compelled to depend upon local traffic alone, they could not pay their expenses and interest on their bonded debt, to say nothing of the various stocks of the roads as now reorganized. These roads have been brought up to a high state of efficiency for the purpose of doing a through business from the seaboard to the West; and if the rates from Boston to points on the Great Lakes made by the Central Vermont line of steamers aforesaid were raised to the same rates as the tariff from Boston to Ogdensburgh, no traffic would go by this line to points on the Great Lakes by reason of competition with other lines, and more especially the Boston and Albany Line hereinafter referred to.

"On the other hand, if the rates from Boston to Ogdensburgh were reduced to the same rates as from Boston to points on the Great Lakes, it would seriously cripple these defendants' roads and would weaken them as competitors for through business by the Boston and Albany Line without affording any relief to Ogdensburgh; but it would probably result in a large increase in the rates from Boston to Ogdensburgh in order to maintain the roads, if the through business is given up.

"And these defendants further say that there are many competing lines for Boston traffic to the West—(enumerating them) that these various lines compete with the defendant's line at the various lake points referred to in the petitioner's complaint and dictate the rates that shall be charged thereto; that the defendants' line must make as low rates to these points of competition as the other lines, or go out of the business; that this through business to competing points is quite as important to these defendants as their local traffic; that the amount of traffic from Boston to Ogdensburgh and intermediate points is not one twentieth part of what it is to points west of Ogdensburgh; that they make money on their through business, and without it they could not secure any adequate return for the capital invested in defendants' roads.

"And these defendants further say that the circumstances and conditions under which they take traffic from Boston to Ogdensburgh is wholly dissimilar from what it is in respect to traffic which they take west of there to points of competition on the Great Lakes; that the cost of service is relatively small for the water carriage west of Ogdensburgh, as compared

"And these defendants further say that they have acted in good faith in the premises; that they have given as good construction as they could to the Interstate Commerce Law, and under the advice of counsel; and if they have erred, they will ask leave to file their petition to be relieved from the operation of the fourth section of said Act."

While the cases were pending the Vermont State Grange of the Patrons of Husbandry, representing itself as "an association of farmers and business men, organized and located within the State of Vermont," presented what is called in the proceedings an intervening petition, but which for all practical purposes is an original complaint, which, after reciting the pendency of the proceedings, goes on to allege "that the tariff rates and charges made by the defendants for the transportation of property from Boston, in the State of Massachusetts, and points near said Boston, to St. Albans, Burlington, Middlebury, and other places in the said State of Vermont and from said places in Vermont to Boston and places near thereto are higher than the charges made by said defendants and said National Despatch Line from said Boston to Montreal, in the Province of Quebec, Detroit, in the State of Michigan, and other points beyond and northerly and westerly of the said State of Vermont, and from said northern and western points to said Boston," in contravention of the statute, and also "that said charges for transportation of property from Boston aforesaid to said points in Vermont, and from said Vermont points to Boston and other places in the vicinity thereof, so made by the defendants, are exorbitant in fact, and are not reasonable or just."

The same defenses were relied upon to this as to the other petitions, and the cases were all heard together at Rutland, Vermont, on the first day of September and following days.

Before proceeding with the evidence the Grand Trunk Railway Company moved that the complaints as to it be dismissed, for the reason that the charges supposed to be in violation of the statute were not made or shared in by it, its participation if any being only in the low charges on the long haul, which in themselves were perfectly legal and were not averred to be otherwise. The Commission, however, was of opinion, and so held, that the interest of that company was such, and the liability of the low rates on long haul traffic to be affected by changes made in the higher rates on short-haul traffic was so great that in case it had not been made a party, and should now come in and ask to be made such in order that it might present evidence and be heard by counsel, it would be proper to order accordingly. This being the case, it was equally proper for complainants to join it as a party respondent in the first instance.

The right of the petitioner in the first com-

itive rates to those which are imposed on its road; and if they were, the fact that they are excessive would tend to its advantage. The petitions do not show that those who pay them regard them as excessive or unjust; nor is it averred that they are so in fact. It is consistent with everything that appears in the first two complaints that these rates are fair and just; that they are even necessary as defendants aver they are; and that the parties who pay them do so without complaint and willingly. Why then should this petitioner complain?

The petitions answer this inquiry by saying that "The grievance which this company and its connections have is that the National Despatch Line makes rates to Detroit and other points in the west less than the Boston & Albany Railroad Company and its connections make to the same point," while at the same time making higher rates to the intervening points. But what the higher rates to the intervening points have to do with the complainant's "grievance" the petition fails to inform us. No connection between the high rates and the low is shown or averred. It is not said that the one set are made high in order that the other may be made low, or that the long haul traffic is taken at the expense of the short haul traffic. As the case stands upon the first two complaints the sole grievance of the petitioner is that the defendant roads accept traffic from Boston to Western points at lower rates than are made by petitioner and its connections; and the legitimate inference must be that the purpose of the proceedings is to compel the putting up of those rates. But in that purpose the petitioner can certainly expect no aid from this Commission. The defendant companies have the legal right to make the low through rates, and their competitors cannot restrain them.

On the argument it was said on behalf of the Boston & Albany Company that the purpose of the proceeding was to obtain a construction of the Act. The petitioner desires to know whether the Central Vermont Railroad Company is justified in making with its connections higher rates from Boston to St. Albans and intervening points than it makes to Montreal and more distant points. It desires to have an authoritative decision on that subject, in order that, if such higher rates are sustained, it may proceed in like manner to impose in respect to its traffic higher rates upon shorter than upon longer hauls. And as it was well understood that this Commission did not give opinions upon abstract questions, or undertake to construe the Law as a guide to parties in their own business when no controversy was pending before it, these proceedings were begun in order to present the necessary contention.

One obvious remark upon this is that it is not warranted by the complaint, which undertakes to advance and rely upon a "grievance." Another, equally obvious, is that the desire to have safe guidance in one's own business is not a legitimate ground for overhauling the business of another with which the party has no other concern. Moreover, a decision upholding the lawfulness of the greater charges made for the shorter hauls by the Central Vermont and its connections, could not, in the nature of things, constitute a rule for the petitioner in deciding

whether to impose greater charges for shorter hauls on its line. Our reasons for this were fully given in *the Matter of the Louisville & Nashville Railroad Co.* [ante, 378]. We there pointed out that the right to make such charges under the Law was exceptional; that it depended in every case upon the peculiar circumstances and conditions; and while we did not undertake to indicate all the reasons that might justly or plausibly be advanced in support of an exception, enough was stated to make clear as we thought how impossible it is to lay down definite rules by which the cases as they arise may be readily determined. It is upon its own circumstances and conditions that each case must be judged.

In the cases before us there is neither allegation nor proof that the circumstances and conditions of the local traffic on the Boston & Albany and its connections are like or substantially like the circumstances and conditions of the local traffic of the Central Vermont and its connections between Boston and St. Albans. If, therefore, it were to be decided that the greater charges on the shorter hauls which are here complained of are just, reasonable and legal, it would not follow that the Boston & Albany and its connections could make the like charges. The reason is plain: the decision would be confined to the facts of the very case in judgment; and how it would apply to the facts of any other case not exactly like it would be matter of inference and argument only. The greater the difference in circumstances and conditions the less would be the likelihood that the decision could be accepted as a precedent. And perhaps it may be safely said that any well informed person who has even a general knowledge of that section of the country knows that the circumstances and conditions of local traffic on the Central Vermont must be greatly different from what those are of the local traffic on the Boston & Albany. The latter runs through the more densely populated country; it has more considerable towns and large manufactories upon it, and for these reasons has a vastly greater volume of business within its reach. It also takes the better direction for a heavy long haul traffic.

In what has been said we are not to be understood as holding that a complainant must necessarily have a pecuniary interest in order to entitle him to be heard. There are no doubt many cases in which an individual having no interest, except to see that the law is enforced for the benefit of society, may complain in his own name but in the public interest. In these cases the petitioner does not complain in the public interest, but in its own; and the grievance of low long haul rates, of which it complains, is not a public grievance.

The Act to Regulate Commerce, however, expressly provides that "No complaint shall at any time be dismissed because of the absence of direct damage to the complainant." Under this provision when an alleged infraction of the Law, of such a character as to constitute a public grievance of considerable general importance, is brought to the attention of the Commission, by a responsible party in a duly authenticated form, it may be the duty of the Commission to enter upon its investigation, and if the charge is substantiated, to apply ap-

propriate relief. We are relieved from any necessity of determining what would be the proper course to pursue in such a case by the fact that the question of the violation of Law is directly presented in the petition filed by the Vermont State Grange of the Patrons of Husbandry. We are not informed whether that body is incorporated, nor is it important. It was conceded on the argument to be an association formed for proper purposes by respectable people of the State, and presumably those persons are interested, or are liable to be, in the charges complained of. They find their grievance not in the low rates which the Law does not undertake to restrict, but in the high rates which, if not justified by a proper showing, stand condemned; and as these are likely to bear with peculiar weight upon those who follow the calling of husbandmen, it is very proper that they as an association, if they believe the rates wrong and oppressive, should raise the question. Upon the petition of the State Grange, therefore, we proceed to examination of the merits of the controversy.

I. It is contended on the part of the defendants that they do not nor does either of them violate the fourth section of the Act to Regulate Commerce, because the shorter hauls for which the greater charges are made are not over the same lines as the longer hauls for which the charges are less.

This contention is based on the phraseology of the first and fourth sections of the Act. By the fourth section it is made unlawful for "any common carrier subject to the provisions of this Act" to charge more, etc., "for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance." The first section prescribes who shall be subject to the provisions of the Act. They are "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment," etc. The party then, it is claimed, who can be liable under the fourth section must, it is said, either be a single carrier operating by itself a line upon which the charges are made, or it must be carriers operating a line "under a common control, management, or arrangement for a continuous carriage," etc. The defendant corporations have each their separate board of directors; they are not under a common control or management; they have no common arrangement for a continuous carriage. Their tracks connect, and a carriage may be made continuous by the delivery of property from one to another till it reaches its destination; but the delivery is a common-law duty, irrespective of common arrangement. The making of a joint tariff is not, it is argued, such a common arrangement as the Act contemplates; it is only an agreement as to what each will accept as its share of the charge for a haul over the roads or lines of them all. The long and short hauls, then, are not on the same line unless both are on the line of the same carrier, which is not the case here. But if two or more roads could be regarded as one "line" within the meaning of the Act, the charges complained

of here are not for hauls on the same line; the line from Boston to St. Albans which some of the defendants form being a different line from that formed to Montreal through St. Albans, and different again from that formed to Detroit, and so on. This is the substance of the very ingenious argument presented and elaborated for the defense.

We do not think the argument sound. Without pausing now to inquire what was meant by the words "under a common control, management, or arrangement," etc., or whether those words have any application at all to carriers wholly by railroad, we have no difficulty in holding that if the defendants join in making the tariff which constitutes the lesser charge on the longer haul, while one or more of their number make the greater charge on the shorter haul, the case is within the fourth section; and those who make such greater charge are called upon to justify it. "Any common carrier" is as much restrained when it unites with one or more others in making the long haul charge as when it makes such charge independently. Nor have we any doubt as to the meaning of the word "line" in the Act. A physical line is meant, not a business arrangement; and one piece of road may be part of several lines, as the road from Boston to White River Junction is part of the line to St. Albans, and also part of the lines severally to Montreal, Ogdensburgh, Detroit, Port Huron, and Chicago. When a greater charge is made from Boston to White River Junction than is made by way of that point to any one of the other points named the two are made for hauls on the same line, the shorter being included within the longer distance.

II. By some of the defendants it is claimed that the case is not brought within the fourth section of the Act, because the tariff for the long haul traffic is not made by the defendants, singly or collectively, but by the National Despatch Line, which operates over their roads.

The National Despatch Line is one of the many fast freight lines of the country, but is perhaps in some respects peculiar. It is neither a corporation nor an association of persons. It exists by virtue of no formal agreement or writing. One witness speaks of it as a name merely; another as a trade mark. It is nevertheless, so far as the public dealing with it are concerned, an actuality of much importance, for it not only transacts a large business, but takes all the traffic passing over the Central Vermont destined to or coming from points beyond St. Albans. It has for general manager, Mr. John Porteous, who owes his office or position to the president of the Central Vermont Railroad Company, whose power to appoint does not appear. Mr. Porteous appoints some assistants, but in general the railroad agents are agents of the National Despatch Line also. The reason for establishing the line originally was that the roads were greatly deficient in rolling stock, and a car company was formed to loan them cars, and this line called into existence to operate the cars. The roads pay mileage for the use of the cars. The earnings of the line, less the expenses, are divided among the roads in agreed proportions. Mr. Porteous makes the tariffs for traffic taken by the line. The long haul traf-

fic rates mentioned in the complaints are rates made by him, the several defendants taking no part in them.

These are the facts as they appear from the proofs. We deem it unnecessary to comment upon them any further than is needful to draw the legal conclusion. The responsibility of the defendant carriers for the long haul rates is unquestionable. They did not through their own officers fix them, but they one and all acquiesced in the designation of a person to be allowed to fix them; they permit the business to be done over their roads respectively at the rates named, and they accept their several proportions. It would be difficult to imagine a method whereby they would become bound more conclusively, for Mr. Porteous is agent of all in making the rates; and they all acquiesce in what he does, so that they would be bound even if he had acted at first without full authority. The arrangement as it exists in fact, though it be only a name or a trade mark, makes the National Despatch Line or its manager representing it, the agent for such roads as the line is operated over. Its rates are their rates for the business done, and at their peril they must see that its tariffs are filed with this Commission, and that in other particulars the Law is obeyed by it.

III. The principal controversy in the case has been over the justification set up for the charges on the short haul traffic. As bearing upon that controversy a considerable body of evidence was taken, the purpose of which was to show that the very low rates charged for long haul traffic were a necessity of the situation, and that the higher rates for short haul traffic were the lowest that could be afforded. As the Central Vermont is the road principally concerned with the short haul rates, and the lines for long haul traffic are very often spoken of as Central Vermont Lines, it will not be necessary in the further discussion of the case to distinguish between the several roads; and what we have to say will perhaps be more readily grasped and understood if we avoid doing so.

The Central Vermont is the successor to the Vermont Central and the Vermont & Canada roads, constructed in 1849 for local traffic, and which became bankrupt and sunk all their capital. There was a long receivership, at the end of which a reorganization was effected under the name of the Central Vermont, with a bonded debt of \$7,000,000. The company as reorganized has paid the interest on its debt, but no dividends—the surplus earnings being all expended in improvements. The road is in a fine state of repair and efficiency, well supplied with motive power, but still making use of leased cars through the National Despatch Line. The line of road is through a sparsely populated country, with no large towns, and where the industry is mainly agricultural. For many years the population has been nearly stationary in numbers, but the wealth of the people has been steadily increasing, and to this increase the railroads have no doubt largely contributed; perhaps it is not too much to say that they have rendered it possible. There is not local traffic along the line of road to enable the company on any possible tariff to maintain a first class road; and its managers before and

during the receivership directed their energies to making it a link in through lines from Boston and other New England towns to Montreal, Detroit, Chicago, and other points in the West. These efforts were successful, and the Central Vermont was recognized by the trunk lines as a powerful rival for the traffic between the Mississippi Valley and the seaboard, and was allotted large percentages of the business. But as the line was much less direct than those of the trunk line roads, and more time was required for the passage of trains over it than between the same points over the other lines, it was compelled to make concessions in rates to shippers; and the trunk lines recognized this necessity and allowed it a differential, as it is called; that is to say, allowed it to make concessions on west bound traffic up to an agreed point without its being regarded as a cutting of rates. This differential has been as high as ten cents a hundred pounds on first class freight between Boston and Chicago, and proportional on the lower classes; but so large a differential is not now conceded. The National Despatch Line, however, continues to insist upon it, and its doing so led to the institution of the original proceedings. The carriers forming the Central Vermont Lines insist that the differentials they make are necessary to enable them to obtain a fair share of the business; their rivals deny this and claim that it results in forcing commerce into unnatural channels and in the taking of traffic at unremunerative rates. All this controversy was gone over in the evidence and in argument, with the purpose on one side to estop the Boston and Albany, as an assenting party to the differentials, from making the complaint it now sets up, and on the other to convict the defendant roads of unfairness to their competitors. But all this becomes immaterial to the controversy presented by the complaint of the State Grange. What we are concerned with now are the local rates as they affect local shippers, not the through rates as they affect the rival lines.

One peculiarity of this controversy is that the differentials are not given or taken on east bound traffic; but, nevertheless, the Central Vermont Line is enabled to obtain its full share of the business. The reasons for this were not brought out on the hearing; but evidently the roads forming that line have been able to give to shippers more satisfactory facilities on east bound than on west bound traffic. But this also is unimportant now. What is important is the fact that the through business is a necessity to the Central Vermont, if it is to maintain its present state of efficiency. The strictly through tonnage over it for the year ending June 30, 1886, was 79 per cent of all; the strictly local tonnage was but 5½ per cent; while what is denominated in the evidence joint freight, that is to say, freight received at points on the line from points beyond its termini, or taken up at local points to be transported beyond the termini, was 15½ per cent. It is very evident from these figures that neither on the local traffic alone, nor on that and the joint traffic, can a first-class road be maintained. It is therefore the right and we may say the duty of the managers of the Central Vermont to obtain and keep up a through business, if they

can do so without injustice to the local traffic and without violation of law.

No injustice is done to the local traffic by taking through traffic at very low rates, provided the doing so neither makes the local traffic more expensive nor otherwise incommodes it. The defendants put in evidence to show: (1) that the rates on local traffic are not out of proportion to those charged on through traffic, it being very much more expensive to handle an equal amount of the former than of the latter; (2) that the through traffic is not carried at a loss, but there are net gains from it in the aggregate exceeding those on the local and joint traffic put together, and that it is by means of those gains that the efficiency of the road is maintained; (3) that the rates on the through traffic cannot be materially advanced without losing it, and (4) that the Company cannot afford to reduce the rates on the local traffic. There was strong evidence in support of all these propositions. We are entirely satisfied that a large through business is essential to this line, if it is to continue to be a useful line even for local business. We are also satisfied that the people of Vermont are largely interested in the low rates on long haul traffic, not only because to some extent they send manufactured articles to distant points, but much more because Vermont relies very largely on the West for grain, flour, meats and provisions. It is highly probable that if the people of the State pay high rates on local traffic, they are fully compensated in the low rates on long haul traffic. A board having full power to adjust rates as circumstances should seem to require might perhaps so hold.

But our power in this regard is restricted by the terms of the Law, which absolutely forbid a carrier "to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance." This is the Law which governs our action, and it cannot be departed from by us on considerations of equity, or of what would be for the interest of parties concerned. If parties complain of a violation of the Law, we can only pass upon the charge preferred; and our action cannot be affected by the circumstance that the rates as adjusted are on the whole to their advantage. They must judge of their interest, while we are to judge of the violations of Law which are complained of.

The controversy in the case, then, is narrowed to this question: Are the circumstances

made. The cost of different kinds of traffic cannot possibly be arrived at with accuracy; at best only an approximating estimate can be made. The calculations put in evidence do not satisfy us that the same kind of freight can be taken from Boston through St. Albans to Detroit at a less cost than from Boston to St. Albans, or from Boston through Ogdensburg to Chicago and Milwaukee at a less cost than to Ogdensburg. Honest calculations are made to show such a result, but they are very likely to charge upon local traffic exclusively items which ought to be apportioned, or to leave something out of view which ought to be considered.

The main reliance of the defense, however, was upon a showing of the competition which defendants must meet in long haul traffic. It was shown that for traffic between Boston and the West there was actual or possible competition by steamers to Portland, and thence over the Grand Trunk by steamers to Halifax, and thence over the Intercolonial by the South Eastern Road to connect with the Canadian Pacific by the several trunk lines and by combinations of carriers requiring no special mention.

The evidence, however, is entirely conclusive that the competition which is troublesome to the defendants is that of the trunk lines. It is from these that the defendants demand the differentials, and it is because they are possessed of the shorter lines that the differentials become necessary. The defendants do not fear the competition of a route by Halifax or of any of the other circuitous routes that can be organized; and such lines do not constitute circumstances or conditions having any perceptible bearing on the present controversy. The circumstances and conditions that must justify the greater charge on the shorter haul over the Central Vermont Line must be such as spring from the trunk line competition.

In *The Matter of the Louisville & Nashville Railroad Company* [supra] we expressed the opinion that there might be cases in which the competition between railroads, even when they were all subject to the jurisdiction of the Commission, would present such dissimilarity of circumstances and conditions between long haul and short haul traffic as to justify the greater charge on the shorter haul on the same line in the same direction. But our published opinion shows that we thought the cases must be rare and quite exceptional. The trunk lines are all subject to our jurisdiction. What then are the peculiar circumstances and conditions which constitute the difference between the case before us and cases of railroad

same claim they do, with the same justice. It is a claim that could be advanced wherever a route, however circuitous, could be formed for long haul traffic. A line from Boston to Detroit, for example, might be formed by way of the Chesapeake & Ohio Railway, and one from Chicago to St. Louis by way of St. Paul. The greater the departure from a direct line, the greater would commonly be the necessity for low rates on through traffic, and the greater the liability to have the charges on the local traffic increased to make the carriage of through traffic possible. But, without enlarging on this branch of the case, we content ourselves with saying that such peculiar facts are not found to exist in this case as will justify the greater charge over the shorter line.

There remains for us only the duty to make and issue the order which the facts found require. The Central Vermont and the other

defendants concerned with it in interstate traffic between Boston and St. Albans and Boston and Ogdensburg, respectively, including those points, must wholly cease and desist from charging or receiving in respect to any part of such traffic at greater compensation for transportation of a like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance. In performing this duty we neither do nor with propriety can express opinion upon the intrinsic reasonableness or justice of the rates heretofore imposed, except to this extent: that we do not think it was shown by the evidence that when the local tariffs are made to conform to the letter of the Law as above directed they will be unreasonable.

In this opinion all concur.

SUPREME COURT OF ARKANSAS.

LITTLE ROCK & FORT SMITH R. CO.

v.

HANNIFORD *et al.*

1. The Arkansas Act of February 27, 1885, prohibiting any railroad company in the State from charging a greater sum for the transportation of freight than is specified in the bill of lading, and imposing a penalty for refusal to deliver freight on payment or tender of the charges due as shown by the bill of lading, is general and uniform in its operation upon all within the class to which it applies, and therefore is not within the constitutional prohibition against special legislation.
2. Said Act is within the police power of the State and is not an attempt to regulate interstate commerce, within the meaning of the clause of the Federal Constitution vesting in Congress exclusive power to regulate commerce among the States.
3. Where a bill of lading specified the rate per 100 pounds to be paid for the goods carried, but did not state the weight of the goods, but the weight was readily ascertainable, *held*, that the sum to be paid for freight was sufficiently specified in the bill of lading, to accomplish the object of the Act.

(Decided June 25, 1887.)

APPEAL by a defendant from a judgment of the Circuit Court for Conway County, in favor of plaintiffs in an action for damages for refusal to deliver freight on tender of payment of charges. *Affirmed.*

The facts and questions presented are stated in the opinion.

Mr. J. M. Moore, for appellant.

Mr. Eugene B. Henry, for appellees.

Battle, J., delivered the opinion of the court:

On the fourth of January, 1886, plaintiffs, Hanniford, Beal & Wills, purchased of the

Armour Packing Company, of Kansas City, Missouri, 25,000 pounds of meat, and delivered it to the Southern Kansas Railroad Company, which executed its bill of lading therefor, and thereby contracted to ship and deliver it to plaintiff at Morrilton, in this State, at the rate of fifty-five cents per 100 pounds. The defendant Little Rock & Fort Smith Railway Company, being one of the connecting line of carriers, received the meat at one end of its line, and carried it to Morrilton. The weight of the meat was not specified in the bill of lading. In the way bill delivered to the defendant the weight specified was 33,900 pounds. Plaintiffs tendered payment of the freight charges on 25,000 pounds, at the rate specified in the bill of lading, and the defendant demanded freight on 33,900 pounds, and for about four days refused to deliver unless freight on that amount was paid. After a delay and refusal to deliver for several days, plaintiffs brought an action against the defendant for the meat, when defendant agreed to accept plaintiffs' offer. Plaintiffs then brought this action for damages to an amount equal to the freight charges tendered for every day defendant refused to deliver the meat after the tender of payment was made.

This action was brought under the Act of the Legislature, approved February 27, 1885, which reads as follows:

"Section 1. *Be it enacted*, By the General Assembly of the State of Arkansas, that it shall be unlawful for any railroad company in this State, its officers, agents or employees, to charge and collect, or to endeavor to charge and collect, from the owner, agent or consignee of any freight, goods, wares, or merchandise of any character or kind whatever, a greater sum for transporting said freight, goods, wares, or merchandise than is specified in the bill of lading.

"Section 2. That any railroad company, its officers, agents or employees, having possession of any goods, wares, and merchandise of any kind or character whatever, shall deliver the same to the owner, his agent or consignee upon payment of the freight charges, as shown by the bill of lading.

"Section 8. That any railroad company, its officers, agents or employees, that shall refuse to deliver to the owner, agent or consignee any freight, goods, wares and merchandise of any kind or character whatever, upon the payment or tender of payment of the freight charges due, as shown by the bill of lading, the said company shall be liable in damages to the owner of said freight, goods, wares or merchandise, to an amount equal to the amount of the freight charges for every day said freight, goods, wares or merchandise is held after payment or tender of payment of the charges due, as shown by the bill of lading, to be recovered in any court of competent jurisdiction."

This Act being general and uniform in its operation upon all persons coming within the class to which it applies, it does not come within that special legislation prohibited by the Constitution; for it applies to and embraces all persons "who are or who may come into certain situations and circumstances," and is "general and uniform, not because it operates upon every person in the State, for it does not, but because every person who is brought within the relations and circumstances provided for is affected by the law." *McAunich v. Mississippi & Missouri R. R. Co.* 20 Iowa, 842; *Iowa R. R. Land Co. v. Soper*, 39 Iowa, 116; *Chicago etc. R. R. Co. v. Iowa*, 94 U. S. 168 [Bk. 24, L. ed. 96]; *Humes v. Missouri Pac. R. Co.* 32 Mo. 221; *Davis v. State*, 8 Lea (Tenn.), 379; *Cooley*, Const. Lim. 5th ed. 481.

It is of that class of legislation specially enjoined by the Constitution of the State upon the General Assembly; for section 10, art. 17, Const. ordains: "The General Assembly shall pass laws to correct abuses, and prevent discrimination and excessive charges, by railroad, canal and turnpike companies, for transporting freight and passengers, and shall provide for enforcing such laws by adequate penalties and forfeitures." Vested with the power to correct abuses by railroad companies, they had the right "to determine what, on the part of the railroad, constitutes abuses, and to determine what laws will correct them, as well as what remedies may be necessary to secure the enforcement of such laws." In the exercise of this power and right, the Act under consideration was, doubtless, passed. *Houston etc. R. R. Co. v. Harry*, 18 Am. & Eng. R. Cas. 502.

But it is contended that, if this Act is applicable to this case its effect is to regulate the charges to be collected on freight shipped from distant points in other States, and transported over several connecting lines of railroad to points within this State, and thereby affect interstate commerce, and is void. It is true the exclusive power to regulate commerce among the States is given by the Constitution of the United States to Congress; but the vesting of this power in Congress was not a surrender of that which is known as the police power. That power still belongs to the State. The power to regulate commerce does not, in all cases, prevent the States, in the exercise of this power, from interfering with interstate commerce. In some cases it may be exercised to the extent of directly interfering with commerce between the States; as, for instance, a State may enact sanitary laws, and, for the pur-

pose of self protection, establish quarantine and reasonable inspection regulations, and prevent persons and animals having contagious or infectious diseases from entering the State. In many cases a State, through her Legislature, in the exercise of the police power, may enact laws which merely affect or influence, but do not regulate or control, interstate commerce. As an illustration she may, within her boundaries, require trains to stop at railroad crossings, at draw-bridges, and require the speed of trains to be reduced when running through incorporated towns and cities, may regulate the speed of railroad trains, and may require railroad companies to place guards at bridges and other points of danger, notwithstanding the railroad affected may run through more than one State, or connect with railroads operated in other States, and may be engaged in transporting freight from one State to another. *Hannibal etc. R. R. Co. v. Husen*, 95 U. S. 465 [Bk. 24, L. ed. 527]; *Chicago & A. R. Co. v. Pierson*, 12 Am. & Eng. R. Cas. 156.

In *Munn v. Illinois*, 94 U. S. 113 [Bk. 24, L. ed. 77], the State of Illinois undertook, by statute, to regulate warehouses in that State. The court held she could do so, in the exercise of her police power, notwithstanding they were used as instruments by those engaged in interstate as well as in state commerce. The court said: "We come now to consider the effect upon this statute of the power of Congress to regulate commerce. It was very properly said in the case of *State Tax on Railway Gross Receipts*, 15 Wall. 298 [83 U. S. bk. 21, L. ed. 164] that 'It is not everything that affects commerce that amounts to a regulation of it within the meaning of the Constitution.' The warehouses of these plaintiffs in error are situated, and their business carried on exclusively, within the limits of the State of Illinois. They are used as instruments by those engaged in interstate commerce; but they are no more necessarily a part of commerce itself than the dray or cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so."

In *Chicago etc. R. R. Co. v. Fuller*, 17 Wall. 567 [84 U. S. bk. 21, L. ed. 713], *Mr. Justice Swayne*, in delivering the opinion of the court said: "The Constitution gives to Congress the power to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes. The statute complained of provides that each railroad company shall, in the month of September, annually fix its rates for the transportation of passengers and of freight of different kinds; that it shall cause a printed copy of such rates to be put up at all its stations and depots, and cause a copy to remain posted during the year; that a failure to fulfill these requirements, or the charging a higher rate than is posted shall subject the offending company to the payment of the penalty prescribed. In all other respects there is no other interference. No other constraint is imposed. Except in these particulars the company may exercise all its faculties as it shall deem proper. No discrimination is made between local and interstate freights, and no attempt is made to control the rates that may be

charged. It is only required that the rates shall be fixed, made public and honestly adhered to. In this there is nothing unreasonable or onerous. The public welfare is promoted without wrong or injury to the company. The statute is doubtless deemed to be called for by the interests of the community to be affected by it, and it rests upon a solid foundation of reason and justice. It is not, in the sense of the Constitution, in any wise a regulation of commerce. It is a police regulation, and as such forms 'a portion of the immense mass of legislation which embraces everything within the territory of a State not surrendered to the general government, all of which can be most advantageously exercised by the States themselves.'

The Act in question does not undertake to regulate commerce between States. It imposes no restriction upon the introduction or the transportation of any article of commerce whatever. It does not undertake to regulate the charges for transportation, but simply undertakes to enforce the prompt delivery of all freight, goods, wares and merchandise of every character, upon arrival at its place of destination in this State and nowhere else, upon the payment or tender of payment, of the freight charges due, as shown by the bill of lading. It does not go to the extent of the statute considered in *Railroad Co. v. Fuller, supra*. In that case the statute subjected the railroad company to a penalty for the charging of a higher rate than was posted. We cannot see

how it can interfere with or affect interstate commerce, and think it is constitutional and valid.

It is contended that appellant is not liable in damages, under the Act, because the bill of lading fails to give the weight of the meat. The object of the Act is to compel railroad companies to deliver freight, after arrival, upon payment, or tender of payment, of charges. Because the weight of the meat was not stated in the bill of lading, the appellant was not relieved of the duty to deliver promptly upon payment, or tender of payment, of the freight charges. It was its duty to have weighed the meat without unreasonable delay. That was the only way in which the amount of the freight could have been ascertained. The sum to be paid for transportation was sufficiently specified in the bill of lading to enable all parties to ascertain what the freight charges were. This is the only object of the Act in requiring the amount to be paid to be specified in the bill of lading. The sum to be paid was therefore sufficiently specified in the bill of lading to accomplish the object of the Act in that respect, and to render appellant liable in damages for failure to deliver upon the payment, or tender of payment, of the amount due for transportation.

We find no error in the instructions of the trial court prejudicial to appellant. All questions of fact were fairly submitted to the jury. There was evidence to sustain the verdict.

Judgment affirmed.

THE INTERSTATE COMMERCE COMMISSION.

NEW YORK, PHILADELPHIA & NORFOLK R. R. CO.,

ATLANTIC COAST LINE *et al.*

(No. 71.)

THE petition herein, given *ante*, 447, was withdrawn by the complainants October 8, 1887.

I. FRIEND & SON

SOUTHERN PACIFIC CO., Denver & Rio Grande R. Co., and Burlington & Missouri River R. R. Co. in Nebraska.

(No. 43.)

ABSTRACT of pleadings in proceeding now pending at issue before the Commission, based upon allegations of a greater charge for the short than for the long haul, discrimination and excessive charges.

COMPLAINT.

(Filed June 24, 1887.)

Complainants state that they are residents of Lincoln, Lancaster County, Nebraska, and are in the general merchandise business in said city.

That the respondents are railway companies organized under the laws of the United States of America, and of several States thereof, and operate and maintain lines of railway, which connect with each other, and form a through line of railroad connecting the City of San Francisco, California, and the Cities of Omaha and Lincoln, Nebraska.

That on June 11, 1887, complainants caused one M. Heineman to deliver to said Southern Pacific Company, at San Francisco, one case of gents' furnishing goods of the weight of sixty pounds, to be transported to them at Lincoln, Nebraska, via Southern Pacific Company, the Denver & Rio Grande Railway and the Burlington & Missouri River Railroad in Nebraska.

That the said respondents charged for the transportation of said goods the sum of \$3.50.

That said charge is in violation of the third and fourth sections of an Act to Regulate Commerce, in that the said railway companies charge for the transportation of freight of like character, under similar circumstances, to Omaha, Nebraska, from San Francisco, \$1.75, and to Lincoln, Nebraska, from San Francisco, \$3.50 per 100 pounds. That the haul from San Francisco to Lincoln is included in the haul from San Francisco to Omaha, Omaha being fifty-five miles further distant from San Francisco than Lincoln, via said lines of railway.

That the said Railway Companies discriminate against Lincoln, and in favor of Omaha, in that they charge more for the transportation of freight from San Francisco to Lincoln than from said point to Omaha, a greater distance, the haul from San Francisco to Lincoln being included in the haul from San Francisco to Omaha.

That said rate of \$3.50 per 100 pounds from San Francisco to Lincoln, by said lines of railway, is unreasonable and extortionate, and excessive.

ANSWER OF SOUTHERN PACIFIC CO.

(Filed July 19, 1887.)

Admits that the Southern Pacific Company received the goods in question for transportation according to the bill of lading, and guaranteed that the charge for the transportation of this freight from shipping point to destination should not exceed \$3.50, and gave its bill of lading to that effect.

Admits that the Southern Pacific Company waybilled the shipment in question at the rate described, and collected from the Denver & Rio Grande Railroad Company \$1,637 as its proportion of said through charge.

Denies that said charge is in violation of the third section of the Act to Regulate Commerce.

Avers that in the matter of the shipment referred to, neither in the manner of handling nor in the charges made for its service, did the Southern Pacific Company give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or any particular description of traffic in any respect whatever; nor did the Southern Pacific Company in such case subject any particular person, company, firm, corporation, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Avers that the charges made on the shipment in question were strictly in accordance with the tariffs of the Southern Pacific Company, which were duly published and filed with the Interstate Commerce Commission according to law.

Avers that the charge for the through service by the companies whose roads form the line over which the goods were transported, and that the charge of each particular road in the line is and was a just and reasonable charge in itself.

Avers that the shipment in question consisted of a single package of gents' furnishing goods, said to weigh sixty pounds, and that such goods are, as a rule, by carriers, rated as of the highest or first class.

That the shipment was of a single package weighing less than 100 pounds, and was, according to the well established and reasonable rule of carriers, charged for at package rates.

Avers that the total charge for the service was \$3.50; that the service consisted in transporting the goods from San Francisco, California, to Lincoln, Nebraska, 2,088 miles, over roads, among the most expensive in construction, difficult and costly to operate in the country.

Avers that the charge of the Southern Pacific Company for the service between San Francisco and Ogden, at which point the goods were delivered to the Denver & Rio Grande Railway, was reasonable and just, being \$1,637.

Avers that in handling the shipment in question and in making the charges for its transportation, no undue or unreasonable preferences or advantage was given to any particular locality, nor was any particular locality subjected to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

INTER 8.

Avers that while the charges made were more than the regular and published schedule of rates of charge for like and contemporaneous service between San Francisco and Omaha, a point sixty-seven miles beyond Lincoln, Nebraska, yet that, under the circumstances and conditions, this was not an unjust or unreasonable preference or advantage in favor of Omaha nor an undue or unreasonable discrimination against Lincoln.

Avers that the carrying trade between San Francisco and Omaha is the subject of competition between the respondents and other railroad lines in the United States which are subject to the provisions of the Interstate Commerce Law, and also between the respondent and the Canadian Pacific Railway, which is not subject to the Interstate Commerce Law; that by reason of this Omaha possesses an advantage in the matter of transportation charges which Lincoln does not possess; that this advantage was not created by the respondents or either of them; that immediately upon the Interstate Commerce Law taking effect, the respondents prepared tariffs which provided that in no case should there be a greater charge for transportation of the same class and quantity of goods from San Francisco to Lincoln, than to Omaha; that the effect of this tariff was to deprive the Southern Pacific Company, one of the respondents, of a large and valuable traffic which was diverted to the Canadian Pacific Road; that in view of this loss of business and of the probable future loss of traffic and damage to its revenue, the Southern Pacific Company petitioned the Interstate Commerce Commission for a suspension of the fourth section of the Interstate Commerce Law, so far as the same could relate to traffic between San Francisco and Omaha; that after a hearing, the Interstate Commerce Commission issued an order suspending the operation of said fourth section, so far as the same could relate to said traffic, for a period of seventy-five days*; that said period did not expire until July 7.

Avers that if the rate to Omaha was made the maximum rate for any intermediate service, it would require a reduction in the tariffs of the Southern Pacific Company and the joint tariffs of the respondents, to such an extent that they would have been compelled to abandon either the traffic between San Francisco and Lincoln, or between San Francisco and Omaha.

ANSWER OF DENVER & RIO GRANDE R. R. CO.

(Filed July 16, 1887.)

Admits the delivery of the goods in question to the Southern Pacific Company at San Francisco, one case of gents' furnishing goods, of the weight of sixty pounds, to be transmitted to Lincoln, Nebraska, via the respondent roads, and that respondents charged \$1.50 for the transportation of said goods; but denies that said charge is in violation of the third or fourth section of the Interstate Commerce Act.

Admits that the charge for the transportation of freight of like character from San Francisco to Omaha, is \$1.75, but denies that

*See ante, 27.

such charge is made under similar circumstances.

Admits that a greater charge is made for the transportation of freight from San Francisco to Lincoln than from San Francisco to Omaha, but denies that the same constitutes a discrimination against Lincoln in favor of Omaha.

Denies that \$3.50 per 100 pounds from San Francisco to Lincoln, by said lines of railway, is unreasonable, extortionate or excessive.

Alleges that said Denver & Rio Grande Railroad and its connecting lines, in the complaint mentioned, which form a through line between San Francisco, California, and Omaha, Nebraska, are in competition, as between said points, with the Canadian Pacific and its connecting lines, and also with certain water transportation between said cities; which said competing lines are not subject to the provisions of the Interstate Commerce Act, and which said lines fixed the rate on freights of the class and character of that in the complaint mentioned, between San Francisco and Omaha.

That prior to April 5, 1887, at a convention of the representatives of the transcontinental lines, held in the City of Chicago, an agreement was made as to the rates between certain points, including, among others, San Francisco and Omaha, which said rates were reasonably adapted to the necessities of said traffic, and in accordance with the provisions of said Act. That by the schedule of rates then adopted, the tariff for the class of goods mentioned in the complaint herein was \$4 per 100 pounds, between San Francisco and Omaha, which said rate was also applicable to and was adopted as the rate between San Francisco and Lincoln. That by a custom of all the railways using what is known as the "western classification," of freights it is a rule that where a package weighs less than 100 pounds, the minimum charge therefor shall not be less than the 100 pound rate for second class matter, which said second class rate between said points was fixed at \$3.50. That under said rule the charge made upon the goods in the complaint mentioned was fixed at \$3.50 from San Francisco to Lincoln.

Alleges that after the fixing of said rates between San Francisco and Omaha, it was discovered that by reason of the competition of said Canadian Pacific and its connections, and the said water competition, it was impracticable for this respondent and its connections, to maintain the said rate of \$4 per 100 pounds between San Francisco and Omaha. That, by reason of such competition, the rate per 100 pounds for goods of the first class was on or about May 25, 1887, reduced, as between said last two named points, to \$2.80 per 100 pounds; which said rate was subject to the modification of the pacific coast tariff; that where a single shipment weighed less than 100 pounds, the minimum charged should not be less than the 100 pound rate for third class matter, which said rate was \$1.75 per 100 pounds.

Alleges that the traffic between San Francisco and Lincoln is not affected by like circumstances and conditions with the traffic between San Francisco and Omaha, by reason of the competition hereinbefore stated; which

said competition affects Omaha but does not affect Lincoln.

Alleges that as to the said traffic between San Francisco and Omaha this respondent and its connecting lines are not only in competition with the said Canadian Pacific and its connecting lines, and with the said water communication, but also with the Union Pacific Railway and its connections. That on April 23, 1887, by an order of this Commission there was granted temporarily, on the application of the said Union Pacific Railway Company, a suspension of section 4 of the Interstate Commerce Act, as between San Francisco and Omaha; and the said Union Pacific Railway Company was by said order temporarily relieved from the operation of said section 4, to the extent specified in the recitals of said order, for a period not greater than seventy-five days from April 23, 1887; subject, however, to the restriction that while said order should remain in force, said common carrier should not charge nor receive compensation for the transportation of property between stations on its line, where more is charged for a shorter than for a longer haul, which should be greater than the rates theretofore in force prior to the 20th day of April, 1887. That said order of suspension of section 4 did not apply as between the said Cities of San Francisco and Lincoln. That by reason of the suspension of said section 4 in favor of the said Union Pacific Railway Company, between San Francisco and Omaha, this respondent and its connecting lines are, as to the said City of Omaha, also subject to the competition of said Union Pacific Railway Company, under circumstances and conditions different from those which exist as between San Francisco and Lincoln.

Alleges that on or about April 23, 1887, upon a petition of the Southern Pacific Company, the said Company operating one of the connecting lines with this said respondent, and being a correspondent in this action, the said section 4 of the Interstate Commerce Act was by the order of this Commission likewise suspended temporarily for a period not greater than seventy-five days from the date of said order, under like circumstances and upon like conditions as heretofore set forth in reference to the order made upon the application of said Union Pacific Railway Company.

Alleges that the consignment in the complaint mentioned was shipped from San Francisco on or about June 12, 1887, the same being within said period of seventy-five days during which said section 4 was so suspended by the order of this Commission in favor of said Union Pacific Railway Company and the said Southern Pacific Company.

Alleges that this respondent did not at the time in the complaint mentioned, nor has it at any time since April 20, 1887, received compensation for the transportation of property from San Francisco to Lincoln at a greater rate than was hitherto in force prior to said 20th day of April, 1887.

Alleges that said charge of \$3.50 for the carriage of said goods from San Francisco to Lincoln is a fair, reasonable and just charge for the distance which said goods were carried;

propriate relief. We are relieved from any necessity of determining what would be the proper course to pursue in such a case by the fact that the question of the violation of Law is directly presented in the petition filed by the Vermont State Grange of the Patrons of Husbandry. We are not informed whether that body is incorporated, nor is it important. It was conceded on the argument to be an association formed for proper purposes by respectable people of the State, and presumably those persons are interested, or are liable to be, in the charges complained of. They find their grievance not in the low rates which the Law does not undertake to restrict, but in the high rates which, if not justified by a proper showing, stand condemned; and as these are likely to bear with peculiar weight upon those who follow the calling of husbandmen, it is very proper that they as an association, if they believe the rates wrong and oppressive, should raise the question. Upon the petition of the State Grange, therefore, we proceed to examination of the merits of the controversy.

I. It is contended on the part of the defendants that they do not nor does either of them violate the fourth section of the Act to Regulate Commerce, because the shorter hauls for which the greater charges are made are not over the same lines as the longer hauls for which the charges are less.

This contention is based on the phraseology of the first and fourth sections of the Act. By the fourth section it is made unlawful for "any common carrier subject to the provisions of this Act" to charge more, etc., "for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance." The first section prescribes who shall be subject to the provisions of the Act. They are "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment," etc. The party then, it is claimed, who can be liable under the fourth section must, it is said, either be a single carrier operating by itself a line upon which the charges are made, or it must be carriers operating a line "under a common control, management, or arrangement for a continuous carriage," etc. The defendant corporations have each their separate board of directors; they are not under a common control or management; they have no common arrangement for a continuous carriage. Their tracks connect, and a carriage may be made continuous by the delivery of property from one to another till it reaches its destination; but the delivery is a common-law duty, irrespective of common arrangement. The making of a joint tariff is not, it is argued, such a common arrangement as the Act contemplates; it is only an agreement as to what each will accept as its share of the charge for a haul over the roads or lines of them all. The long and short hauls, then, are not on the same line unless both are on the line of the same carrier, which is not the case here. But if two or more roads could be regarded as one "line" within the meaning of the Act, the charges complained

of here are not for hauls on the same line; the line from Boston to St. Albans which some of the defendants form being a different line from that formed to Montreal through St. Albans, and different again from that formed to Detroit, and so on. This is the substance of the very ingenious argument presented and elaborated for the defense.

We do not think the argument sound. Without pausing now to inquire what was meant by the words "under a common control, management, or arrangement," etc., or whether those words have any application at all to carriers wholly by railroad, we have no difficulty in holding that if the defendants join in making the tariff which constitutes the lesser charge on the longer haul, while one or more of their number make the greater charge on the shorter haul, the case is within the fourth section; and those who make such greater charge are called upon to justify it. "Any common carrier" is as much restrained when it unites with one or more others in making the long haul charge as when it makes such charge independently. Nor have we any doubt as to the meaning of the word "line" in the Act. A physical line is meant, not a business arrangement; and one piece of road may be part of several lines, as the road from Boston to White River Junction is part of the line to St. Albans, and also part of the lines severally to Montreal, Ogdensburg, Detroit, Port Huron, and Chicago. When a greater charge is made from Boston to White River Junction than is made by way of that point to any one of the other points named the two are made for hauls on the same line, the shorter being included within the longer distance.

II. By some of the defendants it is claimed that the case is not brought within the fourth section of the Act, because the tariff for the long haul traffic is not made by the defendants, singly or collectively, but by the National Despatch Line, which operates over their roads.

The National Despatch Line is one of the many fast freight lines of the country, but is perhaps in some respects peculiar. It is neither a corporation nor an association of persons. It exists by virtue of no formal agreement or writing. One witness speaks of it as a name merely; another as a trade mark. It is nevertheless, so far as the public dealing with it are concerned, an actuality of much importance, for it not only transacts a large business, but takes all the traffic passing over the Central Vermont destined to or coming from points beyond St. Albans. It has for general manager, Mr. John Porteous, who owes his office or position to the president of the Central Vermont Railroad Company, whose power to appoint does not appear. Mr. Porteous appoints some assistants, but in general the railroad agents are agents of the National Despatch Line also. The reason for establishing the line originally was that the roads were greatly deficient in rolling stock, and a car company was formed to loan them cars, and this line called into existence to operate the cars. The roads pay mileage for the use of the cars. The earnings of the line, less the expenses, are divided among the roads in agreed proportions. Mr. Porteous makes the tariffs for traffic taken by the line. The long haul traf-

said Canadian Pacific Railway Company and connecting lines and the said Union Pacific Railway Company and connecting lines.

D. F. ALLEN *et al.*,
v.

LOUISVILLE, NEW ALBANY & CHICAGO R. CO.

(No. 44.)

ABSTRACT of pleadings in proceeding now pending at issue before the Commission, based upon allegations of violation of section 4 of the Interstate Commerce Act.

COMPLAINT.

(Filed June 30, 1887.)

Represents that the firm of D. F. Allen & Brother, is engaged in the grain and milling business at Frankfort, in Clinton County, Indiana. That the Louisville, New Albany & Chicago Railway Company owns, operates, manages and controls a line of railway from Indianapolis northward through Frankfort, with general offices at Chicago, Illinois. That said Company was, at the date hereinafter named, engaged in the transportation of passengers and property for hire, and as such, adopted and promulgated an "East bound tariff rate" numbered 9, of the 5th day of April, 1887, whereby it notified the public that the tariff or rate of freight charges for the shipment of all goods and property classified as belonging to the sixth class, would be transported from Indianapolis, Indiana, to New York, N. Y., on and after said last named date, at twenty-three cents per 100 pounds.

That on June 20, 1887, D. F. Allen & Bro., demanded of and received from said Railway Company one freight car for the transportation of bran from Frankfort to the City of New York, over the "Blue Line". That such demand was made for a "Blue Line" car. That on said day said car so given them was loaded, at Frankfort, with bran, to wit: 28,000 pounds, and a bill of lading given therefor.

That thereupon said D. F. Allen & Bro., tendered to the agent of said Railway Company, at Frankfort, the sum of \$64.40, that sum being the freight or tariff thereon, at the rate of twenty-three cents per 100 pounds. That on the same day, the agent of said D. F. Allen & Bro. demanded of and received from said Railway Company's agent at Indianapolis, a statement of the rates of freight or tariff charged by said Railway Company from Indianapolis to New York on said day was twenty-three cents per 100 pounds for property of the sixth class. That bran belongs to and is classified by said Railway Company as property of the sixth class. That all of the property, grain and freight, transported from Indianapolis to New York, over said Company's road, must necessarily pass through Frankfort. That Frankfort is forty-seven miles nearer New York City via said line of railway, than Indianapolis. That the distance from Frankfort to New York over said Company's route, the same being the route over which said car of bran was billed and shipped is forty-seven

miles shorter than the distance from Indianapolis to New York.

That said firm was compelled to accept said bill of lading at said rate of twenty-five cents per 100 pounds.

That the agent of said Railway Company at Frankfort, on the day of such shipment, refused to accept twenty-three cents per 100 pounds for the transportation of said bran, but demanded twenty-five cents per 100 pounds, as aforesaid.

Wherefore complainants say said agent and said Railway Company have violated section 4 of an Act of the Congress of the United States entitled "An Act to Regulate Commerce" approved February 4, 1887, and ask that said Company be fined, for said unlawful discrimination, as provided in section 10 of said Act, that it be ordered to obey the law and furnish to complainants and all other shippers a tariff in conformity with the law, and that they be allowed reasonable counsel and attorney's fees.

ANSWER.

(Filed July 18, 1887.)

Denies each and every allegation in the complaint contained except as hereinafter admitted, and expressly denies that defendant has violated section 4 of the Interstate Commerce Act.

Admits that respondent owns and operates the Louisville, New Albany & Chicago Railway Company, and that it was on June 20, 1887, engaged in the transportation of passengers and property for hire, and that it adopted and promulgated an east bound tariff of freight rates No. 9 on April 5, 1887, whereby it notified the public that the tariff rate of freight charges for the shipment of all goods and property classified as belonging to the sixth class would be transported from Indianapolis, Indiana, to New York, in the State of New York, on and after the date aforesaid, at twenty-three cents per 100 pounds.

Admits that Frankfort is forty-seven miles nearer New York City by respondent's line of railway than is Indianapolis. Admits that respondent's tariff from Frankfort to New York at said date was twenty-five cents per 100 pounds. Avers that such charge of twenty-five cents per 100 pounds was not an unjust or unreasonable rate, and was no discrimination against the complainants or against the locality in which they live and transact business, and that such charge was not in violation of the Act, for the reasons that respondent is a railway company created and existing by and under the laws of Indiana, and as such it is and was at said date engaged in the operation of certain lines of railway owned and leased by it over which it is and was a common carrier of goods, wares and merchandise between Louisville, Kentucky, and Indianapolis and Michigan City, both in Indiana, and Chicago, in Illinois; that in connection with other railway companies and common carriers which connect with the respondent's railway at the points above named, and other points intermediate the points above named, it has been and is now engaged in carrying from Indianapolis, Indiana, goods, wares and merchandise destined to Buffalo, New York, the City of New York and other points without the State of Indiana.

can do so without injustice to the local traffic and without violation of law.

No injustice is done to the local traffic by taking through traffic at very low rates, provided the doing so neither makes the local traffic more expensive nor otherwise incommodes it. The defendants put in evidence to show: (1) that the rates on local traffic are not out of proportion to those charged on through traffic; it being very much more expensive to handle an equal amount of the former than of the latter; (2) that the through traffic is not carried at a loss, but there are net gains from it in the aggregate exceeding those on the local and joint traffic put together, and that it is by means of these gains that the efficiency of the road is maintained; (3) that the rates on the through traffic cannot be materially advanced without losing it; and (4) that the Company cannot afford to reduce the rates on the local traffic. There was strong evidence in support of all these propositions. We are entirely satisfied that a large through business is essential to this line, if it is to continue to be a useful line even for local business. We are also satisfied that the people of Vermont are largely interested in the low rates on long haul traffic, not only because to some extent they send manufactured articles to distant points, but much more because Vermont relies very largely on the West for grain, flour, meats and provisions. It is highly probable that if the people of the State pay high rates on local traffic, they are fully compensated in the low rates on long haul traffic. A board having full power to adjust rates as circumstances should seem to require might perhaps so hold.

But our power in this regard is restricted by the terms of the Law, which absolutely forbid a carrier "to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance." This is the Law which governs our action, and it cannot be departed from by us on considerations of equity, or of what would be for the interest of parties concerned. If parties complain of a violation of the Law, we can only pass upon the charge preferred; and our action cannot be affected by the circumstance that the rates as adjusted are on the whole to their advantage. They must judge of their interest, while we are to judge of the violations of Law which are complained of.

The controversy in the case, then, is narrowed to this question: Are the circumstances and conditions under the greater charges imposed on the short haul traffic substantially dissimilar to those under which the lesser charges are imposed on the long haul traffic? If not, such greater charges are illegal, and we have no authority to make them otherwise.

The defendants undertook to show that the circumstances and conditions were substantially dissimilar. The evidence of the difference in cost was very justly relied upon, for cost is a very important condition to traffic. This difference fairly justifies a considerable difference in the rates, but we are not satisfied that it will support the difference actually

made. The cost of different kinds of traffic cannot possibly be arrived at with accuracy; at best only an approximating estimate can be made. The calculations put in evidence do not satisfy us that the same kind of freight can be taken from Boston through St. Albans to Detroit at a less cost than from Boston to St. Albans, or from Boston through Ogdensburgh to Chicago and Milwaukee at a less cost than to Ogdensburgh. Honest calculations are made to show such a result, but they are very likely to charge upon local traffic exclusively items which ought to be apportioned, or to leave something out of view which ought to be considered.

The main reliance of the defense, however, was upon a showing of the competition which defendants must meet in long haul traffic. It was shown that for traffic between Boston and the West there was actual or possible competition by steamers to Portland, and thence over the Grand Trunk by steamers to Halifax, and thence over the Intercolonial by the South Eastern Road to connect with the Canadian Pacific by the several trunk lines and by combinations of carriers requiring no special mention.

The evidence, however, is entirely conclusive that the competition which is troublesome to the defendants is that of the trunk lines. It is from these that the defendants demand the differentials, and it is because they are possessed of the shorter lines that the differentials become necessary. The defendants do not fear the competition of a route by Halifax or of any of the other circuitous routes that can be organized; and such lines do not constitute circumstances or conditions having any perceptible bearing on the present controversy. The circumstances and conditions that must justify the greater charge on the shorter haul over the Central Vermont Line must be such as spring from the trunk line competition.

In *The Matter of the Louisville & Nashville Railroad Company* [supra] we expressed the opinion that there might be cases in which the competition between railroads, even when they were all subject to the jurisdiction of the Commission, would present such dissimilarity of circumstances and conditions between long haul and short haul traffic as to justify the greater charge on the shorter haul on the same line in the same direction. But our published opinion shows that we thought the cases must be rare and quite exceptional. The trunk lines are all subject to our jurisdiction. What then are the peculiar circumstances and conditions which constitute the difference between the case before us and cases of railroad competition in general?

The principal difference must be found in the fact that the trunk lines have interior or shorter lines as compared with the line of the defendants, and the latter are compelled, therefore, to make very low rates on their through traffic. This is a necessity of the situation. But it is a necessity which exists wherever long long and short lines compete; the long line must accept the rates made by the short line, and perhaps make concessions from them. In this respect there is nothing peculiar in the position of these defendants; there are roads in every part of the country which can make the

Shows that Indianapolis is nearer the Atlantic seaboard by direct route than Frankfort, and that there are running from Indianapolis the following lines of railway, to wit: Cincinnati, Indianapolis, St. Louis & Chicago, Cincinnati, Hamilton & Chicago, the Pennsylvania Company's Lines; Lake Erie & Western; Cleveland, Columbus, Cincinnati & Indianapolis, and the Louisville, New Albany & Chicago Railway, all competing for Atlantic seaboard business; that this Company could hope to receive none of the business of Indianapolis unless it could be allowed to compete with the above named roads carrying freight to seaboard points at the same rate at which it is carried by the said other competing lines, and if it shall be compelled to charge the same rate that it charges from Frankfort, where complainants transact business, it cannot hope to receive any business at Indianapolis, and it would lose the amount of traffic it has been heretofore able to secure at that point, while merchants and business men at Indianapolis would lose the benefit of one competing line of railroad.

Shows that the warehouse of complainants are located on the tracks of the Lake Erie & Western Railway Company, to which this Company has no access, for the reason that the Lake Erie & Western Railway Company has always refused and still refuses to switch the cars of this respondent to or from its tracks and complainants' elevator and warehouse, and that in consequence thereof any freight complainants may desire to ship by respondent's line must be hauled to the cars of the latter by wagon.

Says that the car of bran mentioned in the complaint shipped by complainants to New York on June 20, last, is the only car the said complainants have ever shipped by this Company to Buffalo or points east thereof, although said complainants ship annually from said point to points in New York and east of the State of Indiana from 1,000 to 2,000 car loads of grain and other property, and the car in question was, as respondent believes, shipped by said line merely for the purpose of affording an opportunity for making the complaint in this action, and not in good faith and in the ordinary and legitimate course of business.

Robert M. TUTTLE

NORTHERN PACIFIC R. R. CO.*
(No. 72.)

ABSTRACT of pleadings in proceeding now pending upon demurrer before the Commission, based upon the charge of carrying a passenger free.

COMPLAINT.

(Filed September 1, 1887.)

States that the Honorable William H. Francis, Judge of the Sixth Judicial District of the Territory of Dakota, has during the year 1887, and since the approval of the Interstate Commerce Law, traveled on the Northern Pacific Railroad cars from place to place as a passen-

ger without paying his railroad fare therefor, and that he has so traveled within this Territory without so paying his fare, with the knowledge, connivance and approval of the agents, employees and officers of said Railroad Company. Asks that such steps be taken as to secure the enforcement of the Statute in such case made and provided.

DEMURRER.

(Filed September 19, 1887.)

Defendant demurs to the petition of the complainant and for ground of demurrer assigns: that said petition does not state facts constituting a violation of the Interstate Commerce Law.

H. F. KETRON

NORFOLK & WESTERN R. R. CO.*
(No. 73.)

ABSTRACT of pleadings in proceeding pending at issue before the Commission, based upon a charge of carrying goods by an indirect route, and one different from that designated by the shipper.

COMPLAINT.

(Filed September 2, 1887.)

The complaint is dated August 27, 1887, and states that petitioner resides in Leicester, Buncombe County, North Carolina. Represents that on or about May 7, 1887, he consigned for shipment 960 pounds of household goods to the Norfolk & Western Railroad Company, at the Town or station of Abingdon, Virginia, to be shipped to Alexander, a station on the Western North Carolina Railroad, every box of said goods marked to be shipped via Morristown, Tennessee. Said goods were forwarded by the agent at Abingdon, to Alexander, via Lynchburg, Virginia, and Salisbury, North Carolina, instead of via Morristown, Tennessee, as directed, thereby causing petitioner to pay \$1.80 per 100 freight; whereas, had they been shipped as directed via Morristown, Tennessee, the freight would have been only seventy-two cents per 100 pounds. States that said goods were delayed in shipping so that they were not delivered to petitioner's agent (his wife) at Alexander for nearly one month from time of consignment, thereby causing slight damages besides trouble and expense.

Further represents that petitioner wrote to Colonel A. Pope, General Passenger Agent of said Norfolk & Western Railroad, explaining the matter to him and asking him to make restitution, but he refused by saying: "We handle business for points beyond our road by such routes as gives us the longest haul thereupon; and that we feel that we have not knowingly injured you in any way, in forwarding your traffic for Alexander via Lynchburg and Salisbury instead of by via Bristol and Morristown."

Wherefore petitioner prays for redress in accordance with law, justice and equity.

*See ante, 483.

*See ante, 483.

ANSWER.

(Filed September 15, 1887.)

States that the question has been the subject of correspondence and investigation to the end of ascertaining the facts, and establishing the correctness of the claimant's statement, viz.: that the property was tendered to our Abingdon agent, marked "To be forwarded via Bristol, Morristown and Paint Rock," as alleged, and likewise for the purpose of ascertaining, by correspondence with connecting lines, what rates would have applied had said property been forwarded by the route it is alleged the goods were marked; there being no other than local rates applicable via the different roads via Bristol, Morristown and Paint Rock. The results of this investigation have been finally reached, and on September 9, 1887, voucher for overcharge upon the shipment to the extent of \$4.38 was made, and forwarded to Mr. Ketron at what was understood to be his postoffice address, viz.: Leicester, Buncombe County, North Carolina.

The settlement of this overcharge was made in conformity with the terms contained in the letter of General Passenger Agent Pope, of June 30, to Mr. Ketron, as per copy herewith attached; and it is suggested that the probability is that this letter reached him, and that the present complaint was in no wise justified by the facts, because it is a matter of evidence that the intention to remedy the alleged wrong, whenever said wrong was established, is clearly shown by said letter, basis of settlement of overcharge attached and referred to, showing at what rate the property was originally charged, and showing likewise that the proportion of the Norfolk & Western Railroad on the property has been reduced in said overcharge settlement to the basis of compensation that would have accrued to it had the property been forwarded from Abingdon to Bristol, as part of the route by which the shipper alleged it was intended the property should be forwarded. The remaining portion of this overcharge is assessed upon the line beyond Lynchburg, as the difference in the sum of the two rates, it being a matter of fact, while this property was charged at a total rate of \$1.30 per 100 pounds, it was not practicable for any rate to have been applied from Abingdon to Alexander via Bristol, Morristown and Paint Rock, of less than \$1.21 per 100 pounds; and it is denied that a rate of seventy-two cents per 100 pounds from Abingdon to Alexander via said route, as charged by the complainant, was practicable or obtainable.

In so far as the erroneous transportation of the property is concerned, careful inquiry fails to establish the fact, by the evidence of any employee, or any other person at Abingdon familiar with the facts of the case, that the property was marked, as alleged; but, as the transportation has been performed and the goods have gone into the possession of the claimant, the Norfolk & Western Railroad Company is powerless to prove to the contrary, and the consignee has been given the benefit of his statement, and thereby reduced defendant's proportion, as before recited, to a sum which would be no greater than that which would have applied had the property been

transported from Abingdon to Alexander via Bristol, Morristown and Paint Rock.

Disclaims any intent on the part of the Norfolk & Western Railroad, or any employee thereof, to have knowingly violated the wishes or instruction of the shipper.

Basis of settlement of overcharge claim of H. F. Ketron, Leicester, North Carolina, on shipment of household goods from Abingdon, Virginia.

lbs. N. & W. R. & D. Total

As originally charged, 960 \$5.28 \$7.90 \$13.48

As reduced on the N. & W. proportion, being

no greater to Lynch-

burg than if shipment

had been made via

Bristol as alleged to

have been ordered, R. & D. proportion being

reduced on a basis of 9

cents per hundred lbs.

as per authority of J.

H. Drake, G. F. A. at-

tached, - - - 960 1.28 6.88 8.25

Amount of O-C allowed, 960 2.88 .87 4.28

Basis of original assessment, 55cts. 75cts. \$1.30

reduced to, - - - 25 " 66 " 86

O-C in rate, - - - 35 " 00 " 44

Roanoke, Va. June 30, 1887.

H. F. Ketron, Esq.,

Mountain City, Tenn.

Dear Sir:

Referring farther to yours of June 9, in ref-

erence to an alleged overcharge, by reason of

the forwarding of your shipment from Abing-

don to Alexander, N. C., by an erroneous

route, contrary to the expression of your

wishes.

I have taken the matter up, and asked for

copies of the manifesto, in order that I may

endeavor to agree with our connections upon

the reduction of rates that will enable the

overcharge that was made to be refunded.

Very Respectfully,

(Signed) A. Pope, G. F. A.

BUSINESS MEN'S ASSOCIATION OF the

State of MINNESOTA

v.

CHICAGO & NORTHWESTERN R. CO."

(No. 74.)

A

BSTRACT of pleadings in proceeding

pending before the Commission, based

upon allegations of unjust and preferential

charges, etc.

COMPLAINT.

(Filed September 2, 1887.)

1. Represents that petitioner is an Associa-

tion consisting of the several boards of trade,

business men's associations and farmer's organ-

izations in the State of Minnesota; that the

object of the Association is to secure equal

and reasonable rates of transportation of per-

sons and property in accordance with state

and national legislation.

2. That the Chicago & Northwestern Rail-

way Company is a corporation duly incorpo-

*See ante, 488.

rated under the laws of the State of Illinois, and is a common carrier engaged in the transportation for hire of passengers and property, and owning and operating a railroad which runs through Illinois, Wisconsin, Minnesota and Dakota, to and from Chicago, in Illinois, to and through the various stations on its road, including Winona, Janesville, Mankato, St. Peter, Nicollet, New Ulm, Sleepy Eye, Sanborn, Tracy and Lake Benton, in Minnesota, and Huron and Pierre, in Dakota.

8. That the defendant company for its services as such common carrier in carrying merchandise of all kinds and classes from Chicago and Lake Michigan ports to stations on its line of road as before indicated, has established and published a tariff of freights and charges which, as it of right ought to do, establishes and makes a reduced rate per ton per mile for the greater distance from Chicago for all stations on its said line of road between Chicago, Illinois and Janesville, Minnesota, a distance of 412 miles; while in the same tariff, for a continuous transportation of the same freights, over the same line, and from the same point of origination, it establishes and makes a higher through rate per ton per mile for all stations west of Janesville.

Submits the annexed table of extracts from said tariff, wherein the rates per ton per mile are figured from the rates and distances as stated by the defendant railway company, to wit: said defendant charges as follows (the items specified being illustrations of an almost uniform practice on the part of said common carrier):

4. That such charges are unjust and unreasonable and in violation of section 1 of the Interstate Commerce Act.

5. That by such charges such common carrier gives an undue and unreasonable preference and advantage to the several certain stations and localities along the line of said route and, to the same extent, subjects the several certain stations and localities to undue and unreasonable prejudice and disadvantage, in violation of section 3 of said Act.

Prays the Commission to investigate the charges, to order defendant to so amend its tariffs of rates and charges that it shall not charge a higher rate per ton per mile for the longer than for the shorter haul aforesaid, and that such proportionate rates be recommended as shall be just and reasonable, and as shall prevent all undue preferences and advantages, and all undue prejudices and disadvantages.

ANSWER.

(Filed September 22, 1887.)

Demurs to the first, second and third paragraphs of the complaint and says that there is no provision in the Interstate Commerce Act requiring the railway carrier to transport freight at a rate fixed by the ton and mile as supposed in the complaint, and that the complaint shows the fact to be that the Chicago and Northwestern Railway Company does not charge or receive a greater compensation for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance, and that it has fixed its tariff in ac-

CLASSES, CARLOADS.

CLASSES, L. C. L.

Miles.	Rate, in cents.	Rate per ton per mile.	Rate.	A.		B.		C.		D.		E.		WHEAT.		COAL.	
				Rate per ton per mile.	Rate.	Rate.	Rate per ton per mile.	Rate.	Rate per ton per mile.	Rate.	Rate per ton per mile.	Rate.	Rate per ton per mile.	Rate.	Rate per ton per mile.	Rate.	Rate per ton per mile.
412	50	2,427	50	1,746	2,427	1,746	1,746	1,746	1,746	1,746	1,746	1,746	1,746	1,746	1,746	1,746	1,746
430	60	2,767	60	1,941	2,767	1,941	1,941	1,941	1,941	1,941	1,941	1,941	1,941	1,941	1,941	1,941	1,941
18	11.111	11.111	11.111	11.111	11.111	11.111	11.111	11.111	11.111	11.111	11.111	11.111	11.111	11.111	11.111	11.111	11.111
20	2,222	2,222	2,222	2,222	2,222	2,222	2,222	2,222	2,222	2,222	2,222	2,222	2,222	2,222	2,222	2,222	2,222
450	64	2,844	64	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844
464	68	2,981	68	2,981	2,981	2,981	2,981	2,981	2,981	2,981	2,981	2,981	2,981	2,981	2,981	2,981	2,981
479	75	3,131	75	3,131	3,131	3,131	3,131	3,131	3,131	3,131	3,131	3,131	3,131	3,131	3,131	3,131	3,131
500	88	3,538	88	3,538	3,538	3,538	3,538	3,538	3,538	3,538	3,538	3,538	3,538	3,538	3,538	3,538	3,538
533	94	3,738	94	3,738	3,738	3,738	3,738	3,738	3,738	3,738	3,738	3,738	3,738	3,738	3,738	3,738	3,738
540	98	3,856	98	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856	3,856

CHICAGO CO.

JANESVILLE, MINN.
MANKATO, MINN.
From JANESVILLE to MANKATO,
being part and the end of a continu-
ous haul of 430 miles.
Distance tariff, under similar circum-
stances.
NICOLLET, MINN.
NEW ULM, MINN.
SLEEPY EYE, MINN.
SANBORN, MINN.
TRACY, MINN.
LAKE BENTON, MINN.

cordance with section 4 of the Act of Congress and published the same according to the other provisions of said Act.

Denies the allegations of the fourth paragraph, that these charges are unjust and unreasonable and in violation of section 1 of the Act.

Denies the statements of the fifth paragraph

of the complaint, and denies that it gives an undue and unreasonable preference and advantage to the several stations and localities along the line of the route mentioned, and that it subjects other stations and localities to undue and unreasonable prejudice and disadvantage in violation of said section 3 of the Act.

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mile is figured from the rates and distances as above stated, which are correct,—and showing as claimed by petitioner:

1. That on the first four classes, all stations within the State of Minnesota, south of Henderson, and on the said line of said defendant railway, are charged an unreasonable rate per ton per mile.

2. That on the fifth class (the most important class of general merchandise), all stations in the State of Minnesota, south of St. Paul on said

line of road are charged an unreasonable rate per ton per mile.

3. That on classes A. and B. all stations south of Henderson on said line are charged an unreasonable rate per ton per mile.

4. That on class E. all stations south of Mankato on said line are charged an unreasonable rate and rate per ton per mile.

5. That on classes C. and D. all stations on said line south of St. Paul are charged an unreasonable rate per ton per mile.

INTER S.

6. That on classes of "coal" and "grain" all stations on said line of road south of St. Paul are charged an unreasonable rate per ton per mile.

7. That such charges are unjust and unreasonable and in violation of section 1 of the Interstate Commerce Act.

8. That by such charges such common carrier gives an undue and unreasonable preference and advantage to the several certain stations and localities along the line of the said route, and to the same extent subjects the certain stations and localities to undue and unreasonable prejudice and disadvantage, in violation of section 3 of said Act.

Prayer as in preceding case, No. 74.

ANSWER.

(Filed September 30, 1887.)

Admits defendant is a common carrier, and as such has established and published a tariff of freights and charges, from Superior and other Lake Superior ports to stations on its lines in the State of Minnesota, and to other stations mentioned in the complaint.

Says, as to all that portion of said complaint which avers of and concerning the tariff of freights and charges above set forth, that it (meaning defendant) "establishes and makes a reduced rate per ton per mile for the greater distance from said lake ports for all stations on its lines of road between them and St. Paul, Minnesota (an average distance of 185 miles), while in the same tariff for a continuous transportation of the same freights, over the same line and from the same points of origination, it establishes and makes a higher through rate per ton per mile for stations south and west of St. Paul. In evidence of which representation, your petitioner submits the accompanying table of extracts from said tariff wherein the rate per ton per mile is figured from the rates and distances, as above stated, which are correct," it ought not to be required to make answer thereto because, if such statements are true, the defendant has not thereby violated any law of the United States, and defendant respectfully insists that this honorable board has no jurisdiction to inquire of and concerning the same.

Denies the remainder of the complaint.

LOPEZ DUNBAR'S SONS & CO.

v.

LOUISVILLE & NASHVILLE R. R. CO.

(No. 79.)

COMPLAINT filed September 22, 1887, charging discrimination in favor of New Orleans as against Biloxi.

United States of America, }
Southern District of Mississippi. }

Personally appeared before me, L. B. Holley, a Commissioner of the United States Circuit Court, in and for said district, William K. M. DuKate, a member of the firm of Lopez Dunbar's Sons & Co., a firm doing business in the Town of Biloxi, in said district, who, upon being duly sworn, deposes and says that by reason of the unjust discrimination of the Louis-

ville & Nashville Railroad Company against said firm, doing business on the line of said road, as shown by attached correspondence, rendering it wholly unprofitable for the aforesaid firm, or any other firm, engaged in the same business, to compete with New Orleans, and other points, having a railroad terminus. Affiant further makes oath that his said firm does and carries on its business on the line of said Louisville & Nashville Railroad, and eighty miles nearer Cincinnati, Ohio, than the City of New Orleans, State of Louisiana, and can see no just reason nor cause why they should be made to comply with the unjust discrimination in prices as demanded by the said Louisville & Nashville Railroad Company between the two points named. Wherefore, said affiant in behalf of his said firm prays that the above charges may be investigated by the honorable Interstate Commerce Commission, and relief granted.

(Signed) Wm. K. M. DuKate,
of Lopez Dunbar's Sons & Co.

Subscribed and sworn to before me this—
day of September, A. D., 1887.

(Signed) L. B. Holley, [L. s.]
Comr. U. S. Circuit Court in and for said Dist.

Cincinnati, Ohio, August 22, 1887.

Messrs. Lopez Dunbar's Sons & Co., Biloxi, Miss.,

Gentlemen: Since making your prices, we find that rail freights to N. Orleans have advanced from \$44 to \$88 per car, and to Biloxi they are now \$1.18 per 100 pounds, in less than car lots, and \$188.60 in car lots, as against ninety-eight cents per 100 pounds, and \$78 per car last season. This enormous advance will of course annul our quotations, as it now costs us by rail, in car lots, taking 2,500 pails as a car load basis, about 3½ cents per pail to N. Orleans, and 5½ cents to Biloxi.

Knowing that you have a house in N. Orleans, and believing that you can get your pails into Biloxi much cheaper via N. Orleans, we propose to furnish you at fourteen cents per pail, f. o. b., Cinti. and consign them to your house in N. O., and let them reship from there.

Why could you not arrange with the Biloxi & Barataria Co's, to get your supplies together via N. O.? It may be possible for us, when river opens to get better rates to N. Orleans.

Very Truly,
(Signed) L. W. Gay & Co.

RAYMOND BROS. & CO.

v.

CHICAGO, BURLINGTON & QUINCY
R. R. CO. et al.

(No. 80.)

COMPLAINT filed September 22, 1887, alleging violations of sections 1, 2, 3, 4, 6 and 7 of the Interstate Commerce Act.

To the honorable board of Interstate Commerce Commissioners:

Your petitioners make complaint against the Burlington & Missouri River Railroad Company, in Nebraska, and their owner, the Chicago, Burlington & Quincy Railroad Company, and their western connections, the Denver & Rio Grande, the Rio Grande, Western,

that the distance from San Francisco to Lincoln, by the route of this respondent and its connecting companies is 2163 miles, the same being through that portion of the country where the construction and operation of railroads is attended with the greater cost and expense. That said charge so made is in strict accordance with the provisions of the Interstate Commerce Act as between San Francisco and all points similarly situated, west of the Missouri River.

ANSWER OF BURLINGTON & MISSOURI RIVER R. R. CO. IN NEBRASKA.

(Filed July 14, 1887.)

Admits that the complainants are residents of Lincoln, Lancaster County, Nebraska, and are in the general merchandise business in said city.

Admits that respondents are railway companies organized under the laws of the United States of America and the several States thereof, and operate and maintain lines of railway; but denies that they connect with each other and form a through line of railroad connecting San Francisco, California, and Omaha and Lincoln, Nebraska; but alleges that the respondents, together with the Denver and Rio Grande Western Railway Company, maintain and operate lines of railway which connect with each other and form a through line between the cities aforesaid.

Denies that the charge made by respondents upon the shipment described in the complaint is in violation of the third and fourth sections of the Interstate Commerce Act.

Admits that it charges more for the transportation of freight of the class and character described in the complaint from San Francisco to Lincoln than from San Francisco to Omaha, but denies that the charge for such freight from San Francisco to Omaha is the sum of \$1.75 per 100 pounds, but alleges the fact to be that the charge is the sum of \$2.80 per 100 pounds. Admits that their charge for the transportation of such freight from San Francisco to Lincoln is \$3.50 per 100 pounds, and also admits that the haul from San Francisco to Lincoln is included in the haul from San Francisco to Omaha, and that Omaha is fifty-five miles further distant from San Francisco than is Lincoln via said lines of railway.

Denies that the transportation between San Francisco and Lincoln and between San Francisco and Omaha is under similar circumstances or conditions, and alleges that the transportation aforesaid between the cities as aforesaid is under entirely dissimilar circumstances and conditions.

Denies that respondent railway companies discriminate against Lincoln and in favor of Omaha.

Denies that the rate of \$3.50 per 100 pounds from San Francisco to Lincoln by the lines of railway aforesaid is unreasonable, extortionate and excessive, and alleges the fact to be that said rate is just and reasonable.

Alleges that in respect of the through transportation over the lines of railway aforesaid between San Francisco and Omaha, respondent and they are subject to competition with the Canadian Pacific Railway Company, the

Pacific Mail Steamship Company, and clipper ships, tramp steamers and other vessels running between the Pacific and Atlantic ports, some and all of which are beyond the control of the Interstate Commerce Commission. That especially the Canadian Pacific Railway Company and connecting lines have established as a tariff rate for the transportation of freight of the class and character of that described in the complaint between San Francisco and Omaha the sum of \$3.80 per 100 pounds, thereby either depriving these respondents of the business aforesaid or of forcing them to meet said rate.

Shows that the established rate for the transportation of freight over the lines of the respondents herein of the class and character of that described in the complaint, between San Francisco and Denver, Colorado, and Omaha and other Missouri River points, and all intermediate points between Denver and Omaha and the Missouri River points aforesaid, was \$3.50 per 100 pounds, which rate is yet maintained by this respondent except as to the Missouri River points upon the lines of its road which are the subject of competition with the Canadian Pacific Railway Company and connecting lines and water transportation. That so far as the rate to Lincoln is concerned, it is the same as the rate established to all other points upon the lines of respondent's railroad company within its territory, with the exceptions aforesaid.

Shows that at the times mentioned in the complaint, the through line formed by the railways of the respondents as to all freights of the class and character described in the complaint transported by them between San Francisco and Omaha and all other Missouri River points within their territory, were subject to competition with the through line formed by the Southern Pacific Railway Company and the Union Pacific Railway Company. That sometime prior to the 23d day of April, 1887, upon a showing made by the Union Pacific Railway Company to the Interstate Commerce Commission, an order was granted by the Commission, temporarily releasing the Union Pacific Railway Company from the operation of section 4 of the Interstate Commerce Act for a period not greater than seventy-five days from the date last aforesaid, so as among other things to enable it to compete with the Canadian Pacific Railway Company and connecting lines, and other competing agencies, not subject to the Interstate Commerce Act, for the transportation of freight between the said City of San Francisco and other points on the Pacific Coast, and said City of Omaha and other Missouri River points in its territory. That immediately thereupon the Union Pacific Railway Company reduced its established rates for transportation between San Francisco and Omaha and other Missouri River points in its territory to the rate established by the Canadian Pacific Railway Company and other competing agencies not subject to the Interstate Commerce Act, thereby forcing respondent either to sacrifice its business between San Francisco and Omaha and other Missouri River points in its territory, or to reduce its rates between the points aforesaid to those established by the

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ises as to the said Commission may seem just and right.

(Signed)

Blandin & Buell, complainants' attorneys.

PLUMMER, PERRY & CO.

v.

UNION PACIFIC R. CO. *et al.*

(No. 82.)

COMPLAINT filed October 8, 1887, alleging violation of sections 1, 2, 3, 6 and 7 of the Interstate Commerce Act.

To the honorable board of Interstate Commerce Commissioners:

Your petitioners make complaint against the Union Pacific Railway Company, and their western connection, the Southern Pacific Railway Company, and allege the following facts in support of charges made against said Companies, to wit:

One car of canned goods, No. 32151, Union Pacific, was purchased on board of cars at San Francisco, and shipped from that point September 10, 1887, bill of lading 18347; consignors, A. Lusk & Co.; purchasers and consignees, Plummer, Perry & Co., Lincoln, Nebraska. The shipment was taken to Omaha, Nebraska, instead of being stopped at Valley Station, and charges seventy-five cents per cwt., San Francisco to Omaha, was collected and shown as advanced charges when shipment was rebilled from Omaha to Lincoln, via Valley Station, at fifteen cents per cwt., making the through charges from San Francisco to Lincoln, ninety cents per cwt. These charges were paid under protest, in which it is claimed that the rate, San Francisco to Lincoln, should not exceed seventy-five cents per cwt. For particulars see bill of lading, expense bill and copy of protest, herewith attached.

It is further stated that said Railway Companies have during this time, and are now taking canned goods in car loads from San Francisco to Omaha, Sioux City, Chicago, and other jobbing points in the West, in competition with Lincoln, at seventy-five cents per cwt. Therefore, based on the above facts as stated, the complainants charge the Union Pacific Railway Company and the Southern Pacific Railway Company with violations of the Interstate Law as follows:

Violation of section 1. The charges made for the service rendered are unreasonable and unjust. It is claimed that a just and reasonable rate is seventy-five cents per cwt.

Violation of section 2. The excessive charges demanded, collected and received, for performing a like and contemporaneous service, in the transportation of a like kind of traffic, under substantially similar conditions and circumstances, is unjust discrimination.

Violation of section 3. An undue and unreasonable preference is given to firms and localities, also unreasonable prejudice and disadvantage is imposed in other respects; and greater compensation is charged and collected in the aggregate for the transportation of like kind of property, under substantially similar

conditions and circumstances, for a shorter than for a longer haul.

Violation of section 6. The Railway Companies shall print schedules showing the rates, also they shall not charge, collect or receive, greater or less compensation than is specified in said schedules. The rate of ninety cents, as charged, collected and received, is not a published rate.

Violation of section 7. No stoppage or interruption shall be made to prevent continuous carriage from place of shipment to place of destination; and there shall be no intent to avoid or unnecessarily interrupt such continuous carriage, or to evade any of the provisions of this Act. The shipment was taken to Omaha and reshipped to this point, contrary to the wishes of the consignees, thus subjecting the consignment to an unnecessary haul from Valley Station to Omaha and return, delaying the freight to the injury of claimants and exacting additional revenue for the additional and unnecessary service performed.

Complainants also state that they have been injured by the continued violations of the Law since the Act took effect, April 5 last, and that in consequence of said unjust discriminations that have existed and now exist against them, they have been prevented and are now being prevented from selling goods in competition with firms doing like business in all other localities with which they come in competition.

Therefore, complainants pray your honorable body will consider all the facts as above set forth, and will cause a copy of its findings with respect thereto to be delivered to said common carriers, together with a notice to cease and desist from said violations of the Law, and to make such full reparation to the complainants for the injury which has been done them by said common carriers, as it may deem just.

State of Nebraska, } ss.
Lancaster County. }

Eli Plummer, being first duly sworn, deposes and says that he is the senior member of the firm of Plummer, Perry & Co., complainants herein, and that the facts as above set forth are true as he verily believes.

(Signed) Eli Plummer, for Plummer, Perry & Co.,

Subscribed and sworn to before me this 29th day of September, 1887.

(Signed) C. L. Harwood, Notary Public.
(Seal)

John H. MARTIN *et al.*

v.

SOUTHERN PACIFIC CO. *et al.*

(No. 83.)

COMPLAINT filed October 4, 1887, alleging discrimination in charges from San Francisco, against Denver and in favor of Omaha, Kansas City, etc.

To the honorable, the chairman and members of the Interstate Commerce Commission of the United States:

The complainants, John H. Martin and M. H. Martin, of the City of Denver, County of

Shows that the comparative distances from Indianapolis to New York and points between Indianapolis and Michigan City to New York via the respondent's line and its connections, as

well as by the shortest line via other routes from said several points to New York, are shown in the following

TABLE OF DISTANCES:

From	To	Via.	Miles	Via.	Miles.
Indianapolis....	New York.	L. N. A. & C.	1055	Penna. Co.	825
Westfield.....	"	" " " " "	1035	Ind. Mid. & Penna. Co..	834
Frankfort.....	"	" " " " "	1008	T.St.L. & K.C.Penna.Co..	846
Delphi.....	"	" " " " "	988	Wabash & Penna. Co.	856
Monticello.....	"	" " " " "	970	Penna. Co.	856
Wilders.....	"	" " " " "	971	C. & A. and connections ..	923
La Crosse.....	"	" " " " "	929	Penna. Co.	887
South Wanatah ..	"	" " " " "	923	N. Y. C. & St. L.	876
Wanatah.....	"	" " " " "	921	Penna. Co.	862
Haskell.....	"	" " " " "	917	C. & G. T.	887
Alida.....	"	" " " " "	915	B. & O.	989
Otis.....	"	" " " " "	909	L. S. & N. S.	931
Michigan City..	"	" " " " "		N. C. R. R.	901

States that, for a long series of years last past, the necessities of commerce and trade, and the competition between production and industries, as well as in the business of common carriers, have for all that section of the Union based the charge for transportation upon relative mileage distances to and from the points of shipment, via the shortest line, and other and longer lines having carried at the same rate in the aggregate as the short lines.

Shows that between Chicago, Illinois, and the Atlantic seaboard the rates were based upon the distance between those points, Chicago being treated as a unit. That upon this basis, rates from Indianapolis to New York and other seaboard points and intermediate points like Buffalo, New York, have been and are now fixed by the carriers having short lines between Indianapolis and the points above named rated at 93 per cent of the Chicago rate.

Shows that respondent's road runs from Indianapolis in a northwesterly direction towards Chicago and Michigan City, and that in so doing it crosses lines of railway running east and west, and that in consequence of the distances via the lines crossing respondent's lines, New York, and points east thereof, being shorter than respondent's road and yet further than Indianapolis, each of said junction points has a higher rate to and from New York and points eastward thereof than Indianapolis.

Avers (referring to the table of distances herein before set forth of junction points on respondent's line between Michigan City and Indianapolis) that there are, including Michigan City, twelve junction points as follows, to wit:

1. Junction, Westfield, Indiana, twenty miles from Indianapolis, takes 96 per cent of Chicago rate; 2. Junction, Frankfort, forty-seven miles from Indianapolis, takes 100 per cent of Chicago rate; 3. Junction, Delphi, Indiana, seventy-two miles from Indianapolis, takes 100 per cent of Chicago rate; 4. Junction, Monticello, Indiana, eighty-five miles from Indianapolis, takes 100 per cent of Chicago rate; 5. Junction, Wilders, Indiana, 123 miles from Indianapolis, takes 100 per cent of Chicago rate; 6. Junction, La Crosse, 126 miles from Indianapolis, takes 100 per cent of Chicago rate; 7. Junction, South Wanatah, Indiana, 123 miles from Indianapolis, takes 100 per

cent of Chicago rate; 8. Junction, Wanatah, Indiana, 134 miles from Indianapolis, takes 100 per cent of Chicago rate; 9. Junction, Haskell, Indiana, 136 miles from Indianapolis, takes 100 per cent of Chicago rate; 10. Junction, Alida, Indiana, 140 miles from Indianapolis, takes 100 per cent of Chicago rate; 11. Junction, Otis, Indiana, 146 miles from Indianapolis, takes 100 per cent of Chicago rate; 12. Junction, Michigan City, Indiana, 154 miles from Indianapolis, takes 100 per cent of Chicago rate.

Shows that each of the above named rates from and to said junction points are reasonable and just, and in no sense extortionate, and are made on the rule of a just and reasonable rate for the shortest and most direct line between the junction points named and Buffalo, New York, and points beyond, and that the rates and charges so far fixed from said points are as follows: the Indianapolis rate to and from New York, 93 per cent of the Chicago rate, which, say on sixth class articles, is twenty-five cents per 100 pounds in car load lots, making the Indianapolis rate thereon twenty-three cents, the Westfield rate twenty-four cents, and the other points, including Frankfort, twenty-five cents; so that by reason of the direction in which respondent's road runs, without charging greater compensation in the aggregate for the transportation it cannot secure any of the traffic to or from Indianapolis unless it meets the rate fixed by the short lines; that in the past it has carried from the last named point at the same rate fixed by the shorter lines, and that if it cannot be permitted to continue that practice it must in the future abandon and lose the benefit of that traffic and all freight business to and from Indianapolis and territory herein before named, as this Company has no power or authority to reduce rates in the territory north of Indianapolis below the established rates, and cannot do so from the fact that respondent's connections will not receive the property from it except at the established rate, in effect at the point where the same originates; and therefore there would be no alternative to this Company, except to withdraw from competing for freight at Indianapolis destined to Buffalo, New York, and other points east thereof.

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ises as to the said Commission may seem just and right.

(Signed)

Blandin & Buell, complainants' attorneys.

PLUMMER, PERRY & CO.

v.

UNION PACIFIC R. CO. *et al.*

(No. 82.)

COMPLAINT filed October 8, 1887, alleging violation of sections 1, 2, 3, 6 and 7 of the Interstate Commerce Act.

To the honorable board of Interstate Commerce Commissioners:

Your petitioners make complaint against the Union Pacific Railway Company, and their western connection, the Southern Pacific Railway Company, and allege the following facts in support of charges made against said Companies, to wit:

One car of canned goods, No. 82151, Union Pacific, was purchased on board of cars at San Francisco, and shipped from that point September 10, 1887, bill of lading 13347; consignors, A. Lusk & Co.; purchasers and consignees, Plummer, Perry & Co., Lincoln, Nebraska. The shipment was taken to Omaha, Nebraska, instead of being stopped at Valley Station, and charges seventy-five cents per cwt., San Francisco to Omaha, was collected and shown as advanced charges when shipment was rebilled from Omaha to Lincoln, via Valley Station, at fifteen cents per cwt., making the through charges from San Francisco to Lincoln, ninety cents per cwt. These charges were paid under protest, in which it is claimed that the rate, San Francisco to Lincoln, should not exceed seventy-five cents per cwt. For particulars see bill of lading, expense bill and copy of protest, herewith attached.

It is further stated that said Railway Companies have during this time, and are now taking canned goods in car loads from San Francisco to Omaha, Sioux City, Chicago, and other jobbing points in the West, in competition with Lincoln, at seventy-five cents per cwt. Therefore, based on the above facts as stated, the complainants charge the Union Pacific Railway Company and the Southern Pacific Railway Company with violations of the Interstate Law as follows:

Violation of section 1. The charges made for the service rendered are unreasonable and unjust. It is claimed that a just and reasonable rate is seventy-five cents per cwt.

Violation of section 2. The excessive charges demanded, collected and received, for performing a like and contemporaneous service, in the transportation of a like kind of traffic, under substantially similar conditions and circumstances, is unjust discrimination.

Violation of section 3. An undue and unreasonable preference is given to firms and localities, also unreasonable prejudice and disadvantage is imposed in other respects; and greater compensation is charged and collected in the aggregate for the transportation of like kind of property, under substantially similar

conditions and circumstances, for a shorter than for a longer haul.

Violation of section 6. The Railway Companies shall print schedules showing the rates, also they shall not charge, collect or receive, greater or less compensation than is specified in said schedules. The rate of ninety cents, as charged, collected and received, is not a published rate.

Violation of section 7. No stoppage or interruption shall be made to prevent continuous carriage from place of shipment to place of destination; and there shall be no intent to avoid or unnecessarily interrupt such continuous carriage, or to evade any of the provisions of this Act. The shipment was taken to Omaha and reshipped to this point, contrary to the wishes of the consignees, thus subjecting the consignment to an unnecessary haul from Valley Station to Omaha and return, delaying the freight to the injury of claimants and exacting additional revenue for the additional and unnecessary service performed.

Complainants also state that they have been injured by the continued violations of the Law since the Act took effect, April 5 last, and that in consequence of said unjust discriminations that have existed and now exist against them, they have been prevented and are now being prevented from selling goods in competition with firms doing like business in all other localities with which they come in competition.

Therefore, complainants pray your honorable body will consider all the facts as above set forth, and will cause a copy of its findings with respect thereto to be delivered to said common carriers, together with a notice to cease and desist from said violations of the Law, and to make such full reparation to the complainants for the injury which has been done them by said common carriers, as it may deem just.

State of Nebraska, } ss.
Lancaster County. }

Eli Plummer, being first duly sworn, deposes and says that he is the senior member of the firm of Plummer, Perry & Co., complainants herein, and that the facts as above set forth are true as he verily believes.

(Signed) Eli Plummer, for Plummer, Perry & Co.,

Subscribed and sworn to before me this 29th day of September, 1887.

(Signed) C. L. Harwood, Notary Public.
(Seal)

John H. MARTIN *et al.*

v.

SOUTHERN PACIFIC CO. *et al.*

(No. 83.)

COMPLAINT filed October 4, 1887, alleging discrimination in charges from San Francisco, against Denver and in favor of Omaha, Kansas City, etc.

To the honorable, the chairman and members of the Interstate Commerce Commission of the United States:

The complainants, John H. Martin and M. H. Martin, of the City of Denver, County of

Arapahoe and State of Colorado, do most respectfully complain of the Southern Pacific Company, the Central Pacific Railway Company and the Union Pacific Railway Company; and herein allege and charge the fact to be that they and each of them have been guilty of a violation of the terms, conditions and provisions of the Act entitled "An Act to Regulate Commerce," approved February 4, 1887.

First. That the complainants are informed and therefore believe the fact to be that a certain corporation, calling itself the Southern Pacific Company and organized under the laws of the State of California, in connection with the Central Pacific Railroad Company, has control of or operates a line of road leading from San Francisco, in the said State of California, to the City of Ogden, in the Territory of Utah, the same being owned by the said Central Pacific Railroad Company and forming part of what is now generally known as the Southern Pacific system, and were so operating the same in the month of August, 1887.

Second. That the Union Pacific Railway Company, as the complainants are informed and believe, is a corporation created under the laws of the Congress of the United States, and is the owner of, has been and is operating a line of railway connecting with said Central Pacific Railroad at the said Town of Ogden, in the Territory of Utah, and leading from thence east to the City of Omaha, in the State of Nebraska, on the Missouri River, and another line of railroad connecting with the said last mentioned line at Cheyenne, in the Territory of Wyoming, and running thence by way of said City of Denver to Kansas City, in the State of Missouri, the said Cities of Omaha and Kansas City being on the Missouri River and distant from the City of Denver respectively about 600 and 639 miles.

Third. That the said lines of railway herein above described form a continuous highway under the joint control of said companies, and, as complainants are informed and believe, are used for the transportation of freight without change of cars from said Missouri River to said San Francisco and all intermediate points.

Fourth. That during the month of August, in the year 1887, and for a long time previously thereto, the complainants, your petitioners, were engaged and are now engaged in the business of buying and selling fresh and dried fruits at wholesale, in and about the prosecution of which business they are compelled to and do purchase large quantities of fruits of all kinds and other produce raised in the State of California and sold by the merchants thereof, and in carrying on said business are exposed to the competition of other dealers therein in the City of Denver and other wholesale points along the line of said Railway.

Fifth. That on, to wit: the second day of August, 1887, the complainants purchased at San Francisco from the firm of Allison, Gray & Company 6,400 pounds of dried fruits and 14,025 pounds of raisins, being thirty sacks and seventy-eight boxes of dried fruit and 609 boxes of raisins, and ordered the same shipped and transported from the said City of San Francisco to the said City of Denver by way

of the said Central Pacific and Union Pacific Railroads; and on said second day of August the same were shipped as aforesaid to these complainants, and duly arrived in the said City of Denver about six days thereafter, to wit: about the 8th day of August, 1887.

Sixth. That the said Railway Companies charged complainants for the shipment of said dried fruits at the rate of \$2.80 per 100 pounds and for the shipment of said raisins at the rate of \$3.65 per 100 pounds, which said sums of money complainants were compelled to and did pay on the 9th day of August, 1887, at Denver, Colorado, to T. D. Whithall, agent of the said Union Pacific Railway Company, but paid the same under protest, and that the total amount of charges for said goods was \$532.11.

Seventh. That afterwards and on the 18th day of August, 1887, complainants purchased certain other goods from the said firm of Allison, Gray & Company, to wit: seventy-three sacks of dried fruit of the weight of 4,980 pounds, which were shipped over the same roads and reached the City of Denver on or about the 24th day of August, 1887, for the shipment and transportation of which the said Companies charged these complainants at the rate of \$2.80 per 100 pounds, by reason whereof they were compelled to and did pay to the said agent of the said Union Pacific Railway Company on said 24th day of August the total sum of \$114.54, the said sum being also paid by these complainants under protest, and because the payment of the same was absolutely essential and made essential by the said Union Pacific Railway Company to the delivery of said articles of merchandise to these complainants.

Eighth. That in and about the shipment and transportation of the identical kinds and classes of goods and articles of merchandise to the Cities of Omaha, Nebraska, and Kansas City, Missouri, a distance of more than 600 miles further than is the City of Denver from San Francisco, said Railway Companies charge at the rate of only \$1.05 per 100 pounds, thereby discriminating against these complainants as well as against the said City of Denver more than 100 per cent, there being absolutely no reason whatever therefor. That the said haul from San Francisco to Denver is one continuous haul, and the transportation of said goods can be made and ought to be made from the City of San Francisco to the City of Denver at a rate as much cheaper in proportion to the rate established for the Cities of Omaha and Kansas City as the distance is less to the City of Denver than to said Cities of Omaha and Kansas City; but in truth, and in fact, the said Railway Companies, being common carriers as aforesaid, have charged and received greater compensation from these complainants for the transportation of said goods for a shorter than for a longer distance over the said line and under substantially similar circumstances, in the same direction, the haul to Denver being the shorter haul included within the longer distance to said Kansas City and Omaha.

Ninth. That the rate charged by the said Union Pacific Railway Company from the said Cities of Omaha and Kansas City back to Denver for goods similar to those mentioned

herein is at the rate of \$1.15 per 100 pounds, in consequence of which the misconduct and unlawful actions of said Railway Companies involved in the premises give the merchants of said cities and competitors of your complainants an immense and overwhelming advantage in competition, for the business naturally tributary to Denver, and tend to and will inevitably drive the complainants out of said business, unless relief can be obtained under and in pursuance of the powers conferred upon this honorable Commission by the statute aforesaid.

Tenth. Complainants further allege that they have, by reason of the position of the City of Denver, been compelled to treat directly with the said Union Pacific Railway Company in and about the matters and things herein alleged; that they have protested to the local officials of said Company against the said wrong and outrage, and have demanded to be relieved from the consequences of said discrimination and to be repaid the difference between the amount charged to them for said Denver haul and the amount for similar services in hauling to Kansas City and Omaha, but that the said Company, through its officials aforesaid, has wholly refused and still refuses to make due or any reparation to these, your complainants.

These complainants therefore respectfully pray that your honorable body cause investigation to be made of this, your petitioners' complaint, and of the truth of the charges and statements herein contained, to compel the said Southern Pacific Company, Central Pacific Railroad Company and Union Pacific Railway Company to make answer thereto as required by the rules of practice of your honorable body and to compel the said Companies, or such of them as may be found to be guilty of a violation of the provisions of said Act, to make due reparation not only to these, your petitioners, for the wrong inflicted upon them, but to change and modify their rates of transportation in behalf of the said City of Denver and that immediate locality, so that further unjust, unlawful and unbearable discrimination against it and against your complainants by said companies in behalf of said Cities of Omaha and Kansas City and the merchants of said cities shall forever cease; and in duty bound your complainants will ever pray, etc. Martin & Co., petitioners,

By John H. Martin.

Patterson & Thomas, Attorneys for petitioners, Denver, Colorado.

William S. DEXTER

v.

CHICAGO, BURLINGTON & QUINCY R.
R. CO.

(No. 49.)

A BSTRACT of pleadings in proceeding pending at issue before the Commission, based upon an allegation of violation of section 2 of the Act.

COMPLAINT.

(Filed July 19, 1887.)

The complaint is dated Lincoln, Nebraska,

July 16, 1887, and alleges that the Chicago, Burlington & Quincy Railroad Company, owner of the Burlington & Missouri River Railway Company in Nebraska, did, on the 12th and 18th days of April, 1887, violate section 2 of the Interstate Commerce Act, in having, on those days, transported one John Haggerty, free of charge, from Lincoln, Nebraska, to Oberlin, Kansas, while on the same days, and on the same train and cars, it charged and collected from the complainant, \$7.70 for the same service, said Haggerty not being an officer or employee of any railroad or transportation company, and not a fit subject for charity.

ANSWER.

(Filed August 3, 1887.)

Admits that defendant is a corporation, and that it owns and operates the Burlington & Missouri River Railroad in Nebraska, and that some time in the month of April the said defendant carried one John Haggerty from Lincoln, Nebraska, to Oberlin, Kansas, and return, free of charge, on a pass that was issued by the said road; that said Haggerty is an old employee of the said railroad company and had worked for the defendant for several years on a branch road of the Chicago, Burlington & Quincy Railroad in Iowa, but was transferred from there to Nebraska and commenced working for the Burlington & Missouri River Railroad Company in Nebraska on the 18th day of November, 1885, and continued working for the said road continuously until he was disabled by an attack of rheumatism; that at the time he rode on the pass in April he was incapable of manual labor on account of rheumatic affliction; that he is still in Lincoln, Nebraska, and still disabled to such an extent that he is not capable of performing manual labor; that he expects to go to work for the Company again soon as he is able, and said Company intends that he shall go to work for it whenever he is able, and has always considered him an employee of the Company ever since he commenced working on the road; he has never had any other employment since he commenced working for defendant; that at the time of his using said pass complained of, he made the said trip on his own behalf in looking after his interest in a piece of land in Cheyenne County, Kansas.

Further answering, the defendant denies that in the giving of said pass it violated the Interstate Commerce Act, and denies each and every charge and allegation made in the complaint, excepting that the said Dexter may have ridden over the said road and paid his fare at the time complained of, of which fact the defendant has not accurate information.

ORDER AS TO PUBLICATION OF JOINT TARIFFS.

At a meeting of the Interstate Commerce Commission, held at the office of the Commission in the City of Washington on the 21st day of June, 1887:

Present, all the Commissioners:

The subject of the publication of joint tariffs being under consideration, the following pro-

as the same relate to business
its which are connected by the
le common carrier required b
graph of said section to make pu
of its rates, fares and charg
t tariffs shall be so published
ting the same in large type of
of ordinary pica, copies of w
cept for the use of the public in
in such form that they can be co
ected, at every depot or station
of the carriers uniting in such
re any business is transacted b
with the business of a carrier wh
are required by law to be made
esaid.

ERN DISTRICT OF LOUISLA

t, is the Act entitled "An Act for
Licensing Ships or Vessels to be
he Coasting Trade and Fish
Regulating the Same." 1 Stat.
[*vers. T. L. Bayne and Geo. J*
complainants.
[*vers. W. F. & D. C. Melle*
[*1887*

[*illings, J., delivered the follow*

o the plaintiffs' claim defendant
exception that the plaintiffs, ch
ting under the laws of the Stat
y, have failed to comply with
ons of article 236, of the Const
State of Louisiana, which provid
ign corporation shall do any b
State without having one or mo
es of business, and an authorize
its in the State upon whom pr
erved. *Held*, that the provisio
stitution of Louisiana referred t
mpt on the part of the State to l
riktion on navigation, and theref
with the provisions of the Act o
roved February 18, 1793, passet
e of a clear authority under the
of the United States, is null and
innot v. *Davenport*, 22 How. 227
16, L. ed. 248.]
ceptions overruled, and judgmen
avor of plaintiffs in each cause.

ROE COMMISSION.

(October 12, 1887

[hearing upon complaint and
Case dismissed.
he pleadings are fully set fort
ante.
o appearance for complainant.
r. A. C. Stewart, of St. Lou
lant.

MEMORANDUM BY THE COMMI
he petition in this case was file
l. The principal complaint see
defendant refused to ship hew
ltoner from St. Francis, in the
ansas, to Kansas City, for less
one half cents each, which was

be an unreasonable and unjust charge. It was also complained that defendant discriminated in its rates unjustly as between sawed ties and hewed ties, to the prejudice of the latter.

Defendant filed its answer June 28, 1887, in which all unjust discrimination as between hewed and sawed ties was denied. It was further denied that defendant had ever made a charge of forty and one half cents each for the transportation of ties from St. Francis to Kansas City; but it was averred that the charge had been forty cents prior to May 28, 1887, when it was reduced to thirty-three and one half cents, at which it remained when the complaint was filed.

A copy of this answer was sent to complainant, and he has not since been heard from by the Commission. Notice that the case would be heard this day was sent to him, but he has not appeared. The defendant appeared by counsel. Under the circumstances we must assume that complainant is satisfied with the answer, and the case is dismissed.

W. B. FARRAR & CO., of Dalton, Ga.,

v.

EAST TENNESSEE, VIRGINIA & GEORGIA R. CO., and Norfolk & Western R. Co.

(No. 84.)

ABSTRACT of complaint filed October 12, 1887, asking for the restoration of former rate for lumber.

Complainants are, and for twenty years past have been, engaged in the lumber and building business and are obliged to use defendants' railroads.

Complain that the rate on lumber is unjust and excessive, and ask that the old rate be re-established.

The old rate asked for is, from Dalton, Georgia, to Roanoke and Lynchburg, Virginia, eighteen cents per 100 pounds (present rate twenty-two cents), over road of both defendants; from Dalton, Georgia, to Bristol, over first named defendant's road, old rate eight cents, now eleven cents.

Also to Johnson City, this side of Bristol, Tennessee, and to Bristol the rates are excessive.

Former rate to Knoxville six cents per 100 pounds, now seven cents.

Rates are quoted to them "subject to change without notice."

James PYLE & Sons

v.

EAST TENNESSEE, VIRGINIA & GEORGIA R. CO.

(No. 85.)

ABSTRACT of complaint filed October 14, 1887 (as a substitute for complaint in No. 28, ante, 486), charging discrimination against and improper classification of "Pearline."

Complaint of discrimination and violation of section 3.

Defendant is selected (to make a test case)

out of railroads that adhere to classification of Southern Railway & Steamship Association. The article dealt in is a soap powder known as "Pearline" and is classified under "Powders and Washing Compounds," "to all points or cities to which the classification of freight as made by the Southern Railway & Steamship Association is held to apply," and as "soap powder" in their classification to other points reached by them.

E. g., to Knoxville, Tenn., Atlanta, Ga., Chattanooga, Tenn., etc., etc., under first head.

To trans-Mississippi points such as Shreveport, La., Dallas, Texas, Little Rock and Fort Smith, Ark., under second head.

The rate, when classified under first head, is over 100 per cent (that is to say 121 8-10 per cent) more than the freight on soap. The rate to first named points on Pearline being seventy-three cents per 100 pounds as against thirty-three cents on common soap.

Complainants' article should be classified as "soap" for following reasons: it differs only in being in powdered form; similar in bulk; packed in similar boxes; no more liable to injury; no more expensive to handle; used for same purposes; and is in competition with soap, and approximates in price.

All other railroads grant same rate as for soap; and the defendants do for points not subject to the classification of the Southern Railway & Steamship Association.

There is an unjust discrimination, therefore, against this commodity, "Pearline," "under the guise of a different classification."

Thomas J. REYNOLDS of Rochester, N. Y.

v.

WESTERN NEW YORK & PENNSYLVANIA R. R. CO.

(No. 86.)

ABSTRACT of complaint filed October 17, 1887, alleging the imposition of unreasonable and discriminative rates for the transportation of ties.

Defendant corporation (until recently known as the Buffalo, New York & Philadelphia Railroad Company, and for about two years prior to September last under the management of G. Clinton Gardner, Receiver) is engaged in transporting property from Kinzua, Sugar Run, Corydon, Wolf Run, and Quaker Bridge, in Pennsylvania, to Salamanca, Olean, and Rochester, in New York.

Complainant owns from 6,000 to 7,000 acres of timber land in Pennsylvania, and for several years has manufactured and shipped lumber and ties between stations above mentioned.

Prior to appointment of receiver rates on lumber and ties per car (capacity of fifteen to twenty tons), without reference to weight, were as follows:

From Kinzua, Sugar Run, and Corydon to Salamanca,	\$9.00
From Wolf Run and Quaker Bridge to Salamanca,	\$7.50

These rates were continued under receiver until about February, 1888, when the rates on "ties" were so raised that all traffic in ties (except for sale to defendant) ceased.

that the distance from San Francisco to Lincoln, by the route of this respondent and its connecting companies is 2163 miles, the same being through that portion of the country where the construction and operation of railroads is attended with the greater cost and expense. That said charge so made is in strict accordance with the provisions of the Interstate Commerce Act as between San Francisco and all points similarly situated, west of the Missouri River.

ANSWER OF BURLINGTON & MISSOURI RIVER
R. R. CO. IN NEBRASKA.

(Filed July 14, 1887.)

Admits that the complainants are residents of Lincoln, Lancaster County, Nebraska, and are in the general merchandise business in said city.

Admits that respondents are railway companies organized under the laws of the United States of America and the several States thereof, and operate and maintain lines of railway; but denies that they connect with each other and form a through line of railroad connecting San Francisco, California, and Omaha and Lincoln, Nebraska; but alleges that the respondents, together with the Denver and Rio Grande Western Railway Company, maintain and operate lines of railway which connect with each other and form a through line between the cities aforesaid.

Denies that the charge made by respondents upon the shipment described in the complaint is in violation of the third and fourth sections of the Interstate Commerce Act.

Admits that it charges more for the transportation of freight of the class and character described in the complaint from San Francisco to Lincoln than from San Francisco to Omaha, but denies that the charge for such freight from San Francisco to Omaha is the sum of \$1.75 per 100 pounds, but alleges the fact to be that the charge is the sum of \$2.80 per 100 pounds. Admits that their charge for the transportation of such freight from San Francisco to Lincoln is \$3.50 per 100 pounds, and also admits that the haul from San Francisco to Lincoln is included in the haul from San Francisco to Omaha, and that Omaha is fifty-five miles further distant from San Francisco than is Lincoln via said lines of railway.

Denies that the transportation between San Francisco and Lincoln and between San Francisco and Omaha is under similar circumstances or conditions, and alleges that the transportation aforesaid between the cities as aforesaid is under entirely dissimilar circumstances and conditions.

Denies that respondent railway companies discriminate against Lincoln and in favor of Omaha.

Denies that the rate of \$3.50 per 100 pounds from San Francisco to Lincoln by the lines of railway aforesaid is unreasonable, extortionate and excessive, and alleges the fact to be that said rate is just and reasonable.

Alleges that in respect of the through transportation over the lines of railway aforesaid between San Francisco and Omaha, respondent and they are subject to competition with the Canadian Pacific Railway Company, the

Pacific Mail Steamship Company, and clipper ships, tramp steamers and other vessels running between the Pacific and Atlantic ports, some and all of which are beyond the control of the Interstate Commerce Commission. That especially the Canadian Pacific Railway Company and connecting lines have established as a tariff rate for the transportation of freight of the class and character of that described in the complaint between San Francisco and Omaha the sum of \$2.80 per 100 pounds, thereby either depriving these respondents of the business aforesaid or of forcing them to meet said rate.

Shows that the established rate for the transportation of freight over the lines of the respondents herein of the class and character of that described in the complaint, between San Francisco and Denver, Colorado, and Omaha and other Missouri River points, and all intermediate points between Denver and Omaha and the Missouri River points aforesaid, was \$3.50 per 100 pounds, which rate is yet maintained by this respondent except as to the Missouri River points upon the lines of its road which are the subject of competition with the Canadian Pacific Railway Company and connecting lines and water transportation. That so far as the rate to Lincoln is concerned, it is the same as the rate established to all other points upon the lines of respondent's railroad company within its territory, with the exceptions aforesaid.

Shows that at the times mentioned in the complaint, the through line formed by the railways of the respondents as to all freights of the class and character described in the complaint transported by them between San Francisco and Omaha and all other Missouri River points within their territory, were subject to competition with the through line formed by the Southern Pacific Railway Company and the Union Pacific Railway Company. That sometime prior to the 23d day of April, 1887, upon a showing made by the Union Pacific Railway Company to the Interstate Commerce Commission, an order was granted by the Commission, temporarily releasing the Union Pacific Railway Company from the operation of section 4 of the Interstate Commerce Act for a period not greater than seventy-five days from the date last aforesaid, so as among other things to enable it to compete with the Canadian Pacific Railway Company and connecting lines, and other competing agencies, not subject to the Interstate Commerce Act, for the transportation of freight between the said City of San Francisco and other points on the Pacific Coast, and said City of Omaha and other Missouri River points in its territory. That immediately thereupon the Union Pacific Railway Company reduced its established rates for transportation between San Francisco and Omaha and other Missouri River points in its territory to the rate established by the Canadian Pacific Railway Company and other competing agencies not subject to the Interstate Commerce Act, thereby forcing respondent either to sacrifice its business between San Francisco and Omaha and other Missouri River points in its territory, or to reduce its rates between the points aforesaid to those established by the

The case was heard July 19, 1887. (See *ante*, 816.)

Messrs. O'Hara & Bryan, for complainants.

Messrs. Hallam & Myers, for Kentucky Central R. R. Co.

Mr. H. W. Bruce, for Louisville & Nashville R. R. Co.

Mr. J. F. Brooks, for Pittsburg, Cincinnati & St. Louis R. Co.

REPORT AND OPINION OF THE COMMISSION.

Morrison, Commissioner:

In this case it is alleged that the Railroad Companies, against which complaint is made, have denied, and continue to deny and refuse to Keith & Wilson, complainants, reasonable and proper facilities for receiving and forwarding live stock over said Companies' several lines of road, separately, and in their connections with each other, and that said Railroad Companies subject said Keith & Wilson to the payment of terminal and discriminating charges not imposed on other shippers of a like kind of property.

The facts appearing from the agreement of parties and testimony heard are found to be:

1. The complainants are partners buying, selling and shipping live stock, and are the proprietors of stock yards at Covington, Kentucky, convenient for receiving and shipping live stock from and upon the Kentucky Central Railroad, the free use of which yards the complainants have offered to the defendant railroad companies and at which live stock is housed, fed and cared for at lower rates than is done by the Covington Stock Yards Company, whose yards and the yards of Keith & Wilson are near each other on the same live stock switch.

2. The defendants are common carriers of passengers and freight, including live stock, to and from Covington, Kentucky, and, through their connections with each other, from Covington, Kentucky, to Cincinnati, Ohio, and thence to Pittsburg, Pennsylvania, for eastern markets. The Covington Stock Yards, the depot for live stock on the line of the Kentucky Central Road used by all the defendants, are reached by the cars of the other defendant railroad companies over a switch or branch extending from the Kentucky Central to the Louisville & Nashville Road at Milldale, or South Covington, over which the cars from the Louisville & Nashville and the Pittsburg, Cincinnati & St. Louis Roads pass to the Covington Stock Yards; the cars of the Pittsburg, Cincinnati & St. Louis Railway pass to and from its southern terminus at Cincinnati, over the Louisville & Nashville track to Milldale.

3. The defendant, the Pittsburg, Cincinnati & St. Louis Railway Company, with other railroad companies, to which the other defendants are successors, had stipulated with the Covington Stock Yards Company to make its yards with chutes leading thereto, on the line of the Kentucky Central Railroad, their exclusive depot for live stock at Covington, Kentucky, for the term of fifteen years from November 19, 1881; the validity and construction of which stipulation had been litigated in the United States Circuit Court for Kentucky,

and is now pending on appeal in the United States Supreme Court; and before such litigation the stipulation was observed by all the parties.

4. W. A. Peters was and is the superintendent of said Covington Stock Yards Company and agent at the Covington Stock Yards and station for, and reports separately to, each of said defendant railroad companies; and the charges alleged as discriminations were made by him for the benefit of the Covington Stock Yards Company, and went to its treasury.

5. Said Peters, as manager of the Covington Stock Yards Company, has been instructed by it to collect "lotage" on all stock passing through said yards for market, shipped to and from Covington, but none for stock not intended for market, and none for stock transmitted immediately through Covington and not kept or housed at complainants' yards.

6. No charge was made to anyone for passing stock through said Covington Stock Yards before May 8, 1886, about which time complainants established their yards in opposition to the Covington Stock Yards, and at which time said Peters issued notice in writing to complainants, that "on and after that date they would be required to pay yardage on all stock unloaded at the Covington Stock Yards and taken to their (complainants') yards;" and since then such charges have been uniformly imposed on complainants, and, in two instances, the only occurring occasions of their imposition, on others.

7. The Kentucky Central Railroad Company has always been willing to receive and ship stock for Keith & Wilson, at the general freight depot at Covington, free of terminal charges, which could only be done with such inconvenience to both, that the freight depot has been used for receiving live stock only in exceptional cases.

Since said stipulation was litigated in the United States Circuit Court for Kentucky, stock billed in the name of the Kentucky Central Road is delivered to and received from Keith & Wilson, at their own platform and yards, but not by or through the agent Peters. Stock billed in the name of the other defendant railroad companies is delivered and received only at the Covington Stock Yards.

The Kentucky Central Railroad Company protests it has the legal right to resume delivery of all live stock at the Covington Stock Yards arriving at Covington, and that it may do so at any time, unless the judgment of the Commission shall be adverse to the existence of such right.

All live stock transported by the Louisville & Nashville Railroad Company to Covington, however consigned, is contracted to be delivered at the Covington Stock Yards.

Since April 5, 1886, the Pittsburg, Cincinnati & St. Louis Railway Company, defendant, refuses to receive stock from complainants for transportation over its road except through the Covington Stock Yards.

8. The questions litigated in the United States Circuit Court, and now pending on appeal in the United States Supreme Court, involved the right of the Covington Stock Yards Company to charge Keith & Wilson, or their customers, at all for merely transmitting live

stock to and from the public highway; whether the contract was valid to give the Covington Stock Yards Company the exclusive right to keep live stock chutes and yards on right of way of the railroad, and whether the Railroad Company could establish any other live stock depot at Covington. But the said Railroad Company had not proposed to establish any other at Covington.

The defendants answering separately, each for itself, denies that it has, by itself or through its connections, refused to complainants any reasonable or proper facilities, or subjected them to any terminal, discriminating or unreasonable charges, as alleged by them.

In justification of this denial it is urged: that the defendants performed their whole duty to the public as carriers of live stock, by receiving and delivering the same, as they were accustomed to do and had done, on the platform at the chutes of the Covington Stock Yards; that the discriminating and terminal charges complained of were imposed by the Covington Stock Yards Company for its own use; that, while it was more convenient for defendants, the public was reasonably well and better served than it otherwise could or would be but for the arrangement by which defendants made the Covington Stock Yards their exclusive depot for receiving and delivering live stock.

In this view, so ably and plausibly presented as it has been, we are unable to concur. The Covington Stock Yards, less complete than they are at present, were established under different ownership, and were in operation many years previous to the stipulation or arrangement for their use by defendants, or any of them. This arrangement was, no doubt, made with the well meant purpose at the time of securing better terminal and improved stock yard facilities. It may, at the time, have stimulated the improvement and betterment of the yards, and in that way was beneficial, in some measure, to the general public. But that such considerations justify the defendants, or any of them, in making the yards of the Covington Company their exclusive live stock depot, thus enabling the Covington Company to exact payment of those who are not its customers, for the privilege of passing stock to and from the cars of defendants, we do not believe. The justification of such exaction is contradicted by the fact that, near to and on the same live stock switch with the Covington Stock Yards, are the yards of the complainants where the public may be suitably well served at considerably lower rates than the rates of the Covington Company. The complainants, as proprietors of stock yards and in their desire and effort to serve the public in that capacity, have the right to be the rivals of the Covington Stock Yards Company, and such of the public as desire to patronize the complainants, have both the right to do so, and to have their stock shipped on equal terms and for like charges as those who patronize the Covington Yards.

As common carriers of live stock it is the legal duty of the defendants to provide reasonable and proper facilities for receiving on board, and for discharging from their cars, all live stock offered for shipment or brought over their respective roads and their connections to

or from the City of Covington, Kentucky, of charges other than the usual transportation charges. It is not believed that this legal duty and obligation of defendants is fully charged by receiving on, and discharging from, their cars live stock at a depot, access to which must be purchased. And the complainants are entitled to ship and receive live stock over defendants' roads and on defendants' cars to and from Covington, free from any other than the customary transportation charges.

The general freight depot, used as a stock depot in exceptional cases, is admitted to be unsuited for such use; the exaction of demands for passing through their yards made by the Covington Company of the complainants and those who patronize complainant yards, prevent complainants and their customers from shipping or receiving live stock on equally favorable terms with the customer of the Covington Company. Until the defendants provide some other suitable and convenient place at Covington, where the complainants may ship and receive live stock free from other than the customary transportation charges, the defendants should be and will be required to receive from and deliver such stock to complainants at their own yards.

This conclusion of the Commission is in accordance with the judgment and order of Circuit Court of the United States for the District of Kentucky, in the case of George Bliss and Isaac F. Gates, complainants, against the Kentucky Central Railroad Company, which involved the question of the right of the Covington Stock Yards Company to charge Keith & Wilson, complainants, for passing stock through the Covington Stock Yards, which right is involved in that case now pending on appeal in the United States Supreme Court.

It is submitted by the defendant, The Kentucky Central Railroad Company, in view of the pendency in the Supreme Court of the United States of the suit on appeal, involving the validity of the contract and the right of the Covington Stock Yards Company to charge Keith & Wilson for passing through the yards of said Company and the chutes leading therefrom to the platform and cars of the defendants, that no further action be taken, in the matter under consideration, until the determination of said suit. We do not concur in this view.

If the stipulation or contract between the defendants, or any of them, and the Covington Stock Yards Company, should be held valid, as to give the Covington Stock Yards Company a right of action against the Railroad Company for the breach thereof, or if it should be judged that the Covington Stock Yards Company could, by reason of rights acquired under said contract, exact payment of complainants for passing their stock through the yards of the Covington Company, this would not necessarily determine the question which is in controversy here, namely: the right of the defendants to subject the complainants to exorbitant charges by making the Covington Stock Yards the exclusive depot for delivering or receiving live stock shipped to or from Covington. On the other hand, should it be held in the pending suit that, under said

ulation, the Stock Yards Company had no right to demand payment of complainants for so passing stock through their yards, the order, in this case, which would be to the same effect, would be no longer important. It is not, therefore, perceived how a determination by us of the question in controversy here between complainants and defendants can lead to embarrassment, or injuriously affect any rights, which, in the federal courts, may eventually be found to exist.

Yet, that no possible injury may result to the parties, and that the orders of the Commission may conform to the final determination in said suit, leave should and will be given to either of the parties to this proceeding, to apply for a modification of this order at any time after such final determination.

ALLEGHENY RIVER COAL PRODUCERS ASSOCIATION

ALLEGHENY VALLEY R. R. CO.
(No. 89.)

A BSTRACT of complaint filed October 21, 1887, alleging the imposition of unreasonable and discriminative rates for the transportation of coal.

(The complaint is signed by eight Coal Companies composing the Association.)

The complaint alleges that while the defendant company, by a series of circulars, notices, and tariffs, of various dates (copies of which are given), gave notice of terminating all special rates, after April 1, and fixed rates on coal at great advances over former rates, it (the defendant) has nevertheless allowed the owners of coal mined at Phillipstown and Brady's Bend (two of the points named in their tariffs), a rate to Buffalo of eighty-five cents per ton—being much less than the published rates—and affording unjust advantage to such owners. At eighty-five cents complainants could have done a large business, as the favored owners have, while the rate of \$1.10, charged complainants, is almost prohibitory.

BOSTON CHAMBER OF COMMERCE

LAKE SHORE & MICHIGAN SOUTHERN R. CO. *et al.*

A PROTEST was received October 24, 1887, from Jerome Jones and others, a committee representing the following named business organizations of Boston, viz.: The Boston Druggists Association; The Boston Fish Bureau; The Boston Fruit & Produce Exchange; The Boston Grocers' Association; The Boston Merchants' Association; The Boston Paper Trade Association; The Boston Traffic Association; Dry Salters Club; The Earthenware & Glassware Association of Boston; The Lumber Dealers Association; The New England Furniture Exchange; The Boston Shoe & Leather Association; The Oil Trade Association; The Paint & Oil Club of New England.

The protest refers to the pending complaints of the Boston Chamber of Commerce (*ante*,

891), "wherein it is claimed that the practice of allowing an export rebate upon flour, grain, provisions and produce which have originally been billed and transported from points west of Buffalo over the Lake Shore & Michigan Southern, New York Central, and Boston & Albany Railroads and charged regular Boston rates, but after arrival in Boston, by subsequent act and determination of the consignees or owners, been reshipped to Liverpool or other foreign ports, or to the State of Maine, east of Portland, is an unjust discrimination in favor of the exporters and against the local consumers and dealers;" and protests against interfering with this custom, on the ground that "the principal of equalizing the rates so that shippers from the West may have the choice of the Boston route" has long been in practice and has been satisfactory.

The protestants further state that they "are in favor of the effort to secure a revision of the excessive difference in local rates to Boston from Buffalo and points West over those to New York, which is more than the difference in distance justifies."

George RICE of Marietta, Ohio,

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC R. CO., Alabama Great Southern R. Co., and New Orleans & Northeastern R. Co.

(No. 90.)

A BSTRACT of complaint filed October 24, 1887, alleging unreasonable and discriminative rates for the transportation of oil. (See *ante*, 854, 876, 443, 478, *et seq.*)

Complaint alleges that defendants' lines constitute a continuous line from Cincinnati to New Orleans "under a common management," etc.

1. That the rates for oil in barrels (car load lots) are unreasonable in themselves, being \$1.56 per barrel from Cincinnati to New Orleans.

2. That the defendants, at the "dictation" of the Standard Oil Company, of Kentucky, have discriminated in favor of that company since April 5, 1887, by charging it only eighty cents per barrel for the same service.

Each of the present complaints (Nos. 90, 91 and 93), sets forth the same facts as to complainant's business, and the intent to prejudice him, which are combined in the other cases, by the same complaint—Nos. 51–60 (*ante*, 876, 443, 478–482).

They apply to the Queen & Crescent Route and its connection, the East Tennessee, Virginia & Georgia R. Co., and in stating the discrimination, do not expressly allege that it arises from the difference between shipments in barrels and in tank cars, as was stated in the former cases.

George RICE

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC R. CO., Alabama Great Southern R. Co., and Vicksburg & Meridian R. R. Co.
(No. 91.)

A BSTRACT of complaint filed October 24, 1887.

Same facts set forth as in preceding, except that the figures are for transportation from Cincinnati to Vicksburg, Mississippi, charged Rice \$1.56 per barrel; Standard Oil Co. of Kentucky, seventy-five cents.

George RICE

CINCINNATI, NEW ORLEANS & TEXAS
PACIFIC R. CO. and East Tennessee, Vir-
ginia & Georgia R. Co.

(No. 92.)

A BSTRACT of complaint filed October 24,
1887.

Same as preceding, except that the points are
Cincinnati and Knoxville, Tenn.

To Standard Oil Co. of Kentucky, 91 cents

To complainant - - - 1 83 "

Re IOWA BARB STEEL WIRE CO.

1. Whether a special privilege, granted by railroad companies to manufacturers in a single line of trade, but not to manufacturers in general, is consistent with the rule of equity and justice which the Interstate Law undertakes to establish, is a question upon which an opinion ought to be expressed only after the most careful consideration; and the Commission ought clearly to see that duty requires an answer, before it proceeds to give one on *ex parte* application.
2. The Commission will not express an opinion where neither by complaint nor by application for relief is a case stated which will come within its jurisdiction.
3. The Commission has not been given a general dispensing power to relieve hardships under the Law, but its power in that regard is strictly limited.

PETITION for the continuance of an "equalized" rate.

Cooley, Chairman:

A petition is presented by this Company which sets forth that its business is located at Marshalltown, Iowa, on several lines of railway; that the raw material for its manufacture comes from points east of Chicago and, after the same is manufactured, it is shipped southwest, west and northwest; that before the first day of the present month petitioner had an "equalized rate" of freight, which is explained to mean that the fixed rate of freight paid by petitioner from Chicago to Marshalltown, added to the rate paid from Marshalltown to the place of consignment of its manufactured goods, equaled the rate from Chicago to such place of consignment. For example: If the rate of freight from Chicago to the Missouri River was twenty-five cents, and petitioner had paid fifteen cents from Chicago to Marshalltown, its rate from Marshalltown to the Missouri River would be ten cents. This is averred to be a just and equitable arrangement, which has enabled the petitioner to build up a very considerable and reasonably profitable

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business, to give employment to a large number of mechanics and laborers, and to agree to furnish a home market for its products. It has proven satisfactory to the city and surrounding country, and is also averred that while just to the petitioner it has not been a discrimination against other persons or locality. And the petitioner prays on behalf of itself and other like manufacturers, that the Commission shall set the equalized rate, or at least suspend operation of the new Law as applied to the industry mentioned, and that railroad companies be authorized to refund to the manufacturer any excess they may have charged or collected from them before the Commission's action or suspension has been made public.

From this statement of the petitioner it is apparent that what is prayed for is an equal privilege—a privilege not granted to manufacturers in general, and which must be of very great value to the line of trade with which it is thus favored. No doubt what is asserted in the petition is true, that the described industry has prospered in consequence, and that where it is located has received some of the benefit. But whether a special privilege of the sort granted to manufacturers in a single line, but not generally, is consistent with the rule of equity and justice which the Interstate Commerce Law undertakes to establish is a question upon which an opinion ought to be expressed only after the most careful consideration. The consequences of an opinion favorable to the petitioner might tend to injuriously affect other interests, and give rise to complaints of discriminations; the Commission ought clearly to see that it requires an answer before it proceeds to give one on *ex parte* application.

The first question, then, to challenge the action of the Commission, is whether the Commission gives jurisdiction for any authoritative expression of opinion upon the facts of the case. If it makes any complaint which comes within the cognizance of the Commission, or if for any relief which it is in the power of the Commission to grant, it then becomes the duty of the Commission to consider the facts and apply its judgment; but if neither by complaint nor by application for relief is a case stated which will come within its jurisdiction, any expression of opinion upon the facts will be binding upon no one, and might be regarded with impunity. The Commission is not uniformly, under such circumstances, to express opinions when private individuals or corporations have called for them.

The petitioner in this case makes a complaint of violation of law by the railroad companies; the complaint is that a privilege is granted. But the privilege is one which is lawful, the companies might withhold it, and the petitioner would be without any view of what was dictated by interest or their policy. On the other hand, the privilege is one which the railroad companies cannot grant voluntarily because coming under the condemnation of the Law; neither can the Commission give authority to grant it. The Commission has not been given a general dispensing power to relieve hardships under the Law, but its power in

gard is strictly and carefully limited. The Law lays down a general rule of equality of right and privilege, and the Commission has no more authority to make exceptions to that rule than have any other persons, except in the particular cases the Law in terms provides for in section 4.

The case set out in this petition is not one of the exceptional cases for which the Law provides. The Commission is therefore powerless to make any order upon it. *Under such circumstances, it is proper and in accord with its practice to withhold any expression of opinion.*

Re UNITED STATES COMMISSION OF FISH AND FISHERIES.

1. As the United States Commission of Fish and Fisheries is one of the agencies of the government, and the distribution of fish and eggs by that Commission is by authority of the government, the transportation of fish and eggs so distributed falls within the exception of section 22 of the Act.
2. The Interstate Commission declines, in the absence of an actual case, to pass upon the question of the propriety of railroads continuing the issuance of free passes to the United States Fish Commission and the National Museum, to enable their employees to carry on their official duty at less expense to the United States.

ON April 19, 1887, the following communication was received by the Commission: United States Commission of Fish and Fisheries, Washington, D. C., April 16, 1887. The President of the Interstate Commerce Commission.

Sir: For many years past the United States Fish Commission has enjoyed certain privileges given to it by the railroads of the United States, with scarcely an exception, with regard to the transportation of fish and eggs from one part of the country to another in cars built especially for the purpose, and attached to passenger and express trains. The usual rate for such service to private individuals, when not performed as a matter of courtesy for railroad officials of other roads, is from eighteen to twenty-five fares, which at an average rate of three cents per mile would represent from fifty-four to seventy-five cents per mile. The highest charge made by any of the roads to the Commission is twenty cents per mile for a car and five messengers, regular fares being paid for any number of persons above five. In many cases the cost of service is even less, being established by some roads at ten cents per mile; while in repeated instances no charge whatever is made, the car and messengers being carried free. It is estimated that the reduction of cost to the United States by these concessions amounts to not less than \$20,000 or \$30,000 per annum. The appropriations made by Congress would be entirely inadequate to meet the cost of operations of

transportation but for the concessions in question; and the scope of the work of the Commission would be greatly reduced if full payment was required.

The railroad companies are all interested in the work of the Commission, and especially in having proper plants of fish made along their lines, thus increasing the food resources of the country traversed, and inducing a considerable amount of travel on the part of anglers and others.

I find in section 22 of the Act the following clause: "That nothing in this Act shall apply to the carriage, storage or handling of property free or at reduced rates for the United States, state or municipal governments, or for charitable purposes," etc.; and I now beg to inquire whether this applies to the service in question, and whether I may assure such railroads as are willing to continue the favor that their favorable action in the premises would be legal. I ask for an answer at your early convenience, as the work of distribution of shad to the West should begin at an early day.

I would also ask to be informed whether the railroads may continue their practice of issuing to the United States Fish Commission and the National Museum passes to enable their explorers and agents to carry out their official duty at less expense to the United States. It is of course understood that all passes to be used on private business are to be excluded; but a large sum of money is saved annually to the government, by the practice in question. I have not yet ascertained whether the railroad companies would be willing to continue their liberal action in this respect, but desire to have some ruling from you on the subject.

Very Respectfully,

Spencer F. Baird,

U. S. Commissioner Fish and Fisheries,
Secretary Smithsonian Institute.

Schoonmaker, Commissioner, in reply, said:

As the United States Commission of Fish and Fisheries is one of the agencies of the government, and the distribution of fish and fish eggs is by authority of the government, it would seem clear that such transportation falls within the exception in the twenty-second section of the Act to Regulate Commerce, recited in the communication.

(And after citing as conclusive on this branch of the inquiry the opinion *In the Matter of Indian Supplies*, ante, 22, he continued:)

The other branch of the inquiry, "Whether the railroads may continue their practice of issuing to the United States Fish Commission and the National Museum passes to enable their employees and agents to carry on their official duty at less expense to the United States," the Commission declines to express any opinion upon, in advance of an actual case that may be presented for its official action.

The Act is silent upon the question of passes or free carriage for officers or agents of the government; and manifestly the question should only be considered and decided upon a hearing after complaint, should any be presented, for alleged violation of the Law.

Adolph OTTINGER

v.

SOUTHERN PACIFIC R. R. CO.

1. The Act to Regulate Commerce does not afford a remedy for transactions which occurred before it took effect.
2. Where a railroad ticket broker, having no apparent interest in the transaction, presented a complaint alleging unjust discrimination on the part of a railroad company in permitting a certain person to transfer to another the return portion of a passage ticket, while it refused to grant the same privilege to a third person holding a ticket alleged to be similar (but which was not so in fact), *held*, that the person aggrieved should complain in his own name, and that the complaint by the ticket broker would not be entertained.

COMPLAINT charging unjust discrimination in violation of sections 2 and 3 of the Act. The complainant states that he is a railroad ticket broker doing business at San Francisco, California, and alleges substantially the following facts:

That on June 3, 1887, one Mrs. T. M. Randolph was owner of the return portion of a first class railroad ticket over the Southern Pacific railroad, of which a photographic copy is given in the petition, which said ticket was permitted to be sold by Mr. Randolph to another person, through and by virtue of the authority of the Southern Pacific Railroad Company, through its authorized agent, T. H. Goodman, the general ticket and passenger agent of said Company, who indorsed on the reversed side of said ticket the following: "Good for passage of Mrs. Sherwood if accompanying Mrs. Randolph. T. H. Goodman, G. P. & T. A." That on June 17, 1887, one August G. Rommel was the owner of a similar ticket, of which a copy is also given, and applied to said agent for the same and like privilege granted to said Mrs. Randolph, but said Company through said agent refused it. It is further stated that said Rommel desires to sell his said ticket, and his affidavit in support of the facts is appended to the petition. The complaint further avers that within two years next last past 175 tickets of similar character, sold by complainant to be used for passage over said railroad, have been, when offered on the cars, seized and destroyed; to his great injury, for which he demands damages.

Mrs. Randolph's ticket, as shown in the complaint, was a ticket good for a return over one specified route if used within thirty days. The return part of Rommel's ticket entitled the purchaser to choose one of four routes, and to have a ticket issued in pursuance of the choice; and it did not appear that the route of return had been selected, nor had the return ticket been obtained when the privilege of transfer was demanded.

Walker, Commissioner, addressing the petitioner's attorney by letter, said:

The complaint in the case of *Adolph Ottinger v. The Southern Pacific Railroad Company* was duly received, and has been considered
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attentively by the Commission. It is returned with the following suggestions:

The allegations commencing with the words "That said plaintiff within the two years next last past" (referring to 175 tickets alleged to have been purchased and sold by complainant, which were seized when presented for passage) should be expunged, as the subject matter thereof does not appear to be within the jurisdiction of the Commission. The Act to Regulate Commerce does not afford a remedy for transactions which occurred before it took effect. And the transaction with Mrs. Randolph is stated as having occurred on June 3, 1887. If the case stated respecting the 175 alleged tickets was the same, there would be no grounds to claim a preference under the Law as to transactions prior to that date. The case stated, however, is not the same; and upon several grounds no *prima facie* case as to those tickets is presented.

As to the Rommel tickets the Commission prefers that if Mr. Rommel has a grievance, he should present it in his own name. His affidavit is annexed to the petition, but the complaint is made by a party having no apparent interest in the transaction. The Commission is given by the Law a certain discretion in reference to its investigations; and it has so many actual controversies pending that it cannot enter upon the investigation of moot cases. A reasonable evidence of good faith in the present case would seem to be the complaint of the party said to be injured.

It is proper to say further that the Randolph ticket is uncanceled, and the time for its use has expired. It does not appear that the transferee, Mrs. Sherwood, was in fact transported on it, but only that Mr. Goodman indorsed it as "good" for her passage "if accompanying Mrs. Randolph." This was apparently an act of courtesy which the party did not see fit to make use of.

Nor are the Rommel tickets similar in form to the Randolph tickets. They have not reached the same stage. As they stand they are good over four routes, and no selection has been made or return ticket issued.

MISSOURI & ILLINOIS RAILROAD TIE
& LUMBER CO.

v.

CAPE GIRARDEAU & SOUTHWEST-
ERN R. CO.

Where it appears that a carrier to whom freight is delivered for transportation from one point to another in the same State has nothing to do with its transportation out of the State, the fact that the ultimate destination of the freight is another State, to the knowledge of such carrier, will not bring the transportation by such carrier within the jurisdiction of the Commission.

COMPLAINT charging unjust discrimination.

The complainant is engaged in getting out ties along the line of the defendant's road, some of which it desires to transport over that

road to Cape Girardeau, on the Mississippi River, where it has a contract for their delivery. The managing officers of the defendant are informed that the ties are to be taken by boat at Cape Girardeau across the river into Illinois; but such transportation across the river is entirely independent of the transportation requested of the defendant, and it will be by boats not in any respect under the control of the defendant, or forming a continuous line with it, or operated with it under any common arrangement.

The complaint is that the defendant fails to give the complainant cars for the transportation of its ties on request, although at the same time it gives cars to a rival dealer. The road of the defendant is entirely within the State of Missouri.

When the complaint was presented the Commission called attention to the fact that the transportation asked for would be entirely within the State of Missouri and, therefore, apparently not within the jurisdiction of the Commission. Complainant relied upon the fact as giving jurisdiction that the ultimate destination of the ties was another State, and the defendant knew the fact; but as it appeared that the defendant was to be in no way connected with any transportation out of the State, this was held to be unimportant, and the Commission declined to entertain the complaint.

The BOARDS OF TRADE UNION of Farmington, Northfield, Faribault and Owatonna, in the State of Minnesota,

CHICAGO, MILWAUKEE & ST. PAUL R. Co.
(No. 27.)

*The Chicago, Milwaukee & St. Paul Railway Company owns and operates an extensive system of railroads. One of its lines, used largely for the transportation of wheat, runs from a point in Dakota Territory through Minneapolis and St. Paul, to Milwaukee and Chicago. Between Minneapolis and Milwaukee defendant has two routes, one by way of Red Wing and other towns, called the River Division, and being the shorter route; the other by the way of Northfield, Faribault and other towns, and called the Iowa and Minnesota Division. The through rate on wheat from the western terminus in Dakota to Milwaukee and Chicago is twenty-five cents per 100 pounds, with the privilege of milling in transit on both the above mentioned divisions. The rate on wheat from said western Territory to Minneapolis and St. Paul when consigned there, and most, if not all of which is carried by other roads, is seventeen and a half cents a hundred. The rate on the River Division of defendant's road and other competing roads from Minneapolis to Milwaukee and Chicago, and from all intermediate and connecting points on that route, is seven and a half cents a 100

pounds. The rate on wheat on the Iowa and Minnesota Division from Minneapolis and the intermediate towns on that division is fifteen cents per 100 pounds, except from Farmington, which has thirteen and a half cents. The rate on other commodities is the same by both routes. The fact that the rate of wheat on the Iowa and Minnesota Division is double the rate enjoyed by neighboring towns on the other division works practically to their disadvantage and prejudice.

On complaint of millers and others on the Iowa and Minnesota Division of unjust discrimination, *held*:

(a) That the complaint is well founded; that the rate on wheat on that division is relatively too high; that while a reasonable differential may be allowed on that division, on account of greater distance and probable larger expense of transportation and the greater stringency of the competitive forces on the River Division, the difference above the present rate on the River Division should not exceed two and a half cents a hundred.

(b) That it is not a sufficient compliance with the Law that rates are reasonable in themselves, but they should be so relatively reasonable as to protect communities and business against unjust discrimination.

(c) That when the same carrier operates parallel lines, and for any cause accepts low rates on one line, it should furnish sufficient corresponding advantages to the patrons of the other line to prevent undue prejudice and disadvantage, and to preserve the substantial equality contemplated by the statute.

(Decided November 2, 1897.)

COMPLAINT charging unreasonable rates and discrimination in the transportation of wheat.

The facts are stated by the Commission.

Mr. A. D. Keyes, for complainant.

Mr. Burton Hansour, for defendant.

REPORT AND OPINION OF THE COMMISSION.

Schoonmaker, Commissioner:

The complaint in this case sets forth that the charges made by the defendant railroad company for services rendered in the transportation of wheat, flour, and mill stuffs, from the Towns of Farmington, Northfield, Dundas, Faribault, and Owatonna, in the State of Minnesota, to points on the defendant's road in the States of Iowa, Wisconsin and Illinois, are unjust and unreasonable; and also that the defendant company, contrary to the Act of Congress, charges and collects from persons living and doing business at Farmington, Northfield, Dundas, Faribault and Owatonna a greater compensation for services rendered in the transportation of wheat, flour and mill stuffs to points on its road in the States of Wisconsin, Iowa and Illinois, than it charges and collects from persons living and doing business at St. Paul, Minneapolis, Stillwater, Menomonee,

* Syllabus by SCHOONMAKER, Commissioner.

Eau Claire and Chippewa Falls, for a like and contemporaneous service in the transportation to the same points of a like kind of traffic, under substantially similar circumstances and conditions, thus subjecting the complainants to undue and unreasonable prejudice and disadvantage.

The facts found in this case are as follows:

The complainants are engaged in the milling business and have flouring mills at the places named in the petition. Their main supplies are procured from Western Minnesota and from Dakota; but they also purchase and grind wheat produced locally in the vicinity of their mills; and in case of the failure of the local supply they purchase what additional wheat they need in the Minneapolis market.

The Chicago, Milwaukee & St. Paul Railway Company controls and operates an extensive railway system, extending westerly, by different lines, to Iowa, Nebraska, Minnesota, Dakota, and leading to Chicago as the eastern terminus. One portion of the system, which is in question in this case, is operated from the vicinity of Aberdeen, in Dakota, to Minneapolis and St. Paul; thence, by two routes, to Milwaukee, and thence, on the same tracks, to Chicago. The more direct route from Minneapolis and St. Paul runs on the west side of the Mississippi River, in Minnesota, through Hastings, Red Wing, Wabasha, and La Crosse, to La Crosse, in Wisconsin, to which point it is known as the River Division; and from La Crosse, through Portage, to Milwaukee, which is known as the La Crosse Division; and thence to Chicago, known as the Chicago Division.

The other route from Minneapolis and St. Paul diverges to the west and south until it reaches Milwaukee, and extends through Farmington, Northfield, Dundas, Faribault, Owatonna and Austin, in Minnesota, and Calmar, in Iowa, to McGregor, in the same State, known to that point as the Iowa and Minnesota Division; from McGregor through Prairie du Chien and Madison to Milwaukee, and thence on the same tracks as the first route to Chicago, being known as the Prairie du Chien & Chicago Divisions.

Both branches are under the same management, and for a distance of eighty-five miles from Milwaukee to Chicago constitute one line of road.

The defendant also owns and operates, as parts of its general system, lines of road from Stillwater to Hastings, and from Northfield to Red Wing, all in Minnesota; also a line from Menomonee, Wisconsin, to Wabasha, Minnesota; another from Chippewa Falls, Wisconsin, to Wabasha; and a line from La Crosse, on the River Division of the direct route from St. Paul through McGregor, Iowa, to Sabula, Iowa, and from thence through Savannah and Davis Junction to Chicago.

The distance from Minneapolis to Chicago via Red Wing and La Crosse is 420 miles; via Faribault and Prairie du Chien, 496 miles; via Faribault and Sabula, 458 miles; via Red Wing and Sabula, 441 miles. Farmington, Northfield, Faribault, and Owatonna can reach Chicago by three different routes over defendant's road, one via Red Wing and La Crosse; another via McGregor and Prairie du Chien; and

a third via McGregor and Sabula, the distances varying only slightly. The route by way of Prairie du Chien is a few miles in excess of the direct route from Minneapolis, and the other two a little less than that route.

The original points of shipment of wheat by defendant are mainly localities in Western Minnesota and in Dakota Territory, and it is billed to Milwaukee or Chicago by a method known as the milling in transit system, by which the through rate is paid at the place of shipment, with the privilege of converting it into flour *en route*, and then sending forward the flour, without further charge to the point of destination.

In addition to the transit wheat thus transported, considerable quantities of wheat are consigned to Minneapolis and delivered there by other roads, and milled, or sold and shipped to other points. This is called free wheat, to distinguish it from the transit wheat.

The transportation rate charged by the defendant on through shipments of wheat from Dakota and Western Minnesota to Milwaukee and Chicago, with the privilege of milling in transit at Minneapolis and other points on the River Division of its road (and also at Farmington, Northfield, Faribault, Dundas, and Owatonna on the Iowa and Minnesota Division), is twenty-five cents per 100 pounds. This rate is divided into a charge of seventeen and a half cents per hundred from the points of original shipment to Minneapolis and St. Paul, and seven and a half cents per hundred from Minneapolis and St. Paul and from all points south of those cities on the River Division to Milwaukee and Chicago.

Free wheat and flour and mill stuffs transported from Minneapolis and St. Paul by the River Division to Chicago or Milwaukee are charged seven and a half cents per hundred, being the proportion of the through, or milling in transit rate from Dakota to the same destinations.

The rates charged by defendants for transporting wheat, flour and mill stuffs from April 5, 1887, to May 26, 1887, from all the petitioning towns to Milwaukee and Chicago was eighteen cents per 100 pounds. On May 26, the rates were reduced from Faribault to fifteen and a half cents per hundred, and from Farmington to thirteen and a half cents per hundred. On June 1, 1887, the rates were reduced from Northfield, Faribault, Dundas and Owatonna to fifteen cents, and were left at thirteen and a half cents per hundred from Farmington, at which sums they have since been maintained. The rate from Minneapolis to Milwaukee and Chicago, over the line through the petitioning towns, is also fifteen cents per hundred. Prior to and until April 5, 1887, a milling in transit rate of nine and a half cents per hundred was given the petitioning towns to Milwaukee and Chicago.

The tariff rates for other freight from Minneapolis to Chicago are the same over both routes.

On these facts the petitioners claim that they are discriminated against and suffer undue prejudice and disadvantage. They urge that they are required to pay fifteen cents per hundred on the Iowa and Minnesota Division of defendant's road for the transporta-

tion of the same kind of property that is charged only seven and a half cents per hundred on the River Division of the defendant's road, and that their business suffers seriously in consequence.

They concede that some difference in the rates on the two divisions may reasonably exist under the conditions affecting traffic on the River Division, and on account of the longer distance to Milwaukee and Chicago by the other division, but claim that a rate one third higher, or ten cents per hundred, should be the extent of the difference, and is all that the business will bear.

The defendant insists that the rates from the petitioning towns are reasonable and are in fact a large reduction on former rates; and that the seven and a half cent rate from Minneapolis by the River Division is too low, but is forced upon the Railroad Company by the competition of other lines of road running to Chicago, and by lines running from Minneapolis and St. Paul to Duluth for shipment by way of the Lakes to Buffalo, which latter roads charge only five cents per hundred from Minneapolis to Duluth. The rates from Duluth to eastern points being only two and a half cents a hundred higher than from Milwaukee and Chicago to the same eastern points, the defendant contends that it has no option except to conform to the Duluth rates or abandon the business.

The conditions of competition that exercise controlling influence on the rates for wheat transportation over defendant's lines from Minneapolis doubtless exist. They are not dependent upon the volition or action of the defendant. The defendant has yielded to their force in establishing its wheat rate upon its River Division, and all the towns upon that division enjoy the low rate that the defendant is willing to give from Minneapolis. Upon the Iowa and Minnesota Division, however, which is coterminous at Minneapolis and Milwaukee with the River Division, a similar rate is refused, and a rate double in amount is charged for the same kind of traffic. This division is apparently regarded as a separate and independent line, and for that reason at liberty to charge rates deemed suitable for the traffic without reference to the rates on the River Division, or to their effect upon business along the respective routes. This principle is not admissible. The carrier by both routes is the same. The rates for other traffic besides wheat are alike upon both divisions. The same reasons that give equality of rates to other traffic upon the two routes apply with equal, if not greater force, to the article of wheat. Although the low rate on the River Division may result from circumstances apparently beyond the control of the carrier, and may be necessary to enable the carrier to participate in the business, yet, being willing to carry for that rate, the carrier should not, by a relatively unjust rate on the other division, impose a burden that renders business in wheat and flour practically impossible along that division.

A fair statement of the existing disparity demonstrates its indefensible injustice. A Minneapolis or St. Paul miller purchasing free wheat in those cities which has paid a rate of seventeen and a half cents a hundred ships its

products to Milwaukee or Chicago at seven and a half cents a hundred. A miller in the complaining towns purchasing free wheat in the same cities or local wheat is required to pay fifteen cents a hundred to reach the same destinations with its products. The capacity of one of the mills in Dundas is 600 barrels a day. It is computed by complainant's counsel that if its proprietor should purchase wheat in his own vicinity to operate his mill for a year, or should purchase it at Minneapolis, it would cost him to deliver his flour at Chicago \$28,170 more than the cost to a Minneapolis miller for the same quantity of wheat ground and flour shipped over the favored line. That would probably exceed the profits of the business, and the loss would fall upon the producer of the local wheat and the miller.

In a State where the wheat product is so large as in Minnesota, and the chief agricultural staple, inequalities of rates that affect industries so materially are of vital importance.

If the different rates on the two routes worked no hardship or injustice to anyone, there would be no occasion for corrective remedies; but when, as the fact was shown in this case, the producers and millers located in the petitioning towns and along that division are seriously injured, and their business disastrously affected by the double flat rates charged them, the public interests are concerned, and a case is presented demanding redress. These rates obviously preclude competition with the Minneapolis and St. Paul mills and those on the River Division.

The two branches of the defendant's road from Minneapolis to Milwaukee, the one through Hastings, Red Wing and La Crosse, and the other through the petitioning towns, cannot, on the facts of this case, be deemed the same line within the meaning of the fourth section of the statute. But both branches belong to and are operated by the defendant, and are under the same management, and trains may be run from Minneapolis over either branch.

While the inhibition of the fourth section of the Statute, against charging more for a shorter than for a longer distance over the same line, does not literally apply, the defendant under the circumstances of the case is required to make its rates reasonable on both branches of its road. If the two lines were separately owned and operated, competition might substantially equalize the rates. And the fact that one company controls parallel lines affords no warrant for giving superior advantages to the patrons of one line and denying similar advantages to those of the other line. It may not be essential that the rates on the two lines should be identical. Some difference on account of greater distance and increased operating expenses and the conditions affecting the traffic may be reasonably permissible. Nor is it enough that, independently considered, as if the parallel line did not exist, the higher rates might be deemed reasonable. They should be relatively reasonable, in view of their relations to each other and their effect upon the public, in order to prevent undue and unreasonable prejudice and disadvantage, and thus in their results become unjust and unreasonable. Under the present rates the apparently low charges on the route embracing the River and La Crosse

Defendant alleges in its answer, "That for the purpose of facilitating such sales it has established land offices; that to enable parties negotiating with it for the purchase of its lands to personally inspect the same, it has established the rates mentioned in said petition, and has sold, and is now selling, tickets to said parties at such rates; that it has established said rates and is selling said tickets solely to facilitate the sale of said land, and to induce the intending purchasers to purchase the same by offering them such rates of transportation as will enable them to personally inspect its said lands before purchasing, without subjecting them to any great expense if, after inspection, they should be dissatisfied with said land, or should determine not to purchase the same."

Further, the answer is as follows: "Defendant denies that it has ever sold or will sell said tickets to any person merely upon representation or statement of said party that he is a land explorer or settler. On the contrary it avers the fact to be that it has always intended and has always instructed its emigrant and ticket agents not to sell said tickets to any person, unless satisfied that such person in good faith desires to personally inspect defendant's land with a view to making purchases thereof, and procures such tickets for that purpose."

Other owners, especially the government, have land for sale in the same market, and which land adjoins in many instances the land of defendant.

When the defendant owns lands and is in the same market as a vendor, does it not act, in selling the same, as a private individual?

The question is this: When the defendant is a competitor in selling land with the government and with others, all in the same market; the same class of lands; and the same class of purchasers; in the same locality, and at substantially the same prices, can it use its powers as a public carrier to its own private advantage for the sole purpose of promoting the sale of its own lands for its own benefit?

Where, in such case, other owners present a person who desires to inspect their lands, can the defendant charge such person \$10 for a ticket to a station, and those expressing a desire to inspect its own lands a ticket for \$5, or a mere nominal sum for passage to the same station?

Two parties desire to purchase, one from the defendant, one from another owner. The circumstances are the same, that is, the intending purchasers both desire to locate upon the land and cultivate it; they both desire to use the land for the same purpose; the price is substantially the same; then perhaps comes in a third purchaser who intends to enter upon government land as a pre-emptor or homesteader. Here then are three persons at a station on the line of defendant's road desiring to procure tickets to another station upon the line of its road. All of them are farmers, and, as above stated, desire to enter upon land of the same character, which they desire to cultivate; but the defendant discriminates in favor of the one desiring to inspect its own land as against those desiring to enter upon, inspect or purchase the other lands.

The only reason for this discrimination is that thereby the defendant may possibly be benefited by a sale of its own land.

The benefits which will be derived to the country and the public at large will be the same in the three cases; and all the advantages which are set forth in the defendant's brief in this proceeding as a reason for inducing the settlement of their lands would apply equally to a settlement upon land of other parties and upon government land.

If the Railroad Company can sell return tickets at reduced rates, so it can for the same reason sell tickets for a nominal sum.

The argument that the defendant may make such discrimination for its own advantage is without force. All discriminating rates are made with a view of promoting the interest of the party making them. The circumstance that it owns land cannot be held to justify it in discriminating by its rates as against other land owners and as between parties desiring to purchase similar lands in the same market.

That the defendant may obtain some advantage from the sale of its land is true; so it would obtain the advantage from the location of a large mill in a town upon its line where no mill exists, and where grain in consequence of there being no mill is diverted into other channels; and the reason for the location of such mill is to prevent the diversion of such grain to other points.

Again; such a mill if it were large enough might form the nucleus of a new town. The location of such a mill might afford as much, if not a greater, advantage and benefit to the defendant than the sale of a large quantity of its land; and yet it will not be contended that a discrimination in passenger rates and freights to aid in the location and erection of such a mill can be made.

The counsel for defendant contends that the selling of tickets to land explorers, that is, to those who represent that they desire to inspect its land with a view of purchasing the same, is not in contravention of the Statute, because the defendant is willing to sell tickets to all parties desiring to inspect its land, at the same price.

But its interest is not alone to be considered in determining what are substantially similar circumstances and conditions. Under the facts of this case others have similar land to sell; and parties desiring to inspect or purchase are refused the same rates and facilities, for a like and contemporaneous service, that are granted to those desiring to inspect the lands of this defendant; and the provisions of the fourth section are likewise violated for the same reason.

Now, the defendant may have but a few quarter sections in one locality, while on the other hand the government may have a large number of sections open to settlement under the preemption and homestead laws.

To repeat what has been said: If these parties desiring to locate upon government land should apply to the defendant for land explorers' tickets, the defendant would refuse them, because there could be no honest claim made that the parties asking for such tickets desired to inspect the lands of the defendant with a view to purchase. The discrimination then is made to those who represent and satisfy the servants of the defendant that they desire to inspect its lands with a view to purchase, and for that reason alone.

Again; a comparison of the published tariff rates, a copy of which is on file with this Commission, and the rates for land explorers' tickets as per circular Number 496 attached to the petition, will show that the defendant does not offer such rates to and from all stations on its line between given points, but only to the stations named in its circular, so that there is a clear discrimination in its own interest and as to certain localities where in its view its best interest will be promoted. There are presumably many stations on its line to which such tickets are not sold where there is land for sale.

It is urged by the defendant that parties desiring to inspect and purchase land are often parties of small means, who can ill afford to pay the expense of the journey at the regular tariff rates, and this is offered as a reason for issuing land explorers' tickets; but this reason holds good only to those who desire to inspect and purchase the land of the defendant and not the land of others.

When sifted down the answer of defendant is: If you will agree to inspect our lands with a view of purchasing from us, we will reduce your transportation to lands owned by us, but not to the lands of others or to the land of the government open to settlement.

Again; the defendant does not pretend that it offers land explorers' tickets to those who claim that they desire to inspect with a view of purchasing such land as may be found along or in the vicinity of its road. The sale of land explorers' tickets to such persons would be clearly an unjust discrimination.

Twenty persons desire to purchase tickets from St. Paul to a station upon the line of defendant's road. Some travel for pleasure, others to sell goods, and others to inspect land with a view of purchasing. The last are sold tickets at a reduced rate. Can this be justified? Why should men pursuing one object be favored as against those in pursuit of another object?

Again; who is to determine whether parties applying for land explorers' tickets are acting in good faith or not?

The circular reads: "No tickets at rates named herein are to be sold, except on order of Mr. P. B. Groat, General Emigration Agent."

If the sale of such tickets is justifiable in a case where the purchaser in good faith proposes to inspect with a view of purchasing the lands of defendant, the danger of deception is so great, and the means of determining the good faith of such party so uncertain, and the chances of a sale so remote, that the defendant should not prevail in its defense in this proceeding.

As To Settlers' Tickets.

The reason urged for the rebate as to settlers' tickets is substantially the same as urged for the settlement of lands belonging to the defendant; and the reasons are equally applicable to cases of settlement upon lands of the government or other owners.

Of course we do not intend to controvert the position of the defendant that the settlement of the land is of great advantage to the general public and to the defendant.

The question is whether, under the Interstate Commerce Law, the defendant can make

discrimination for that reason, an dividing its passengers into various classes, apportioning the cost of transportation to the classes in proportion to the benefit assumed will be derived to the railroad in the various vocations and employments which they may become engaged in. The view the defendant might, on account of supposed advantages to be gained by the public and itself, give to settlers upon near its line, which the settler is to special rates, which it would refuse a mechanic desiring to locate in a town line.

A physician who proposes to settle near a community of farmers, although services are absolutely necessary to the community, cannot procure the special rate.

A purchaser of land is entitled to a rebate; but the laborer who desires to go to the land to cultivate it is not entitled to a rebate; yet the services of the laborer results of his labor are what it is claimed the defendant.

Under the argument of the defendant should be discovered in a particular country along the line of its railroad, on account of the benefit it would therefrom, sell tickets at a reduced rate to parties who would give assurances intended to engage in boring for oil. A particular township should desire the establishment of a mill, then the Company could reduce the rates to those who intended to locate in the township. If a town was without a merchant dealing in a particular stock of goods, it could grant a special rate to a merchant who desired to locate in such a town.

Finally.

The discrimination being admitted, it is incumbent upon defendant to show that it is justifiable under the provisions of the law.

In the case *Re Southern Railroad Ship Assn.* 1 Inters. Com. Rep. 291, the Commission has decided that the existence of actual competition may make up the circumstances and conditions entitling a carrier to charge less for a longer than a shorter haul, etc., in certain cases.

The decision in that case and in the *Union Case* meets the contention of the defendant as to the right to sell settlers' tickets at reduced rates.

In the case at bar the discrimination is in favor of one passenger as against another, the same train and from and to the same place and possibly traveling for the same purpose.

It is difficult to name a state of facts which will justify any such discrimination, quite apparent that the interest which the defendant has in the business or the personage of one of those passengers to deal with will justify such discrimination.

Messrs. James McNaught and Bullitt, Jr., for defendant:

The petition charges the defendant with a violation of sections 2 and 4 of the Interstate Commerce Act.

It appears that the defendant's regular rate for the transportation of passengers from St. Paul to Fargo, Dakota Territory is \$1.00, and that the rate for the round trip is \$1.50.

the rate from St. Paul to Jamestown, one way, is \$18, round trip, \$20.65, and that the rate to Dawson is \$15.05.

It also appears from the petition, answer and evidence, that the defendant has two kinds of tickets, denominated respectively "settlers' tickets" and "land explorers' tickets," which it sells at rates, between the above-mentioned points, less than it charges for the regular tariff tickets, and which it sells only to two particular classes of passengers, viz.: "settlers" and "land explorers."

The complainant contends: first, that the refusal of defendant to sell these tickets to the public generally, and the limitation of their sale to "settlers" and "land explorers" exclusively, are an unjust discrimination against the public generally, and in contravention of section 2 of the Act; and second, that the selling of such tickets as practiced by the defendant violates the fourth section of the Act.

The phrase "under substantially similar circumstances and conditions" has identically the same meaning in both sections. If a common carrier, under circumstances and conditions that are not substantially similar, charges or receives from any person a greater or less compensation for his transportation than it charges or receives from any other person for doing for him a like and contemporaneous service, it is not guilty of unjust discrimination; and so, if that greater or less compensation happens to be for carriage over a longer distance, less than is charged for carriage over a shorter distance, the shorter distance being included in the longer, still the carrier does not violate section 4, because the dissimilarity in the circumstances and conditions, which protect it from the charge of unjust discrimination also protect it from the charge of violating the "long and short haul" clause. In other words, the dissimilarity of circumstances and conditions which authorize a carrier to discriminate, also authorize it to charge more for a shorter than a longer haul. If, in the case at bar, the defendant is warranted in discriminating between "settlers" and "land explorers" on the one side, and the public generally on the other, on account of dissimilar circumstances and conditions, then, for the same reason, it is warranted in charging for the transportation of such persons for a longer distance less than it charges the public generally for a like and contemporaneous transportation for a shorter distance.

It follows, therefore, that if the circumstances and conditions of the service rendered to "settlers" and "land explorers" by defendant are not similar to the circumstances and conditions of the contemporaneous service rendered by it to the public generally, the defendant has violated neither section 2 nor section 4. Are they similar? This is the sole question, and will be discussed, first with respect to the "settlers'" tickets, and then with respect to the "land explorers'" tickets.

I. Settlers' Tickets.

We contend that the circumstances and conditions surrounding this class of passenger traffic differ radically from the circumstances

and conditions surrounding the passenger traffic with the public generally.

Generally speaking, all passengers occupy exactly the same relation to the carrier. The latter has invested a certain sum in its road bed, rolling stock, depots, platforms and other appurtenances, and is at a certain fixed expense to move every train. It is interested in getting the public to travel over its line only to the extent of the fares which it receives for such travel. A traveler, desiring to go to a certain point, pays the carrier a fixed sum to carry him to that point. The interest of the carrier begins with the application of the passenger for carriage, and ends when it has deposited him safely on its platform at the end of his journey. For performing the carriage the carrier receives a certain sum, proportioned to the distance traveled, the risk assumed, the amount invested in road bed, rolling stock and appliances, the expense of operation and all the circumstances of the case, so as to give to the carrier a reasonable and fair compensation or remuneration for the service performed. The carrier is interested in the transaction only to the extent of receiving its reward or hire, and carrying the passenger safely to the end of the journey, for which the reward or hire is given. Its interest and its duty both terminate when it has deposited the passenger on its platform at his place of destination. The reasons which induce the passenger to make the journey, the length of time the passenger will remain at his destination, the business he will engage in while there, in short everything connected therewith, except the actual carriage itself, and the fare received therefor, are matters of utter indifference to the carrier. Hence, it follows that all passengers should, as a general rule, be treated alike by common carriers. They stand upon the same footing, and are objects of the carrier's solicitude and interest, only because they are the pledges or assurances of so much revenue and so much pecuniary profit to the carrier.

The defendant's interest in "settlers" to whom it sells "settlers'" tickets, is of an entirely different nature. It appears that these tickets are sold to actual settlers only, to various points along the line of defendant's railroad. They are intended to, and do, enable persons of small means (as most settlers are) to locate permanently in the comparatively sparsely populated regions of Northern Dakota at a minimum expense for moving the settler's family, household goods and effects. That these cheap rates are advantageous to the settlers goes without saying; that they are a material factor in inducing persons in the older communities who contemplate a change, to seek their homes along the line of defendant's railroad, appears incontrovertibly from the evidence. The pecuniary saving to the settler which they effect is not, perhaps, a circumstance which takes them out of the operation of the Act to Regulate Commerce, but the effect which they have on the settlement of the country contiguous to defendant's railroad is a circumstance entirely dissimilar from the circumstances surrounding the passenger traffic generally, and warrants the de-

defendant in offering and selling these tickets to actual settlers.

It will be conceded that the defendant is interested to no small degree in the settlement of its territory. At the present time that territory has a very sparse population, scattered, by reason of the vastness of the country, over immense distances. A small population yields a small freight and passenger traffic; and hence the settlement of its tributary country is a matter of vital importance to defendant. With the increase of population of that country the revenues of the defendant will be proportionately increased; and every settler added to the number of its inhabitants means just so many dollars in defendant's pocket. For the purpose of encouraging settlement and inducing settlers to locate along its line, the defendant has adopted and published the rates mentioned in complainant's petition. If these rates were not offered intending settlers, it appears from the evidence that the settlement of the country through which defendant's road runs would be materially retarded.

We contend, therefore, that these rates are a necessity to the rapid development and settlement of Northern Dakota; and as a common carrier, dependent on its traffic for a revenue, the defendant is deeply interested in that development and settlement, because they directly produce an increase in its earnings in two ways:

First. The settlement of the country produces an increased tonnage of articles of commerce carried from the older communities of the East into such country. The settler does not and cannot produce, by his own labor, everything which he consumes. In order to supply the wants of himself and his family, he must, to a greater or less extent, draw upon distant markets. The supplies thus necessarily brought from the outside must pass over defendant's road as freight, and the defendant must receive a certain sum as a reward for their carriage. Suppose, for instance, that the present tonnage from the East, of articles of prime necessity to the base of supplies of any given section of country on defendant's road, is 20,000 tons per month, and within the next year the number of inhabitants of that section should be double, is it not certain that, after this increase in population has taken place, the tonnage from the East to the base of supplies will be increased correspondingly, say from 20,000 tons per month to 40,000 tons per month?

Second. The settler who locates along the line of defendant's road produces, by his labor, more than he consumes. He must get rid of his surplus products in some way, and he does it by shipping them over defendant's road to eastern points, receiving from such points those commodities in exchange which he cannot himself produce, and which are necessary to the comfort of his family. The defendant receives a reward for carrying this surplus out of the country, and thus its revenues are decidedly increased by the settlement.

This increase can be estimated with almost mathematical certainty in those cases where the settler engages in agriculture. The great and almost exclusive crop of Northern Da-

kota is wheat. The farms generally consist of 160 acres. Suppose, now, that a settler goes out to Jamestown, one of the points mentioned in the petition, and locates on a 160 acre tract to farm. He will usually sow at least 120 acres in wheat, and the yield, estimated at fifteen bushels per acre (a low estimate for Dakota), will be 1800 bushels. One fourth of this quantity will be required, say, for home consumption, and the remaining 1350 bushels will be surplus, to be sent to outside markets. The great wheat depots of the Northwest are Duluth and Minneapolis, and the farmer will send his surplus to one or the other of these two places. The tariff of defendant from Jamestown to either city is twenty-two cents per 100 pounds; and it will receive for its reward for the carriage, the sum of \$156.20. As nine settlers out of every ten who locate in Northern Dakota, engage in farming, it is safe to say that every man in 90 per cent of the whole number which settles along the line of defendant's road is worth, in additional freights, \$156 per annum to the defendant.

A third circumstance distinguishing the case of settlers from the general public arises from the fact that the defendant is a land grant railroad. By the Act which incorporated it, the United States granted to it twenty sections of land, designated by odd numbers, on each side of every mile of road in the Territories.

18 U. S. Stat. at L.

By virtue of this grant, the defendant has acquired 11,500,000 acres of land in the Territory of Dakota; and at the present time owns about 7,500,000 acres, having heretofore sold, in round numbers, 4,000,000 acres. The average value of these lands, at the present time, is estimated to be \$2.50 per acre.

Now the present value of these lands will increase in exact proportion to the increase of the population of Northern Dakota, where they are situated. If the population of that region can be increased so as to be as dense, in comparison to area, as the population of, say, Kansas, it is reasonable to assume that the value per acre of these lands will be \$15 or \$20 at the least, an appreciation which represents to the defendant the enormous sum of \$97,500,000, in round numbers. This estimate is, of course, an exaggerated one, for the increase in population must necessarily be gradual, and by the time it reaches the density supposed, the defendant will have disposed of a large part of its lands, and will not obtain the full benefit of their appreciation in value. But it illustrates the importance to the defendant of the settlement of the country. For every settler who locates along its line of road, a certain quantity of land, hitherto unoccupied, is withdrawn from the market. The effect of this withdrawal upon the value of adjacent lands will be inappreciable in the case of a single settler, or even a small number of settlers. But the pioneer in time attracts others around him in considerable numbers. The number of withdrawals becomes greater; fewer and fewer acres of good lands are left for the new comers to select from, and then the values of real estate begin to advance. The defendant, as a land owner, will reap the benefit of this advance, and should therefore be permitted to encourage settlement by every means in its power. Every settler

which it can induce to locate along its line adds so much to the present and future value of its lands in the vicinity of the settlement.

Are not these facts conclusive upon the question of defendant's right to discriminate in favor of actual settlers? If the advantage resulting to defendant from that discrimination were remote, and merely conjectural and hypothetical, the practice could not be sustained. But it is direct, positive, certain and almost capable of mathematical computation in dollars and cents. The case is precisely one of dissimilar circumstances and conditions which was contemplated by Congress when it inserted the phrase in the Act.

The case of *Larrison v. Chicago etc. R. Co.* 1 Inters. Com. Rep. 869, is clearly distinguishable from the case at bar. It was held in that case that a carrier cannot sell mileage tickets to commercial travelers for a less sum than to the public generally. The company contended that the circumstances and conditions of that class of travelers known as "drummers" were not similar to the circumstances and conditions of the public generally, for these reasons:

1. The company argued that the form of mileage ticket sold by it to drummers contained a clause which relieved it of a part of the liability under and subject to which it transported all other passengers. This contention was overruled by the Commission, upon the ground that any and every passenger might enter into such an agreement restricting the carrier's liability, as well and to the same extent as a drummer. The remarks of *Mr. Commissioner Morrison* upon this point of the case would be applicable to the case at bar, if every person who applies for passage could become an actual settler along the line of defendant's road. A contract limiting the carrier's liability can be entered into by any passenger whatsoever, whether he be a minister, a drummer, a doctor, a lawyer, a merchant or a gentleman of leisure. An arbitrary classification of passengers, according to occupation, permitting those of one class to make the contract, and refusing a like privilege to all others, is objectionable because the classification is purely arbitrary and artificial, and rests upon no peculiar circumstances of its own, not common to the other classes.

But the classification made by the defendant in the case at bar rests upon substantial and actual differences of circumstances in the case of settlers on the one hand, and the public generally on the other. We have already indicated those differences, and need not dwell upon them here. If every passenger who applies for carriage will agree to become a settler along defendant's road, the latter will give him a "settler's ticket" at the reduced rates. According to the decision of the Commission in the *Larrison Case*, a carrier must sell mileage tickets to every person who asks for them, and who is willing to enter into the contract limiting liability. And we understand that decision to mean that the carrier need not sell mileage tickets to any person who refuses to enter into the contract. The defendant here is ready, and has at all times been willing, to come within the letter and the spirit of that decision, by selling "settlers' tickets" to every passenger who will become a *bona fide* settler, and by refusing

to sell them to every passenger who will not become such settler.

2. The company argued in the second place that the placing of commercial travelers in a separate class was justified, because they generally rode short distances at a time, and traveled very much more than other people. It is apparent that this argument bears no resemblance whatever to the argument above given in support of defendant's practice with respect to "settlers' tickets."

3. It was lastly claimed that commercial travelers, as salesmen, represent wholesale merchants and manufacturers, for whom they sell goods, thereby creating a large freight traffic for the roads over which they ride. Upon this point *Mr. Commissioner Morrison* said:

"To increase the quantity of railroad business in the manner alleged, traveling salesmen must stimulate consumption, and add to the demand for the necessities and comforts of life. Commercial travelers are usually men of such energy and superior intelligence that they introduce into some communities articles useful and desirable earlier than such articles might otherwise reach them. Yet the general intelligence of the people is equal to providing themselves with such luxuries and comforts as their means will justify. And the representatives of merchants are not likely to sell, nor railroads to carry, more goods than customers can pay for."

It is apparent, from this language, that the Commission overruled this claim purely upon a question of fact. The base of supplies of any given section of country supplies the wants of that section; and the quantities of commodities necessary to supply those wants depend altogether upon the number of inhabitants of such section. Increase the number of inhabitants, and the quantity of goods necessary to supply their wants increases. Decrease the number, and the quantity decreases. Now, a drummer who visits a base of supplies for the purpose of selling goods to its merchants cannot, by any possibility, sell a greater quantity than is required by the section drawing upon that base. The inhabitants require a certain fixed quantity for their wants, and will procure this quantity at all events, even if the drummer does not visit the merchants. Any quantity over and above this fixed quantity is a surplus which they cannot consume and which they do not want. The merchants, being experienced in their business, know exactly what is necessary to suit their trade, and the quantity required, and are not in the habit of purchasing more than they can dispose of.

Hence, the drummer does not, and in the nature of things cannot, add one pound to the freight traffic of the railroad over which he travels to make his visit; and there can be no just ground for discriminating in his favor in the passenger rates charged for his carriage.

The case at bar, however, differs from the case considered by the Commission, because here every actual settler along the line of defendant's road, causes a certain increase in defendant's business; and adds a certain number of pounds to the freight carried both into and out of the country. The value of defendant's land is also enhanced; and it would seem clear

that the defendant was justified in discriminating in favor of so valuable a passenger.

II. *Land Exploring Rebate Ticket.*

That defendant is warranted in pursuing its practice with respect to the sale of these tickets

the purposes of the grant, viz.: of aiding in the construction of its railroad and telegraph line, by being placed upon the market and sold to persons desiring to purchase. It has therefore established a "Land Department" for the sale of its lands, with principal offices at St.

cial rates were not prohibited by that Act. It was, however, believed that Congress, in passing the Act, intended only to prohibit unjust discrimination practiced by common carriers without regard to the circumstances of any particular case, but granted purely as a matter of favoritism for the purpose of building up particular localities at the expense of other localities, or of giving some particular individual an undue advantage over his competitors. It seemed that the case of settlers had such a peculiar character of its own as to warrant an exception being made in their favor, as not coming within the purview of the Act and as not included within its scope liberally construed. It was also considered that unless special rates to settlers was given, the development of the Northwest would be greatly retarded.

Governed by these considerations the defendant, a short time after the Act went into effect, determined to renew the sale of these tickets, which sale had been discontinued for a short time after the Act went into effect; it has continued their sale up to the present time.

The sole question is whether the defendant is correct in its belief that these special rates are necessary, in order to secure speedy settlement of the territory through which its railroad runs. If it is, then we claim that the continuance of the practice should be permitted.

The question is purely one of fact; and the only testimony before the Commission is that of Mr. P. B. Groat, defendant's general emigration agent. The long experience which Mr. Groat has had in this kind of business entitled his testimony to be received with great consideration, and gives to it great weight.

What are the facts which Mr. Groat's testimony reasonably tends to prove? They are in substance that settlers, as a rule, are persons of small means; that unless they can secure reduced rates of transportation from the point of removal to their destination, they are unable to move, as their means do not permit them to pay the regular tariff rates; and that, unless such reduced rates were permitted, the settlement of the thinly populated regions of Northern Dakota would receive a blow, the full seriousness of which it would be impossible to calculate.

In considering this case, therefore, we urge upon the Commission the importance to the material prosperity and development of the Northwest, of permitting the defendant to continue the sale of these tickets to settlers. We firmly believe that they are an important factor in the settlement of the country through which the defendant's road runs, and that if they are prohibited, an incalculable injury will be inflicted upon that region. For this reason, if for no other, their sale should be allowed unless clearly and incontrovertibly prohibited by the Statute.

We respectfully submit that the petition should be dismissed.

Supplemental Brief.

In addition to the brief submitted herewith, which said brief was prepared before the trial and submission of the case, we make the following points:

I. That the petition of the complainant ought to be dismissed for want of prosecution. In section 18 of the Interstate Commerce Act it is provided that no complaint shall, at any time, be dismissed because of absence of direct damage to the plaintiff. This provision is the only statutory limitation upon the power of the Commission to dismiss. We know of no justifiable practice or rule warranting the Commission in investigating a petition involving purely local questions, when neither the petitioner, nor anyone for him, appears to prosecute, and especially where the discrimination, if such it is, is in the interest of the general public and the company, and injures no one. As incidental to this question we suggest that there is no proof that the complainant or other person has sustained direct or indirect damage.

II. Section 8 of the Interstate Commerce Act is an re-enactment of section 2 of an Act "For the Better Regulation of the Traffic on Railways and Canals," 17 and 18 Vict. chap. 81; enacted July 10, 1854. See Supplement, Vol. 27, Am. & Eng. R. R. Cas. p. 82. Said section 8 expressly prohibits undue and unreasonable discrimination. This express prohibition is a statutory recognition of just and reasonable discrimination; and is a restriction of the power of the Commission to the regulation of undue and unreasonable discrimination. *Chicago etc. R. Co. v. Peter*, 64 Ill. 11; *Houston etc. R. Co. v. Rust*, and *Rogan v. Aiken*, 9 Am. & Eng. R. R. Cas. 123, 201.

The construction by the Courts of Great Britain, of the English Statute before referred to, must have an influence in construing said section 8. The Courts of Great Britain have uniformly held that said section 2 did not prevent the carrying of car loads, or large quantities of freight, for less rate per hundred than it did parts of car loads or smaller quantities. 27 Fed. Rep. p. 526; 23 Am. & Eng. R. R. Cas. p. 650, and the English authorities there cited by Judge Wallace.

It is also said by the English Courts, in construing said section, regard should be had for the benefit and convenience of the public and the convenience of the railroad companies with regard to their general traffic; and that was not undue and unjust discrimination which benefited the public and the traffic of the company, and did not materially interfere with or damage any other class of business; that in such a case fancied and imaginary rights were not to be considered. *Lees v. Lancashire & Yorkshire R. R. Co.* 1 Nev. & McN. 852; *Ransom v. Eastern C. R. Co.* 1 Nev. & McN. 68; *Orlaid v. Northeastern R. R. Co.* 1 Nev. & McN. 72.

The Supreme Court of Mississippi said: "We think that regulating rates for the transportation of persons and property does not fall within the class of matter requiring or demanding uniformity. Perhaps no subject admits or demands greater diversity with varying localities and circumstances justly affecting the value of the services." 21 Am. & Eng. R. R. Cas. 18.

The admitted averments in the answer and the testimony of Messrs. Groat and Postlewaite and the conditions and limitations contained in the land explorer and settler's tickets

which was refused him. The answer attempts to justify the sale of such tickets at reduced rates to persons desiring to explore and settle upon the lands embraced in defendant's governmental land grants, and denies all knowledge or information of the complainant's alleged application for a ticket.

There being no proof before the Commission that the complainant was in fact refused an explorer's or settler's ticket on application therefor, or was refused transportation at the rates at which such tickets were sold, it is obvious that no personal grievance of the complainant is established. So far as his interests are concerned, there are no facts before the Commission upon which action can be taken.

Section 15 of the Act to Regulate Commerce provides, however, that if, in any case in which an investigation shall be made by the said Commission, it shall be made to appear to the satisfaction of the Commission, either by testimony of witnesses or other evidence, that anything has been done, or omitted to be done, in violation of the provisions of said Act, by any common carrier, it shall be the duty of the Commission to take proper proceedings to put an end to such violation of law. The answer filed by defendant admitted and attempted to justify a course of dealing which the Commission regards as in certain respects illegal, and a report thereon is made a statutory duty. The defendant was heard by its officers at Minneapolis on September 14, and briefs have since been filed by both parties.

The facts found are as follows: the Northern Pacific Railroad Company owns and operates a railroad extending from Ashland, in the State of Wisconsin, and from St. Paul, in the State of Minnesota, westerly through the States of Wisconsin and Minnesota, and the Territories of Dakota, Montana, Idaho, and Washington, to Tacoma, in the latter Territory. In connection with its charter this Company received from the General Government extensive land grants in each of the said States and Territories; and it is continually engaged in offering said lands to purchasers and in making sales of the same. It has established various land offices, and has a land commissioner at St. Paul in charge of such sales. The sale of said lands is of great importance to the Company, not only on account of the income arising therefrom, but also for the reason that the settlement and development of the country along its line tends to permanently increase the business of the road, and to insure its future prosperity.

The defendant company issues first and second class tickets, including first class round trip tickets, which are advertised upon its published schedules, and are sold at its usual ticket offices, together with such excursion and mileage tickets as are from time to time announced and sold to the public generally.

Besides these regular tickets it issues two special classes of tickets, called respectively, "Round Trip Land Exploring Rebate Tickets" and "Settlers' One Way Land Tickets," which are used to induce possible purchasers to go and inspect said lands, and buy and settle upon the same. Purchasers of these tickets are carried upon the regular trains of the Company, and in the same cars with pur-

chasers of the Company's regular issues of tickets.

The above described special tickets are not found at the ticket offices, but can only be procured upon personal application to said land commissioner at St. Paul. They are issued at his discretion and are intended to be sold only to "*bona fide* land seekers, examining with a view of securing lands, and to actual settlers." The rates are very low as compared with the regular first and second class tariffs; for example: to Medora, in Dakota Territory, the first class fare is \$23.50, second class, \$19.35; explorer's round trip ticket out and back, \$26.90; settler's ticket, \$14.80; to Jamestown, first class round trip out and back, \$21.10; explorer's round trip ticket, \$11, etc.

In addition to these greatly reduced rates, the "explorer's ticket" bears a rebate coupon to be retained by the passenger, agreeing that in case he shall within forty days purchase not less than 160 acres of the Company's land, he will be allowed one half of the amount paid for such ticket to be applied upon his first payment for the land; and the "settler's ticket" bears a like coupon entitling the passenger to an allowance on his first payment for lands purchased from the Company, equal to the whole amount paid by him for such ticket. "Explorers' tickets" are sold to persons who represent themselves as intending to go out and inspect defendant's lands, with a view to subsequent purchase after returning to St. Paul, and are not transferable. "Settlers' tickets" are sold to actual settlers upon the Company's lands or upon the publiclands, no rebates being available, of course, in the latter case. To secure settlers' one way fares, passengers must be accompanied with emigrant effects. Only a portion of the Company's road can be reached upon these special tickets, namely: from Milnor, in Minnesota, 305 miles from St. Paul, to Little Missouri, in Dakota, 626 miles from St. Paul. Explorers desiring to go further West than this are accommodated by special excursion rates open to the public and regularly advertised, made to points west of the Missouri River during the fall season of the year.

No objection has occurred to the Commission in respect to the plan pursued by the defendant in issuing these special tickets whereby an allowance is made, in the one case of one half and in the other case of the entire price of the ticket, to purchasers of the Company's lands. The Company may sell its lands at such price as it may see fit to establish therefor, and may accept whatever it sees fit in payment; and when it makes a discount from the selling price of an amount equal to the whole or to any part of the fare paid by the purchaser in inspecting or emigrating to said lands, it does not appear to violate any of the provisions of the Act to Regulate Commerce.

But when the defendant puts on sale in an emigration office special tickets at reduced rates, which are not open to the public at large, but which are used by passengers upon its ordinary trains, justification for which is claimed in the fact that they are a valuable auxiliary to the Company's sales of real estate, it certainly demands and receives from its or-

inary passengers more for the same service, than it collects from persons who, truthfully or otherwise, represent themselves to be prospective purchasers of land or settlers. This course of dealing is in direct contravention of the second section of the Act to Regulate Commerce. The fact that the custom tends to stimulate the sales of the Company's land or its future business, cannot be regarded as an excuse for its continuance. Many companies would very likely be glad to stimulate their freight business by offering special rates or even free transportation to shippers or to traveling salesmen; and other companies which are engaged incidentally in the sale of coal or any other outside enterprise, could largely increase their revenues by judiciously employing the facilities of transportation at their disposal; but all these methods are in direct opposition to the spirit and letter of the Act to Regulate Commerce, and are illustrations of the evils which the Act was designed to remedy. In the transportation of passengers carriers are performing a public duty under franchises granted by the State, and are subject to the rules of law which require absolute impartiality to all, when the circumstances and conditions are substantially similar. The fact that their own interests may be promoted to some extent by swerving from this rule cannot be regarded as sufficient to warrant a departure from the obvious language of the Statute.

It is further suggested that the "settlement of the country" should be encouraged; that the interest of the community is promoted by the taking up and settling of new lands in the far West, and the development of the wonderful capabilities of the Territories across which defendant's line extends. This consideration, if entitled to weight, should be addressed to the legislative department. The law, as framed by Congress, admits of no exception upon any such ground; and in any event it may fairly be questionable whether the inducements which may properly be given to purchasers of railroad lands by way of discounts in settlement for the price thereof, and by way of excursion tickets open to the public at large, and apparently regarded as adequate in respect to defendant's territory west of the Missouri River, are not sufficient to bring their lands upon the market as rapidly as the interest of the country fairly requires.

It is further urged by the defendant that the transportation of that class of the public which it denominates as "settlers" is performed under different circumstances and conditions from those attending the transportation of the residue of the public. The reasons given are found in the facts that settlers are usually persons of small means who are about to locate permanently in the sparsely populated regions of the Northwest; and that the settlement of that territory will yield a largely increased revenue to the defendant in the future, on both its freight and passenger traffic, so that it is largely for the interest of the defendant to stimulate the movement of settlers toward the Territories contiguous to its line. This is merely stating the same proposition in another form. A car load of passengers leaving St. Paul, some of whom are tourists, some bus-

iness men, some insurance agents, some settlers, are all in fact transported under precisely the same "circumstances and conditions" until they respectively leave the car, whatever may be their calling or their intention as to future residence. It is not claimed that the rates in question are forced upon the defendant by competition, or by any external conditions whatever. They are made or refused at defendant's pleasure! The circumstances and conditions referred to by defendant's counsel do not pertain to the transportation of the passengers, but are connected with their varying pecuniary ability and their possible future home. These considerations are not proper to be admitted in considering the propriety of discrimination between passengers who are patrons of common carriers.

Moreover, "settlers," so-called, are not confined to the great Northwest, but are found throughout the entire United States; upon almost every passenger train a constant movement of population is going on between the States, which if once recognized as forming a ground for a discrimination in railroad charges, would make an opening extremely difficult to regulate. Professional and business men are frequently "settlers" in fact. Travelers coming through from eastern points, who have purchased tickets to their ultimate destination, may not be informed of the opportunity to obtain a special rate at the St. Paul land office; the same train may, and no doubt often does contain "settlers," some of whom are charged much more than others. And again it is quite possible for the defendant to be imposed upon by persons who claim to be explorers or settlers, when in fact their actual intention is very different. These considerations illustrate the practical impossibility as well as the inevitable unfairness of attempts to discriminate among passengers enjoying the same accommodations, by reason of any special classification founded upon means, occupation, or purpose.

It will be very difficult to find any principle upon which the transportation of passengers in our country can be impartially and fairly carried on short of maintaining the rule of absolute equality of payment from all persons enjoying the same accommodations.

The defendant must, therefore, be notified to immediately cease and desist from selling either of said special classes of tickets at lower rates than those established by it for the sale of tickets to the public generally.

David F. ALLEN and Edward A. ALLEN
v.
LOUISVILLE, NEW ALBANY & CHICAGO R. CO.
(No. 44.)

*In this case the complaint is that the defendant violates the fourth section of the Interstate Commerce Law by charging more for a shorter than for a longer distance over the same line in the same direction. The facts are that defendant has a line of railroad extending from New Albany, Indiana, to Mich-

igan City, passing through India and Frankfort. At Indianapolis road is crossed by east and west which give a rate on wheat to New of twenty-three cents a hundred. At Frankfort it is crossed by a road which makes a rate to New of twenty-five cents. At South W defendant's road is crossed by the York, Chicago & St. Louis; and at Michigan City it intersects the Michigan Central. Defendant wishes to participate in the grain carrying trade to New and the Michigan Central will take from it at Michigan City grain to Indianapolis, and prorate with twenty-three cent rate on a mileage basis. The New York, Chicago & St. Louis will receive from it at South W the grain taken up at Frankfort at a rate with it the twenty-five cent a mileage basis. Defendant has the practice of taking wheat at Indianapolis on these terms; and it receives a load from complainants at Frankfort and charged the twenty-five cent. The Indianapolis shipments are through Frankfort on their line to Michigan City, and the whole haul from Indianapolis to New York by Michigan City is greater than from Frankfort to New York by South W. It appeared by the evidence, however, that by the direct line Indianapolis is nearer to New York than Frankfort is by its direct line, and is given rates for that reason;

II. That defendant receives a compensation for its haul from Indianapolis to Michigan City than it receives for its haul from Frankfort to South W, and consequently does not charge more for the haul;

III. That defendant does not, and cannot, control the fixing of rates crossing and intersecting lines, and has no option but to accept those rates which are fixed and prorate upon them; and cease to take grain altogether.

(a) These facts show no violation of the defendant of the long and short haul clause of the Act. Its own charge for the longer distance is not greater than for the shorter distance, because the Michigan Central charges less on its own line than does the New York, Chicago & St. Louis—defendant having no control of either.

(b) If it is desired to test the reasonableness of the through rate from Frankfort to New York, all the complainants are responsible for it should be maintained. It is not enough that the initial road defendant, which the road has authority to make the terms all.

(c) The conclusion is that the complaint is not sustained.

(Decided November 1, 1887.)

*Syllabus by COOLEY, Chairman.

COMPLAINT for violations of section 4 of the Interstate Commerce Act, in charging more for a short than for the long haul.

The complaint and answer are given on page 586, *ante*.

At the hearing before the Commission, at Chicago, on September 20, 1887, the following testimony was received:

William H. McDoel, having been duly sworn, was examined as follows, by **Mr. Friedley**, of counsel for defendant:

Q. Mr. McDoel, what position do you hold with the respondent railway company?

A. Traffic Manager.

Q. Were you occupying that position at the time this controversy arose with the complainants at Frankfort?

A. Yes sir.

Q. Will you state to the Commission what line is the shorter or more direct line from Indianapolis to New York for the purpose of making shipments of freights of the sixth class of the joint classification now in force?

A. I think it is based on the mileage of the Pennsylvania Company.

Q. Will you state now what is the line making the rate from Frankfort, Indiana, to New York?

A. The rates are made by the Lake Erie & Western. That is not the shortest route, but it is the route, I think, on which the rates are based.

Q. Is it, or is it not, the shortest practical route in operation?

A. I think it is.

Q. Will you state now, if you please, over what line the Lackawanna Fast Freight Line operates with you?

A. It leaves our line at South Wanaiah, running over the New York, Chicago & St. Louis Railway.

Q. Have you examined one of these maps?

A. Yes sir.

Q. Does the red line correctly represent the Lackawanna Line?

A. Yes sir.

Q. What does the blue line represent?

A. It represents the line upon which the fast freight line known as the "Blue Line" operates over the Michigan Central and connections.

Q. Mr. McDoel, taking into consideration the bulk and volume of your traffic between Indianapolis and Michigan City, state to the Commission if you are deprived of the east bound business heretofore procured by you at Indianapolis, how it would affect the operation of your road as to giving you full train loads between those points.

Mr. Suit: What is that?

Mr. Friedley: I asked him to state, taking into consideration the volume of the traffic between Indianapolis and Michigan City and intermediate points, how the operation of his line would be affected if he were deprived of the Indianapolis east bound traffic, with reference to whether he would have full train loads or not.

Mr. Suit: The Commission can see.

By the **Chairman:** Let him give the answer.

The **Witness:** We would be deprived of just that much business, and, as a rule, be compelled to haul the cars that are now loaded

with seaboard business, back over our line empty.

By **Mr. Friedley:**

Q. State why that is. If it is in connection with the lumber trade at Michigan City.

A. That is caused from the fact that we haul more load, as it now is, into Indianapolis than we haul out.

Q. Now, taking those facts into consideration, and the element of the reduction of the cost of train service on that line, state whether or not in your judgment, the traffic you procure at the twenty-three cent rate out of Indianapolis gives you any margin of profit?

A. Yes, it does undoubtedly.

Q. Mr. McDoel, what rule, if any, or custom, exists among the transportation companies operating in that section of the Union, as to the reception of traffic from a line on which it originates at less sums than the short line rate from the initial to the terminal point?

A. The connecting lines would decline to receive it, unless it was charged at the agreed rate from the initial point.

Q. When you speak of the agreed rate, how has that been determined, and what is it based upon? Upon the mileage of what line?

A. Chicago, for instance, is taken as a unit, and the short line mileage from the crossing is used as a basis. For instance, take Chicago at 100 per cent; Indianapolis is 93 per cent, either based on the actual mileage or as near that as may be, taking into consideration the surrounding circumstances. The short line mileage would be the lowest rate that would be received by our connections; it may be a trifle higher by agreement by all lines in interest.

Q. Have you, since your connection with this Railway Company, had any regular patrons in grain shipments to the seaboard points from Indianapolis?

A. Yes sir.

Q. Name some of your customers.

A. Well, William Scott & Company, Mack-mer Milling Company, and several others that I cannot recall now.

Q. Why do you make this twenty-three cent rate out of Indianapolis?

A. Because it was the rate established by the short line.

Q. What difference did that make to you? Did you make it for the purpose of securing the traffic of your former customers?

A. We could not secure any traffic unless we made the same rate made by all lines, naturally.

Mr. Friedley: Mr. Suit, it may be conceded that the map shows the various crossings?

Mr. Suit: That is described in your answer, is it?

Mr. Friedley: Yes sir.

Mr. Suit: That's all right. I suppose it is correct of course.

By **Mr. Friedley:**

Q. Mr. McDoel, will you examine the table of distances on the third page of the answer, and state whether it is correct, in substance, giving the relative distance between these junction points?

By the **Chairman:** Do you raise any question about that?

Mr. Suit: I raise no question about that.

Mr. Friedley: That's conceded then. Then the map is correct too?

Mr. Suit: Yes sir; that's correct.

By Mr. Suit:

Q. Mr. McDoel, will you be kind enough to state to the Commission what you mean by saying you would be obliged to haul your cars back empty any more over one route than over another?

A. I stated that we would have to bring more cars back empty if we did not take east bound business.

Q. Yes, sir. Now will you please explain to the Commission in what respect the shipment of a car load of grain from Frankfort over the Lackawanna route would differ from the shipment of a car load of grain from Indianapolis over the Lackawanna route, so far as compelling you to bring back empty cars? In other words, a car taken from Frankfort to New York over the Lackawanna would go precisely the same way that a car taken from Indianapolis over the Lackawanna, would it not?

A. Yes sir.

Q. And Frankfort is forty-seven miles nearer New York via that route than Indianapolis?

A. Yes sir.

Q. And this car did go over that route? Then this car was not shaded with blue, it was shaded with red?

A. It went over the Lackawanna Line.

Q. One other question, I believe, is all I care to ask and occupy the time of the Commission with. You speak something of the connecting line declining to receive cars from you unless they should be taken at an agreed rate. The rate you have agreed upon with these connecting lines, do you mean?

A. Yes sir.

Q. I will ask you to state to this Commission if the rate is not determined by the initial route, and the connecting lines simply get their percentage of what you have determined to ship this car for?

A. No sir.

Q. You may explain that to the gentlemen.

A. The initial road, for instance, could not name the rate except by agreement with its connections, and by agreement of the first line with its competitors at competing points.

Q. Then will you state whether or not, at the time this car was received from Mr. Allen at Frankfort, your road had any deal or arrangement with the Lake Erie & Western or Vandalia or the Terre Haute & Logansport Branch of it, by which you were not to take anything out of Frankfort at less than twenty-five cents?

A. Yes sir.

Q. You may state now whether any freight can be shipped over your road to New York without going through Frankfort?

A. Not from points between Indianapolis.

By Commissioner Walker:

Q. What percentage of the Chicago rate does Frankfort take?

A. Ninety-six per cent.

Q. Practically?

A. Yes sir. At the time this shipment was made it was twenty-five cents, or the same as Chicago.

Q. That was 100 per cent.

INTER 8.

A. Yes sir. It has been changed since and put back to ninety-six by all lines except the New Albany.

By the Chairman:

Q. Do you still maintain that?

A. We still maintain it.

By Mr. Suit:

Q. And was that change made since the institution of this proceeding?

A. Yes sir. I may explain that 96 per cent of the Chicago rate would be the lowest possible rate that could be made by any line out of Frankfort. If it was made less than that, our eastern connection would decline to receive the property. The rule is such, and there is an agreement to that effect, but lines at a competing point may, by agreement, make a higher rate than the percentage. For instance, we agreed, on account of contiguous territory and rates, that we would make it the same as Chicago at Frankfort, but I don't know what brought about this reduction back to ninety-six. It was not by agreement with all the lines; it was made, I think, by the Lake Erie & Western Road arbitrarily.

By Commissioner Walker:

Q. This shipment in question was made in a Blue Line car, was it not?

A. No sir.

Mr. Suit: We asked for it, but they shipped it over a different route.

Commissioner Walker: Your petition says it was shipped in a Blue Line car.

Mr. Suit: We have an understanding and agreement on that.

Mr. Friedley: I do not know as it makes any difference. I will rest my case with that showing.

By the Chairman: If you are through with the evidence, you can proceed with any questions.

Mr. Suit: I have made a *prima facie* case. I will waive anything I may have to say.

Messrs. Joseph C. Suit and Joseph Combs, for petitioners:

Section 8 of the Interstate Commerce Act prohibits common carriers from giving unreasonable preference or advantage to any person, firm or locality, or to any particular traffic. The petitioners insist that the conduct of the defendant is obnoxious to the above section. A tariff which gives shippers a shorter distance and higher rates, than it gives shippers for a greater distance over the same line of travel, is an undue preference and advantage within the meaning of this section. It prefers and gives an advantage to one person, firm or particular traffic, by which he, they or it are able to give a greater price for a like kind of commodity in a given locality, than other persons can give for the same article under similar conditions.

The giving of more favorable rates to persons engaged in shipping bran from Indianapolis, which comes within the sixth clause as classified by the said tariff rate, than are given to persons engaged in the same trade at Frankfort, is in effect to give the traffic at the former place an undue and unreasonable advantage over the latter. If the advantage is unreasonable "in any respect whatsoever" it is prohibited. It is unreasonable in so far as it gives shippers at Indianapolis an unreasonable ad-

vantage over shippers of the same class of goods at Frankfort. It is unreasonable in so far as it forces the agricultural interests of Frankfort to part with their products and property at a less value than do like interests at the City of Indianapolis. It is unreasonable in so far as it compels the country merchant to pay a greater rate for transportation, and the farmer to receive less value for his products and labor; all of which come within the inhibition of section 3 and are pronounced unlawful.

The fourth section in substance provides that it shall be unlawful for any common carrier to charge or receive a greater sum of money for transportation of goods for a shorter distance than is received for a longer distance of like kind of freight under similar circumstances, over the same line of railway. The evidence shows, and it is admitted, that Frankfort is forty-seven miles nearer New York over defendant's line of railway than Indianapolis, and that to reach New York, cars going from Indianapolis must necessarily pass through Frankfort. It is further admitted that respondent charges twenty-three cents per 100 pounds for carrying freight over said line from and to terminal points; and it was proven that such rate was denied by petitioners, and that said respondent demanded and received twenty-five cents per 100 pounds for transporting bran for petitioners from said City of Frankfort to said City of New York. The answer to this violation of section 4 is that as there are many lines of railways from Indianapolis engaged in the carrying trade to Atlantic ports, respondent is forced to meet the rates of said other carriers and give equal or better rates and facilities for transporting merchandise, or abandon the field of traffic to others. If respondent can carry such goods from Indianapolis to the seaboard at the rate above given, why should it be permitted to charge a carrying rate for such carriage on confessedly a shorter route and for a shorter distance, over the same line in the same direction? The practice sought to be justified by this argument must so reduce the earning capacity and power of a carrier, transporting merchandise to and from trade centers, that bankruptcy must follow; or if it may successfully compete with rival carriers, the tariff must be so increased at points of lesser non-competitive commercial importance, and on country shippers, that they may be able to continue in the carrying trade at all. Thus will trade centers become richer on the substance and labor of men less fortunately situated. Localities remote from trade centers are by such devices forced to pay for carrying products of more fortunate men to a healthful market—a state or condition which the Act in question did not intend should be permitted to follow or continue.

Dissimilarity is said to exist in the facts that Frankfort is north of Indianapolis; that connecting lines will not reduce their tariff, and will not receive respondent's cars at a smaller tariff rate, and respondent should not be compelled to carry freight from Indianapolis at the same tariff for which it is carried from Frankfort. The petitioners do not seek

to force the same rate from both points, but they do insist that Frankfort is entitled to as favorable a rate as Indianapolis, for a like kind of service, over the same route, in the same direction, and over a less number of miles.

Messrs. Haynes & Easley and Geo. W. Friedley, for defendant:

1. The fact of the direction in which the defendant's road leads from Indianapolis to Michigan City with reference to the Atlantic seaboard traffic, and that to raise the Indianapolis rate to the Frankfort rate would deprive Indianapolis of legitimate competition, and result in defendant getting no business from Indianapolis, in connection with the fact that if the Indianapolis rate was put in force at Frankfort the traffic would not be taken by defendant's connections, and if it were would inaugurate a war of rates disastrous alike to the defendant and the public, puts the defendant in the predicament of either doing the Indianapolis business at the short line rate or abandoning that traffic altogether. These facts justify the taking of Indianapolis traffic at a lower rate than the Frankfort traffic.

Re Louisville & Nashville R. R. Co. 1 Inters. Com. Rep. 279.

The views expressed by Judge Cooley are well sustained by the decision of *Mr. Commissioner Rogers* in the *Complaint of R. J. Richardson & Co. 1 N. Y. R. R. Comrs. Rep. 101, 105; Rand Lumber Co. v. C. B. & Q. R. R. Co. Comrs. Rep. Iowa, 550-553; Ex parte Koehler, 1 Inters. Com. Rep. 28, 817; S. C. 21 Am. & Eng. R. R. Cas. 53, 58; Greenhood, Public Policy, pp. 639, 640; Hadley, R. R. Transportation, pp. 116, 117. See Report of Simon Sterns, Senate Min. Doc. 66, pp. 18, 19.*

If the competition is legitimate and the discrimination between localities is made in good faith for the purposes of securing advantages to the carrier not otherwise attainable, it is permissible. But if the competition is illegitimate and made to meet cut or war rates, and not founded upon the ordinary laws of trade, the discrimination cannot be upheld.

Illinois Central R. R. Co. v. People, 10 West. Rep. 588.

2. It must be determined from the bill of lading, schedules, tariffs and map offered in evidence that the shipments from Indianapolis to New York by way of Michigan City and the Blue Line are not over the same line in the same direction as the shipments from Frankfort by way of South Waukegan over the Lackawanna Line.

The word "line" in the fourth section of the Commerce Act should receive the same construction as the word "route" in the Regulation of Railways Act, 1873, section II, subsection 5, and means a route of carriage "from the station on the sending line where the traffic arises to the station on the forwarding line where the traffic is delivered."

East & West R. v. Great Western Railway, 1 Ry. & Canal Traffic Cases, 844.

The expression "over the same line in the same direction," should be given substantially the same construction as the expression in the Railway Clauses Consolidation Act, 1845, section 90, "passing only over the same portion of the line of railway under the same circum-

stances," and held to mean passing between the same points of departure and arrival; passing over no other part of any other line.

Manchester, S. & L. R. Co. v. Denaby Main Colliery Co. L. R. 14 Q. B. Div. 223; *Finney v. Glasgow R. Co.* 2 Macq. 183; *Murray v. Glasgow etc. R. Co.* 11 Ct. Ses. Cas. (4th series) 205; *Commonwealth v. Worcester etc. R. R. Co.* 124 Mass. 561.

8. But if the line used from Indianapolis and the line used from Frankfort are held to be the same line, there being no evidence offered in the case to show the proportion of the defendant's part of the through rate, there is no evidence in the case from which it can be determined whether the defendant has charged a greater sum for the shorter haul. It must be held under the Commerce Act, and especially under that provision which provides that no common carrier party to a joint tariff shall be liable for the failure of any other common carrier to observe and adhere to the rates or charges made and published, that the respondent can only be liable for such part of the overcharge as was received by it.

Streeter v. Chicago etc. R. Co. 40 Wis. 294; *S. C.* 13 Am. & Eng. R. R. Cas. 439.

REPORT AND OPINION OF THE COMMISSION.

Cooley, Chairman:

The complaint in this case is that the defendant violates the fourth section of the Act to Regulate Commerce by charging more for the transportation of a like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance.

The facts as we find them to be on the evidence are the following: the defendant has a line of railroad extending in a direction west of north from New Albany to Chicago, with a branch line from Monon to Michigan City. The line is crossed at many points by roads which form lines to New York and other Atlantic seaboard cities. Among the points where there are such crossings are Indianapolis, Frankfort and South Wanatah, in the State of Indiana. The branch from Monon intersects the Michigan Central Railroad at Michigan City. Defendant's road is through a grain growing region, from which wheat and products of wheat are taken to the seaboard. The direct roads from the points on defendant's line to the Atlantic cities determine the rates that shall be charged for the transportation, and other roads that participate with them in the business accept the rates so fixed, apportioning it on some agreed basis.

The complainants are dealers in grain and grain products at Frankfort, and buy for the eastern market. The current rate from Frankfort to New York is twenty-five cents per 100 pounds. From Indianapolis to New York, the distance by direct lines being somewhat less, the rate is only twenty-three cents per 100 pounds. The management of the defendant is desirous of participating in the grain carrying trade, but to have any part in the east bound traffic it must carry at such rates that the whole charge to the seaboard over all the roads forming a line of transportation shall be the

current rate at the point at which the traffic is received. The roads crossing the defendant's road are willing to receive the traffic from it and divide the compensation by prorating on a mileage basis. Defendant has an arrangement with the Michigan Central Railroad Company whereby it receives grain at Indianapolis at the twenty-three cent rate and delivers it to the Michigan Central at Michigan City, prorating the compensation, and another with the New York, Chicago & St. Louis Railroad Company whereby it receives grain at Frankfort at the twenty-five cent rate and delivers it to the last named road at South Wanatah, prorating the compensation. The result is that the rate given by defendant to shippers at Indianapolis by the Michigan Central Line is less than the rate given at Frankfort by the other line, although the distance by the former line is greater.

This proceeding is instituted to compel reduction in the rate at Frankfort to the level of the Indianapolis rate. The complainants do not usually send grain by defendant's road, but they sent a consignment of grain product by it and paid the twenty-five cent rate under protest, with a view to this proceeding. It is not claimed that the direct line from Frankfort to New York violates the Law by charging the twenty-five cent rate; but it is supposed that if defendant is compelled to reduce its rate by the order of the Commission, the direct line will have no alternative and must make the like reduction. In fact since this proceeding was begun, a reduction to twenty-four cents has been made.

The distance from Indianapolis to New York by the shortest railroad line is 825 miles. From Frankfort the shortest railroad route is 846 miles. From Indianapolis to Michigan City is 154 miles, and from Indianapolis to New York, by way of Michigan City and the Michigan Central Railroad, is 1,055 miles. From Frankfort to South Wanatah is eighty-four miles; and from Frankfort to New York, by way of South Wanatah and the New York, Chicago & St. Louis Railroad, is 1,008 miles. These figures give a basis for such calculations as are necessary to an understanding of the legal propositions.

On the hearing the general question was discussed, whether the transportation of grain to the seaboard through the agency of the defendant is under circumstances and conditions so different at Frankfort from what they are at Indianapolis as to justify the greater charge on the shorter haul. For the defendant it was contended that they were—Indianapolis being not only a point of greater railroad concentration and competition, but also nearer New York by the direct lines and therefore justly entitled to the lower rates; while for the complainants it was insisted that business over the line of the defendant is alone in question, and by that line Frankfort, being nearer the points of freight destination, is entitled by the Law to rates not higher than those accepted by the defendant at Indianapolis.

On the facts found, however, it is very evident that the general question the complainants have desired to present does not arise. The defendant transports grain from Indianapolis to Michigan City, but no further, and receives

INTER S.

for the transportation a proportion of twenty-three cents per 100 pounds, measured by the distance it carries it, 154 miles, as compared with the whole distance, 1,055 miles. It also transports grain from Frankfort to South Wanatah, and receives for the transportation a proportion of twenty-five cents per 100 pounds measured by the distance it carries it, eighty-four miles, as compared to the whole distance, 1,008 miles. An arithmetical calculation will readily show that while defendant receives somewhat more per mile upon the grain taken up at Frankfort, it receives more in the aggregate for that which it carries from Indianapolis to Michigan City than for that it carries from Frankfort to South Wanatah, and therefore does not violate the statute which prohibits receiving more for the shorter than for the longer haul. If the calculation were made on the Indianapolis shipment for the distance between that place and South Wanatah only, the fact would still be that more is received upon that than upon a like consignment from Frankfort; the distance being forty-eight miles greater. Since, therefore, the distance between Frankfort and South Wanatah is all that is included in the longer line, it is plain that on no calculation is it made to appear that the defendant receives more for the transportation of a like kind of property over the same line in the same direction, the shorter being included within the longer distance; and this without regard to the question raised on the argument, whether the line from Indianapolis by way of Michigan City to New York on which the twenty-three cent rate is charged is or is not in a legal sense the same line as that from Frankfort by way of South Wanatah to New York on which the twenty-five cent rate is charged. We say nothing upon that question because the case does not call for its consideration, and also because only one of the several parties interested in the question has been brought in as defendant and given the opportunity for a hearing.

But it is argued for the complainants that defendant unites with the other carriers in making the through rate, and is therefore responsible for the whole as much as if the whole was for a transportation over its own line. On this point we are necessarily governed by the evidence, and the evidence is distinct and positive that while the defendant names the through rate to shippers when it is called for, the rate from the intersecting points is not controlled by defendant, but is fixed by the crossing roads. The Michigan Central Railroad, it appears, will accept Indianapolis grain from defendant at Michigan City and prorate the twenty-three cent charge, on a mileage basis, and the New York, Chicago & St. Louis Railroad will accept Frankfort grain from defendant at South Wanatah and prorate at twenty-five cent charge on a mileage basis. If defendant consents to receive the proportions from the two roads, respectively, it can name a through rate to shippers when they ask for it; but in doing so it does not make the through rate any more than it would if it named its own proportion and that of the other roads in figures separately, and then received, as it now does, the whole; for in receiving what goes to the other road, it receives it as agent merely.

The charge from Frankfort to New York by the defendant's line is greater than the charge from Indianapolis, not because the defendant exacts more for its own service—for the contrary is the fact—but because the Michigan Central Railroad carries from Michigan City at a lower compensation than the New York, Chicago & St. Louis Railroad charges for the transportation from South Wanatah.

There are cases in which a carrier may be bound for some purposes by the rates established over connecting lines, even though it has not directly united with such connecting lines in making them. Such a case was before the Commission in the *Vermont State Grange v. Boston & Lowell R. R. Co.* ante, 500, in which one of the defendants shared long haul rates which were lower than the short haul rates which it charged on its own road constituting a part of the long haul line. The legality of the short haul rates was all that was in controversy in that case; and the Commission held that the carrier exclusively responsible for them was not entitled when fixing them to make them greater than the long haul rates in which it participated with others, unless a case was made out of dissimilar circumstances and conditions. Participating in the long haul rates, it was held, made them under the statute a maximum limit for short haul rates to be imposed on its own line, and made the short haul rates illegal when the limit was exceeded. But in that case there was no question of responsibility for the rates which were found to be illegal, nor could there have been, for they were made at pleasure by the local road. In this case the rates which defendant makes exclusively are not complained of; and as no one can be convicted of illegality in respect to action of others which he could not control, it obviously becomes necessary, before defendant can be charged in this proceeding, to show that at least it had the power to make the through rates different. But all the showing made is to the contrary.

The conclusion is that a violation of law by the defendant in the particular charged is not made out.

A further difficulty with complainants' case is that its purpose is to compel a change of the through rate from Frankfort to New York. But when it is shown that defendant, instead of controlling the whole line to the seaboard on which freight is transported from Frankfort, controls only the small fragment thereof from Frankfort to South Wanatah, it then becomes impossible, on any view that may be taken of the law of the case, to give, in a proceeding to which the defendant is alone made a party, the relief which the complainants seek. An order requiring defendant to cease charging more on the Frankfort than on Indianapolis shipments to the seaboard would be quite futile. It could not be enforced against any carriers which are not parties to the proceeding, and the defendant would not violate it if, when called upon to give the rates, it gave those on its own line only. If in giving its own rates it did not antagonize the long and short clause of the statute, it would be guilty of no violation of law under the fourth section, which is the section on which this complaint proceeds.

iness men, some insurance agents, some settlers, are all in fact transported under precisely the same "circumstances and conditions" until they respectively leave the car, whatever may be their calling or their intention as to future residence. It is not claimed that the rates in question are forced upon the defendant by competition, or by any external conditions whatever. They are made or refused at defendant's pleasure! The circumstances and conditions referred to by defendant's counsel do not pertain to the transportation of the passengers, but are connected with their varying pecuniary ability and their possible future home. These considerations are not proper to be admitted in considering the propriety of discrimination between passengers who are patrons of common carriers.

Moreover "settlers," so-called, are not confined to the great Northwest, but are found throughout the entire United States; upon almost every passenger train a constant movement of population is going on between the States, which if once recognized as forming a ground for a discrimination in railroad charges, would make an opening extremely difficult to regulate. Professional and business men are frequently "settlers" in fact. Travelers coming through from eastern points, who have purchased tickets to their ultimate destination, may not be informed of the opportunity to obtain a special rate at the St. Paul land office; the same train may, and no doubt often does contain "settlers," some of whom are charged much more than others. And again it is quite possible for the defendant to be imposed upon by persons who claim to be explorers or settlers, when in fact their actual intention is very different. These considerations illustrate the practical impossibility as well as the inevitable unfairness of attempts to discriminate among passengers enjoying the same accommodations, by reason of any special classification founded upon means, occupation, or purpose.

It will be very difficult to find any principle upon which the transportation of passengers in our country can be impartially and fairly carried on short of maintaining the rule of absolute equality of payment from all persons enjoying the same accommodations.

The defendant must, therefore, be notified to immediately cease and desist from selling either of said special classes of tickets at lower rates than those established by it for the sale of tickets to the public generally.

David F. ALLEN and Edward A. ALLEN
v.

LOUISVILLE, NEW ALBANY & CHICAGO R. CO.

(No. 44.)

"In this case the complaint is that the defendant violates the fourth section of the Interstate Commerce Law by charging more for a shorter than for a longer distance over the same line in the same direction. The facts are that defendant has a line of railroad extending from New Albany, Indiana, to Mich-

igan City, passing through Indianapolis and Frankfort. At Indianapolis the road is crossed by east and west lines which give a rate on wheat to New York of twenty-three cents a hundred pounds. At Frankfort it is crossed by another road which makes a rate to New York of twenty-five cents. At South Wanatah defendant's road is crossed by the New York, Chicago & St. Louis; and at Michigan City it intersects the Michigan Central. Defendant wishes to participate in the grain carrying trade to New York; and the Michigan Central will receive from it at Michigan City grain taken up at Indianapolis, and prorate with it the twenty-three cent rate on a mileage basis. The New York, Chicago & St. Louis will receive from it at South Wanatah the grain taken up at Frankfort and prorate with it the twenty-five cent rate on a mileage basis. Defendant has been in the practice of taking wheat at Indianapolis on these terms; and it received a car load from complainants at Frankfort and charged the twenty-five cent rate. The Indianapolis shipments are carried through Frankfort on their way to Michigan City, and the whole distance from Indianapolis to New York by Michigan City is greater than from Frankfort to New York by South Wanatah. It appeared by the evidence, however, I. That by the direct line Indianapolis is nearer to New York than Frankfort is by its direct line, and is given lower rates for that reason;

II. That defendant receives a greater compensation for its haul from Indianapolis to Michigan City than it does for its haul from Frankfort to South Wanatah, and consequently does not on its own line charge more for the shorter haul;

III. That defendant does not, and cannot, control the fixing of rates by the crossing and intersecting lines, and has no option but to accept those rates which are fixed and prorate upon them, or to cease to take grain altogether. *Held,*

(a) These facts show no violation by defendant of the long and short haul clause of the Act. Its own charges are the greater for the longer distance; and if the whole charge to New York is the greater for the shorter distance, it is only because the Michigan Central charges less on its own line than does the New York, Chicago & St. Louis—defendant having no control of either.

(b) If it is desired to test the reasonableness of the through rate from Frankfort to New York, all the roads responsible for it should be made defendants. It is not enough to make the initial road defendant, unless that road has authority to make the rate for them all.

(c) The conclusion is that the complaint is not sustained.

*Syllabus by COOLEY, Chairman.

INTER 8.

(Decided November 1, 1887.)

now 12½ cents, is unreasonable, is afforded by comparison of this and other rates on the branch line with the Red Wing, Lake City and other rates on the River Division of the main line, the Commission declined to declare 12½ cents an unreasonable charge for the services rendered, or that a rate nearly a third lower than it had ever been previous to the Act to Regulate Commerce is unjust and unlawful of itself, or within the meaning of the first section of the said Act.

2. But rates and charges not unreasonably high of themselves, can be so adjusted in their relations to each other as to give the undue preference and produce the unreasonable disadvantage which the third section of the Act to Regulate Commerce makes unlawful, and if the railway company in establishing its charges on the different divisions and branches of its road, so adjusts them as to divert trade and business to one locality, which naturally under an equitable adjustment of charges would go to another, such unreasonable preference for one place and disadvantage to another, are not excused or made lawful by the fact that some of such rates are not entirely voluntary, but the result of competition with other carriers. If an advantage is given to competing towns on the main line, the advantage must not be unreasonable. The difference in the rates at Mazeppa, compared with the rates at Red Wing and Lake City, should neither exceed 2 1-2 cents on 100 pounds, nor one third part of the rates made in the adjustment of charges from said competing towns.

(Decided Nov. 21, 1887.)

COMPLAINT charging that the discriminations made by the defendant against the locality of Mazeppa are unjust and sufficient to divert largely its grain business.

The pleadings are reported *ante*, p. 474.

The facts are stated in the opinion.

Mr. Burton Hansom, for defendant.

REPORT AND OPINION OF COMMISSION.

Morrison, Commissioner :

It appears from the statement of E. B. Raymond, by way of complaint against the Chicago, Milwaukee & St. Paul Railway Company, that he is a resident of the Town of Mazeppa, County of Wabasha, State of Minnesota, and interested there in buying and selling wheat and other farm products for shipment over the defendant's road to more eastern markets.

The defendant railway company owns and operates two lines of railroad through from Chicago, Illinois, by way of Milwaukee, Wisconsin, to Minneapolis, Minnesota, with branch lines or roads to and from various points on each of said through lines. Both through lines run over the same track from Chicago to Milwaukee. The through and the branch roads are divided into parts designated divisions.

By the most direct of said through lines of

defendant's road, herein treated as the main line, the distance from Chicago to Minneapolis is 420 miles. The part of this main line between La Crosse and Minneapolis, with stations at Wabasha, Lake City, and Red Wing, is the "River Division."

The branch line of defendant's road, sixty miles long from Wabasha on the main line to Zumbrota, with stations at Mazeppa and McCracken, is narrow gauge and is the "Wabasha Division."

From Wabasha, the junction of the "narrow gauge" branch with the main line, the distance over the main line northwest to Lake City is twelve miles, and to Red Wing twenty-nine miles. Over the branch line the distance west (from Wabasha) to McCracken is eighteen and to Mazeppa fifty-two miles. The distance north from Mazeppa to Red Wing by wagon road is twenty-two miles and nearly the same to Lake City, and both are competitors with Mazeppa for the grain and other trade of the territory intervening. The distance to Chicago from Mazeppa is 392, from Red Wing 369, from Lake City 352 miles. To Milwaukee the distance is less than to Chicago by 107 miles.

From August 15, 1886, to April 5, 1887, when the Act to Regulate Commerce took effect, the published rate of defendant for carrying wheat and other grain to Chicago from Lake City, Red Wing, Minneapolis, and other points on the River Division of defendant's road was fifteen cents; on the Wabasha Division it was fifteen cents from McCracken, and from Mazeppa seventeen cents on the 100 pounds. On April 5, 1887, this rate from Mazeppa to Chicago was increased to eighteen cents, the rate from Minneapolis, Red Wing, and Lake City remaining at fifteen cents until May 18, 1887, when it was reduced to ten cents, the rate from McCracken then still remaining at fifteen cents per 100 pounds.

On this statement of facts, which is not contested by defendant, the complainant alleged that the discriminations made by the defendant against the locality of Mazeppa were unjust and sufficient to divert largely its grain business; that the excess of eight cents in the Mazeppa rates over Lake City and Red Wing rates was, and any difference or excess in such rates above two cents, would be an undue preference in favor of Lake City and Red Wing, and an unreasonable prejudice against Mazeppa in respect of the grain and other trade in which complainant was and is interested.

On the 20th of May, 1887, when the defendant railway company had notice of complainant's petition for relief, the defendant reduced its rates to Chicago from Lake City, Red Wing, and stations on the River Division of its road, including Minneapolis, to 7½ cents. Six days later, May 26, 1887, it made a reduction in rates on the Wabasha Division, the rates from Mazeppa to 12½ cents and from McCracken, distance eighteen miles from the main line, to eight cents per 100 pounds.

The defendant railway company, answering, admits many and contests none of the facts stated above, but asserts that the Mazeppa rates are, and have been since April 5, 1887,

When complainants desire to test the justice or legality of the through rates from Frankfort to New York, the necessity of bringing in the parties who make the rates, not for forty-six miles merely but for the whole distance, is obvious. They must be brought in, *first*, because they have a right to be heard, and *second*, because an order made and purporting to control their action when they were not parties would be improper on its face, and in a legal sense ineffectual. If such an order could have any effect as against the initial road, it would only be to prevent its agents naming to shippers when they called for it an aggregate through rate; it would not prevent its making the same rate as now to South Wanatah, nor preclude the connecting road from making rates independently from South Wanatah eastward.

On this finding an order will be entered that the complaint is not sustained.

NOTE.

According to the evidence the compensation of defendant for transporting one ton of grain from Indianapolis to Michigan City in connection with the Michigan Central is - 67.0 x
Proportion to South Wanatah - 53.6 x
Compensation per ton from Frankfort to South Wanatah in connection with the N. Y. Chicago & St. Louis - 41.6 x

Leverett LEONARD

v.

UNION PACIFIC R. CO.

(No. 10.)

1. Where the pleadings present **issues of fact** which cannot be disposed of by a decision which shall reach the merits without some evidence, and **no evidence is presented**, the case must be **dismissed**.
2. The complaint charged **unjust discrimination** in exacting an **extra rate** for transporting cattle in a **Burton stock car**; the answer denied the fact of unjust discrimination, and **no proof** was given by either side. *Held*, that it is impossible for the Commission to say that if all the facts were before it, the greater charge could not be justified; and hence, as it is not suggested that further proceedings are desired, the **case must stand dismissed**, but without prejudice.

(Dismissed October 18, 1887.)

COMPLAINT charging the exaction of an unreasonable and discriminating rate for the transportation of cattle in a Burton stock car.

The case having been assigned for hearing on October 18, 1887, it then came before the Commission on the complaint and answer, which are given at page 472, *ante*, no proof being offered by either side.

Mr. M. J. Foote, for complainant.

Messrs. J. S. Blair and Shellabarger & Wilson, for defendant.

INTER S.

By the *Commission*:

The pleadings in this case present clear issues of fact. It is impossible to dispose of these issues by a decision which shall reach the merits without some evidence upon which to base it. We cannot assume that the higher rates charged for transporting the Burton cars constitute unjust discrimination when the fact is denied in the pleadings, and is not proved.

Whatever doubts we may have on the subject in the absence of proofs, it is impossible for us to say that if all the facts were before us the greater charge could not be justified. In the case brought by the Burton Stock Car Company against the Chicago, Burlington and Quincy Railroad Company and others, and heretofore heard by us, considerable evidence was put in by the defendants in justification of the greater charge; and while we could not say it was entirely convincing, neither on the other hand could we say that unjust discrimination was fairly made out. The case was therefore retained for further proceedings in case the parties should see fit to take them. In this case, however, no evidence whatever is presented; and as it is not suggested that further proceedings are desired, *the case must stand dismissed, but without prejudice.*

E. B. RAYMOND

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

(No. 20.)

1. Where from Wabasha, the junction of the "narrow gauge" branch with the main line of defendant's railway, the distance over the main line northwest to Lake City is twelve miles, and to Red Wing twenty-nine miles, and over the branch line the distance west from Wabasha to McCracken is eighteen and to Mazeppa fifty-two miles, and the distance north from Mazeppa to Red Wing by wagon road is twenty-two miles, and nearly the same to Lake City, and both are competitors with Mazeppa for the grain and other trade with the territory intervening; the distance from Chicago to Mazeppa being 392, from Red Wing 369, from Lake City 352 miles, and to Milwaukee the distance is less than to Chicago by 107 miles and the complainant alleged that the discriminations made by the defendant against the locality of Mazeppa were unjust and sufficient to divert largely its grain business; that the excess charged of eight cents in the Mazeppa rates over Lake City and Red Wing rates was and, any difference or excess in such rates above two cents, would be an undue preference in favor of Lake City and Red Wing and an unreasonable prejudice against Mazeppa in respect of the grain and other trade in which complainant was and is interested, and the only evidence in support of complainant's statement that the Mazeppa rate,

charge more "for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance." The longer distance from Minneapolis to Chicago over the main line is 420 miles. It would seem to require some extension to include the shorter distance from Mazeppa to Chicago, fifty-two miles of which is on the narrow gauge branch line; and any experiment in running the same cars over all of the alleged same line of said Railway Company would most likely upset the cars, if not the argument of counsel.

These questions, first raised in the argument, are not presented in the complaint or answer. They are not before us for adjudication and no opinion is expressed as to them.

It is therefore ordered by the Commission that the Chicago, Milwaukee & St. Paul Railway Company so readjust its rates and charges to Milwaukee and Chicago from Mazeppa, on the Wabasha Division, and Lake City and Red Wing, on the River Division of its road, that the difference in favor of the points named on the River Division shall neither exceed $2\frac{1}{2}$ cents nor one third part of its own rates; and while the rates and charges on flour, grain, and other like products are $7\frac{1}{2}$ cents on the 100 pounds from Lake City and Red Wing to Milwaukee and Chicago the rates from Mazeppa to Milwaukee and Chicago shall not exceed ten cents on the 100 pounds on the like kind of property.

MANUFACTURERS & JOBBERS UNION OF MANKATO, *Petitioner,*

v.

MINNEAPOLIS & ST. LOUIS RAILWAY CO. *et al.*

(No. 76.)

Where, after the examination of witnesses and documentary evidence upon a petition to require the respondent to so adjust its tariffs on freights from the City of Chicago, that its rate to the City of Mankato, Minnesota, and to all other points west of Waterville and between Waterville and Mankato, on its line of railroad on all classes of freight, shall hereafter be no higher than the rates established by said Company from the City of Chicago to said Village of Waterville and points east on said line of railroad between Waterville and the City of Red Wing and points north on said main line, between Waterville and the City of Minneapolis, and after submissions upon the petition, answer and evidence and full consideration of the matters involved, but before the announcement of the report and opinion, the respondent railroad company conceded the relief sought and made, and published a tariff of rates in accordance with the prayer of the petition, the Commission only deemed it necessary to make the report to complete the record of the case.

(Report filed Nov. 21, 1887.)

COMPLAINT charging violation of section 4 of the Act, in making unjust discriminations and unlawful preferences in tariff of rates.

The facts are stated in the opinion.

See also *ante*, 483.

REPORT OF THE INTERSTATE COMMERCE COMMISSION.

Bragg, Commissioner :

The complaint in this proceeding was made by the Manufacturers & Jobbers Union of Mankato, in the State of Minnesota, against the Minneapolis & St. Louis Railway Company, the Chicago, Rock Island & Pacific Railroad Company, the Burlington, Cedar Rapids & Northern Railway Company, and the Kankakee & Seneca Railroad Company. It alleges that the Minneapolis & St. Louis Railway Company is a corporation created, organized, and existing under the laws of the State of Minnesota, and as a railroad company was, at the time of the filing of the petition and for more than two years last past had been, doing business as a common carrier in the State of Minnesota and elsewhere. It avers that petitioner is an association of business men of the City of Mankato, in Minnesota, whose object is to promote the business interests of that city. It states that the Minneapolis & St. Louis Railway Company, in connection with the Chicago, Rock Island & Pacific Railroad Company, the Kankakee & Seneca Railroad Company, and the Burlington, Cedar Rapids & Northern Railway Company, have established traffic arrangements for the transportation of passengers and freights for hire from the City of Chicago, in the State of Illinois, to the various stations on the line of the Minneapolis & St. Louis Railway, in the State of Minnesota, including the City of Red Wing, the City of Minneapolis, the Village of Waterville, and the City of Mankato, in said last named State. It states that the direct line of the Minneapolis & St. Louis Railway Company, operated within the State of Minnesota for such traffic, extends from Albert Lea northerly through Waterville to Minneapolis. It states that the Wisconsin, Minnesota & Pacific Railway is controlled and operated by the Minneapolis & St. Louis Railway Company under the said traffic arrangement, and extends from the City of Red Wing westward through said Village of Waterville to the City of Mankato, running in a general direction at right angles with said railroad, extending from Albert Lea to Minneapolis, as aforesaid. It states that the rates of freight established and published and at the date of the filing of the petition enforced by the Minneapolis & St. Louis Railway under said traffic arrangement from Chicago to Minneapolis were as follows per 100 pounds:

Class.	-	-	-	1	2	3	4	5	A	B	C	D	E
Rate in cents.	50	40	30	20	12½	17½	15	13	10	8			

It states that the rates of freight established by the Minneapolis & St. Louis Railway Company from Chicago to Waterville were the same as were established by that Company from Chicago to Minneapolis by reason of the operation of section 4 of the Interstate Commerce Law, the distance from Chicago to

reasonable and just, and avers that the lower rate, 7½ cents, on the River Division is "exceedingly low and unprofitable," is not voluntary, but the result of competition, and only indirectly affects the rates at Mazeppa.

This answer of the defendant was supported by the testimony of witnesses tending to show that the Mazeppa rates of 12½ cents are reasonable within themselves and without relation to the 7½ cent rates on the main line, and that by reason of competition defendant was and is compelled to accept the latter rates to get any share of the main line grain traffic.

This testimony, intelligent in theory, is based in part on comparison of these rates with rates for like distances in the States of Iowa and Illinois under state regulation, with no explanation of surrounding circumstances, and partly on the estimate of the cost of the service dependent upon conditions so numerous and variable as not to be convincing.

The only evidence before us in support of complainant's statement that the Mazeppa rate, now 12½ cents, is unreasonable, is afforded by comparison of this and other rates on the branch line with the Red Wing, Lake City, and other rates on the River Division of the main line. It already appears that the rate complained of, now 12½ cents, was eighteen cents when the complaint was made. Before the Act to Regulate Commerce was passed it had been as high as thirty and never lower than seventeen cents. We do not feel authorized to declare 12½ cents an unreasonable charge for the service rendered, or that a rate nearly a third lower than it had ever been previous to the Act to Regulate Commerce, is unjust and unlawful of itself, or within the meaning of the first section of said Act.

The averment of defendant's answer that 7½ cents, the River Division grain rates, were and are exceedingly low and unprofitable, is qualified by the statement of the defendant's general manager that low as they are they yield something more than the cost of moving the grain. So qualified, the averment means only that if all freight was carried over defendant's road at rates no more profitable the earnings might not equal the cost of the service, including a reasonable return on the capital invested. Thus qualified, the averment is not without support in the facts presented.

The surplus products of northwestern grain fields go largely to Eastern States for consumption or for export. Conceding that it may be true, as claimed by defendant's answer, that to share in the grain traffic from Minneapolis it must accept rates made by its competitors, and assuming that under the fourth section of the Act to Regulate Commerce the rates for the shorter distance from Lake City and Red Wing cannot be greater than the Minneapolis rate, and it can yet be true that these rates give an undue preference to these places as against Mazeppa in the grain and other "produce" trade.

Rates and charges, not unreasonably high of themselves, can be so adjusted in their relations to each other as to give the undue preference and produce the unreasonable disadvantage which the third section of the Act to Regulate Commerce makes unlawful; and if

the defendant railway company in establishing its charges on the different divisions and branches of its road so adjusts them as to divert trade and business to one locality, which naturally, under an equitable adjustment of charges, would go to another, such unreasonable preference for one place and disadvantage to another are not excused or made lawful by the fact that some of such rates are not entirely voluntary, but the result of competition with other carriers.

The complaint does not insist that no advantage shall be given to competing towns on the main line, but that the advantage shall not be unreasonable, and so the Law provides.

It is said in behalf of the defendant that the Wabasha Division being a narrow gauge road, the volume of traffic small and requiring transfer to the main line at Wabasha, five cents is not an unreasonable charge for the additional service resulting from these conditions. This reasoning loses some of its force in connection with the fact that the rate from McCracken, on the Wabasha Division, is but eight cents per 100 pounds, or one half cent above the main line rate, for the haul to and transfer at Wabasha.

The traffic over the road being small its cost of movement is not believed to be greater than if the road were of the standard gauge.

The difference now complained of in the rates at Mazeppa compared with the rates at Red Wing and Lake City is five cents per 100 pounds, a difference equal to two thirds of the rate of the last named two places.

For eight months next before the Act to Regulate Commerce was in force this difference was but two cents, or less than one seventh of the then rates from Lake City and Red Wing.

Any difference in the rates named so large as that now existing, five cents, cannot fail to so divert a part of the grain trade as to subject Mazeppa to unreasonable disadvantage and give undue preference to Red Wing and Lake City, its rivals in that business. This difference should neither exceed 2½ cents on the 100 pounds nor one third part of the rates made in the adjustment of charges from said competing towns. Such a difference or discrimination in the rate will compensate the defendant railway company for any additional cost of transportation from Mazeppa over the cost from the competing towns.

The complaint asks the Commission to cause to be refunded to shippers from Mazeppa over defendant's road any charges in excess of reasonable charges paid by them since the Act to Regulate Commerce took effect. The amount claimed to have been so paid and the names of the persons paying the same are not stated, nor is there evidence before us to authorize consideration of the subject.

In the argument, both parties debated, in connection with or as part of this proceeding, the system of transportation known as "milling in transit;" also the fourth section or long and short haul clause of the Act to Regulate Commerce. Under the milling in transit system grain billed through is stopped on the way, ground into and forwarded as flour, and the two shipments treated as one. The fourth section of said Act declares it unlawful to

law, would involve a readjustment so general that other interests and localities are entitled to be first heard and their respective claims considered.

3. Where relief granted in the form desired by petitioners might be understood as deciding that the circumstances prevailing in the district about Opelika are such as to justify making that town an exception under the fourth section of the Act to Regulate Commerce, as against the local stations about it, the Commission declined to enter such an order, because the question of the exceptional circumstances and conditions authorizing such an order was not presented by the petition or proofs, and the points that would be injuriously affected by such an order are not before the Commission, and have had no opportunity to be heard. Permission was granted to amend the petition so as to set out the facts on which complainants claim for themselves lower rates than are given to towns nearer Atlanta, Montgomery and Columbus. If such an amendment is made, notice will be given to the localities to be affected and a further hearing granted. If the general subject of freight rates from points in other States to the various points on the line of defendant's roads, including Opelika, is to be brought before the Commission, the petition may be so amended as to distinctly so state, that towns interested may be advised of the relief sought affecting their interests, but if complainants shall see fit to ask for a strict enforcement of the long and short haul clause as against Columbus and Montgomery, or either, an amendment of the petition must be made, and the towns now favored with the lower charges on the shorter hauls, given an opportunity for a hearing.

4. Where the rate from Opelika to Savannah via Columbus & Georgia Central is fifty-two cents per 100, while the rate to the same point by the same system from both Montgomery and Columbus is but forty-five cents, and Opelika can obtain no other rate to New Orleans at all on cotton, although it has good and ample facilities for the handling of cotton, and the rate on cotton from Montgomery to New Orleans is forty-five cents per 100, and the local rate charged Opelika, on cotton, to Montgomery is twenty-seven cents, making seventy-two cents to New Orleans, thus cutting off that market, leaving Savannah as the only outlet—an order was made requiring defendants to cease and desist from such denial, the Commission finding from the evidence that through rates and through bills of lading on cotton offered for shipment at Opelika for New Orleans are unjustly and unreasonably refused by the defendant, the Western Railway of Alabama, while given by said road on other com-

modities, and at other points similarly situated, and while said defendant's connecting lines making the route to New Orleans are ready and willing to unite therein, and finding also, that Opelika is by such action of the defendant subjected to undue and unreasonable prejudice and disadvantage in violation of the provisions of the third section of the Act to Regulate Commerce. It is no defense against the issuing of such an order that some undisclosed connection of the defendant once made an offer of rebates to the merchants of Opelika for the purpose of getting the business away from what the defendant considered, its "ordinary and proper channel to New Orleans," it not being averred that the lines to New Orleans will not now unite in making the usual through rates and no reason whatever being stated why through rates and through bills of lading on cotton are not given over the line which forms the aforesaid "ordinary and proper channel."

(Decided December 3, 1887.)

COMPLAINT charging discrimination in freight rates against Opelika and in favor of Montgomery and Columbus, and that the Western Railway of Alabama refuses a through rate and through bills of lading from Opelika to New Orleans on cotton. *Relief denied in the matter of discrimination until the complaint is amended, and granted as to the through rate and through bills of lading.*

The facts are stated in the opinion of the Commissioner.

Plaintiffs appeared in person.

No appearance for defendant on the final hearing.

REPORT AND OPINION OF THE COMMISSION.

Walker, Commissioner:

Complaint under section 8 of the Act to Regulate Commerce for alleged unjust discrimination against Opelika in favor of Montgomery, Alabama, and Columbus, Georgia.

Answers were filed by both defendants. The answer of the Western Railway of Alabama, by Cecil Gabbett, general manager, is quite full, in substance alleging that rates at Opelika are the result of considerable negotiation and compromise, and although less favorable than at Montgomery and Columbus are more favorable than at Cusseta, Youngsboro', Gold Hill, and other points in the immediate vicinity of Opelika, claiming "that there is more ground for complaint against the railroads for discriminating in favor of Opelika against Auburn, Cusseta, Youngsboro', and Gold Hill than there is for Opelika to complain of discrimination in favor of Montgomery and Columbus. The circumstances and conditions which cause the difference in the rates between Opelika and the Cities of Montgomery and Columbus are more potent and forcible than any that could be shown in favor of Opelika as against its neighboring towns."

The answer of the Columbus & Western

Waterville being sixty-five miles less than from Chicago to Minneapolis.

It states that the Minneapolis & St. Louis Railway Company has established and put in force a tariff on its line from Red Wing to Mankato, the rates of which from Chicago, through Waterville, to all points east of Waterville on said line, for the distance of sixty-seven miles to the City of Red Wing, were the same as established by said Company to Waterville, while to all points on said line west of Waterville, including the City of Mankato, a distance of twenty-nine miles, were unreasonably and unjustly in excess of said rates to said Village of Waterville, and from Chicago were as follows per 100 pounds:

Class.	-	-	1	2	3	4	5	A	B	C	D	E
Rate in cents.	60	50	35	25	17½	22½	18	16	13	10		

It states that said rates from Chicago to points west of Waterville on said line, including said City of Mankato, were from 20 to 40 per cent in excess of the rates established and in force by said Minneapolis & St. Louis Railway Company from Chicago to said Village of Waterville and points on said line east of Waterville to the City of Red Wing, although the distance is much less, and the City of Mankato is the most important shipping point on said line of railroad in the State of Minnesota, excepting St. Paul and Minneapolis.

The prayer of the petition is that the Minneapolis & St. Louis Railway Company shall be directed and required to so adjust its said tariffs on freights from the City of Chicago, in the State of Illinois, that its rates to the City of Mankato, in the State of Minnesota, and to all other points west of Waterville and between Waterville and Mankato, on said line of railroad, on all classes of freight, shall hereafter be no higher than the rates established by said Company from the City of Chicago to said Village of Waterville and points east on said line of railroad between Waterville and the City of Red Wing and points north on said main line between Waterville and the City of Minneapolis.

At the hearing, which occurred in St. Paul, Minnesota, it was admitted by the defendants that the above facts, as set forth in the petition, were, in substance; true, but, while admitting this, the defendants did not admit that petitioner was entitled to the relief sought. On the contrary, they denied that petitioner was entitled to any relief whatever. They relied in their defense upon two grounds: *first*, that each of these rates were fair and reasonable in themselves; *second*, that these rates between Waterville and Red Wing were caused by the competition of the water lines of Lake Superior, in connection with rail lines operating from the lake points into the interior. And upon these grounds they insisted that in no sense was there any unjust discrimination or unlawful preference in any of these rates.

Several witnesses were examined before us by the respective parties at the hearing, and documentary evidence was also submitted on behalf of the petitioner. The matter was then submitted for our report and opinion. At a subsequent day, after we had fully considered the matters involved, but before the announcement of our report and opinion, we

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received notice that the respondent railway company had conceded the relief sought, and on the 20th day of October, 1887, had made and published a tariff of rates to take effect October 28, 1887, by which the rates are reduced and made the same at Mankato and points between Waterville and Mankato that the rates are at Waterville and at points between Waterville and Red Wing over the defendant's said lines on freights from Chicago to these points, as above set forth.

This disposes of this complaint, and under the circumstances we have only deemed it necessary to make the report of it here stated to complete the record of the case.

W. O. HARWELL, H. B. T. Montgomery
and J. W. Ponder, Committee on Transportation of the Board of Trade of Opelika,
Alabama,

2.

COLUMBUS & WESTERN R. R. CO. and
the Western Railway of Alabama.*

(No. 47.)

1. **Dissimilar circumstances and conditions may be made out by the existence of actual competition which is of controlling force in respect to traffic important in amount;** and the limitations suggested by this rule are applicable, when the controlling force of water competition is invoked in respect to the second and third sections of the Act, as well as in respect to the fourth. The exceptional circumstance to be proved is "actual competition"—not possible competition likely to arise if rates are raised—"of controlling force"—not when the rail line is the controlling force, but when the competing water line is able to dictate rates which will control the traffic, unless met by the railroad—"in respect to traffic important in amount"—not when competition in a single direction or for the transportation of a single article or class of articles exists, but general competition of the character stated, controlling the carriage of the traffic on which the discrimination is made. That "railroads have water competition and are compelled to meet it," without more, is not sufficient to justify the lesser charge for the greater distance, much less to justify the making of such tariffs as the petitioners seek relief from.

2. **Where the petitioners ask that the discrimination against their Town of Opelika, which it appears unjustly exists in favor of the Cities of Montgomery and Columbus, be corrected, that is, that the rates at Opelika be reduced, but when the order which they seek would increase the existing discrimination under the "Ball Arbitraries" in favor of Opelika as against the local points on each side of it, the relief was refused, as to grant it in a form in which no injustice would be done to other points, and yet conforming to the**

*See pleadings, ante, 494.

to La Grange, Georgia, through Opelika, is sixty-four cents, which, added to fifty-nine cents, makes a charge of \$1.23 as the rate a Montgomery jobber can handle flour at La Grange. The rate from Opelika to La Grange is forty-two cents, making \$1.32 as the rate the Opelika jobber can handle flour at La Grange, with 132 miles shorter haul. The present rate from New York to Opelika, is \$1.65, first class; to Montgomery, sixty-six miles further, through Opelika, \$1. The rate on cotton is fifty-two cents per 100 pounds from Opelika to Savannah, Georgia; from Montgomery and Columbus to Savannah the rate is forty-five cents per 100 pounds. No through rate is stated and no through bills of lading are issued on cotton from Opelika to New Orleans. In order to ship cotton to New Orleans, a local rate of twenty-seven cents to Montgomery is charged, and the cotton has to be rebilled from that point.

The foregoing illustrations are examples of the rates made on every class of merchandise from and to all northern and western points and to the seaboard. Upon the foregoing facts there seems to be no question but that the charge of discrimination against Opelika and in favor of Columbus and Montgomery is substantiated. Indeed, this is not denied by the defendants, who, however, claim that the discrimination is founded upon grounds which render it not unjust. The practical result in this case is the natural one, namely: that the Opelika merchants have been unable to successfully compete with the merchants of the rival towns in their efforts to make Opelika a distributing point. The value of real estate has largely decreased. The business of handling cotton for sales abroad has been diverted to other towns to a great extent, and the town, although the most important in population and location on the line between Atlanta and Montgomery, has not held its own in the progress of the last decade, but has been outstripped by its competitors and practically left behind.

The considerations upon which the defendants attempt to justify their treatment of this community involve broader questions than those presented by the present rates between two or three neighboring towns and cities. The question from the standpoint of the defendants cannot be considered without entering to some extent upon the method under which freight rates are made in the Southern States, as related to the requirements of the fourth section of the Act to Regulate Commerce. Their position amounts, in substance, to this: That they admit that the rates to Montgomery and Columbus are made less for the longer haul than to intermediate points on the same line of road, but that they are justified in so making them by reason of the water competition which exists at those points and which compels the establishment of very much lower rates than naturally would be made, while they claim that the rates to intermediate points are reasonable and just; but they say, in substance, that what the merchants of Opelika desire is the establishment in their favor of another competing point or "trade center" at which the rate shall be materially lower than to intermediate points on

the same line, thus inviting them to commit a still further breach of the letter of the fourth section without the justification of water competition, which exists in respect to the other places named. This they say they are not willing to do, insisting that Opelika cannot be properly treated otherwise than as a local station on the line of the Western Railway of Alabama; and, not having the advantages of water competition, cannot ask the railroads arbitrarily to give them such advantages as they would have if located upon a navigable stream.

Another complication is found in a circumstance referred to in Mr. Gabbett's answer, namely: that this controversy is one of long standing, which, in 1884, was made the subject of investigation by the State Railroad Commissioners of Alabama, who were of the opinion that the law under which they were acting required more liberal treatment of Opelika on the part of the roads. The arrangement which was then made was not satisfactory to Opelika, although a concession to some extent was instituted. It appears that a system of arbitrary figures, called the "Ball Arbitraries," was then established, whereby the Opelika rate was made by adding these arbitrary figures to the rates to Montgomery or Columbus, the result being that, although the Opelika rates were considerably higher than the rates at those points, nevertheless they were somewhat lower than the rates at the adjoining points in its vicinity. Thus, for example, the rates furnished the Commission by the Louisville & Nashville Railroad Company from Louisville, Kentucky, in effect from August 20, 1887, show the following on flour per barrel:

To		
Montgomery, Ala.,	52 cts.	
Columbus, Ga.,	58 "	
Eufaula, Ala.,	58 "	
Atlanta, Ga.,	54 "	
Opelika, Ala.,	72 "	
Auburn, "	90 "	Seven miles west of Opelika.
Salem, "	82 "	Ten miles southwest of Opelika, towards Columbus.
Cusseta, "	91 "	Nine miles northeast of Opelika, towards Atlanta.
Dadeville, "	110 "	Thirty miles northwest of Opelika, on the Columbus & Western Extension.
Buffalo, "	97 "	Twenty-two miles north of Opelika, on the East Alabama Railroad.

From these examples, which illustrate the rates on every commodity to all points similarly situated, it is apparent that while the rates to Opelika are considerably higher than the rates to Montgomery, Columbus, and Eufaula, they are, nevertheless, considerably lower than the rates to the neighboring points in every direction. In other words, Opelika is now treated by the railroad companies to some extent as a competing point or trade center as against the surrounding towns, but does not receive this treatment to a sufficient extent to enable it to compete with other distributing points, or to satisfy the desires of its citizens; and while the railroad companies say that they cannot properly give Opelika further concessions in rates, by reason of the unfairness to the neighboring points which such concessions

Railroad Company, by E. P. Alexander, president, contains the following:

"Montgomery, situated on the Alabama River, and Columbus, situated on the Chattahoochee River, have lower rates than Opelika. The reason is very plain; the railroads there have water competition and are compelled to meet it. The rates to Opelika are made by adding to the rates from Montgomery or Columbus a line of rates we call the 'Ball Arbitraries,' as they were suggested by Colonel Ball, one of the State Railroad Commissioners of Alabama. They are less than the local rates which generally prevail on the railroads in that State.

"Opelika wishes them still further reduced. I am prepared to say that I am not unwilling to reduce them so far as Opelika is concerned, if I may be allowed to reduce them to Opelika without making the reduction general to all other stations upon the line of the Columbus & Western Railroad."

The case was assigned for hearing by the Commission on October 19, 1887, at which time the complainants were present and were heard. The defendants were not present, but had admitted receipt of notice of the assignment of the case for that date. The general subject of the rates at Opelika had been previously brought before the Commission at its session in Atlanta, Georgia, on April 28, 1887, when Mr. Harwell, one of the present complainants, testified at considerable length and was cross examined by Mr. Alexander. The latter gentleman also referred to the subject in the argument which he made before the Commission at that time as President of the Central Railroad Company of Georgia. The proceedings at Atlanta are referred to in the petition in the pending case. The Commission understand that the defendants are content to submit the controversy upon the proofs and arguments laid before the Commission at Atlanta and appearing in the record of the present proceedings.

The facts found are as follows: Opelika is a town of about 8,500 inhabitants, located in the eastern part of the State of Alabama, 109 miles from Atlanta and sixty-six miles from Montgomery. The road from Atlanta to Montgomery, through Opelika, is composed of the Atlanta & West Point Railroad, and the Western Railway of Alabama, which connect at West Point, on the state line, and are operated as a continuous line from Atlanta to Montgomery by the same management. Columbus, Georgia, is situated twenty-nine miles southeast of Opelika on the Columbus & Western Railroad, which is a part of the Central Railroad of Georgia system, extending from Savannah westerly across Georgia into Alabama. The Columbus & Western Railroad is prolonged through Opelika (where it crosses the Western Railway of Alabama) in a northwesterly direction towards Birmingham, being operated at a distance of sixty miles to Goodwater. Another railroad, called the East Alabama Railway, extends directly north from Opelika, a distance of twenty-two miles, to Buffalo, in Alabama.

Opelika is surrounded by a territory producing cotton and consuming provisions and other products of the Western and Northern States.

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Columbus is surrounded by a similar territory and is upon the east bank of the Chattahoochee River, which at that point is the boundary between the States of Georgia and Alabama. This river is navigable except in the dry season of the year.

Montgomery, in the center of Alabama, is on the main line of the Louisville & Nashville Railroad, extending from Cincinnati to New Orleans. It is also reached by the Central Railroad of Georgia, via Eufaula, and by the Western Railway of Alabama, as above stated, extending through Montgomery to Selma on the west; it is also situated on a navigable stream. The rates from the Northern and Western States to Montgomery by the Louisville & Nashville, via Birmingham, and by the Western Railway of Alabama, via Atlanta, are the same; and are considerably less than the rates from the Northern and Western States to Opelika. The rates from the Northern and Western States to Columbus, by way of the Louisville & Nashville Railroad, and Montgomery, and also by way of Atlanta, in both cases passing over the Western Railway of Alabama to Opelika, thence twenty-nine miles over the Columbus & Western to Columbus, are also considerably less than the rates to Opelika. The Central Railroad of Georgia also has another more southerly route from Montgomery, to Columbus, via Union Springs, on the Montgomery & Eufaula line. The Central Railroad Company of Georgia also controls the Western Railway of Alabama as part of its general system, so that the rates to both Opelika and Columbus are practically established by that Company, of which Mr. Alexander is president; and at Montgomery by that Company acting in harmony with the Louisville & Nashville Railroad Company.

For example, it appears that the rates from Cincinnati are as follows:

To	1	2	3	4	5	6	A	B	C	D	E	H	F
Montgomery.....	108	102	88	71	59	47	32	33	32	28	52	57	56
Columbus.....	117	112	91	76	63	52	32	40	35	31	54	59	62
Opelika.....	156	120	107	90	75	62	40	28	42	37	68	82	90

Cusseta is a station on the Western Railway of Alabama, eleven miles northeast of Opelika. A Montgomery jobber can purchase first class goods in Cincinnati, have them shipped to Montgomery for \$1.08, then back to Cusseta for fifty-three cents—total, \$1.61—passing through Opelika twice in so doing. An Opelika jobber would pay on the same goods \$1.50 from Cincinnati to Opelika and twenty-two cents from Opelika back to Cusseta, making a total of \$1.72. Dadeville is a station on the Columbus & Western Extension, thirty miles northwest from Opelika. A Columbus jobber can purchase first class goods at Cincinnati, paying to Columbus \$1.17; thence to Dadeville sixty-six cents; total, \$1.83, passing through Opelika in both directions. The Opelika jobber would pay on the same goods: Cincinnati to Opelika, \$1.50; Opelika to Dadeville, fifty-nine cents; total, \$2.09. The rate on flour from St. Louis to Montgomery is fifty-nine cents per barrel by way of Birmingham or by way of Atlanta, while the Opelika rate is ninety cents and the Columbus rate seventy-six cents. The rate from Montgomery

pany of Georgia, in making a rate from Savannah to the West wholly on its own road—for instance, to Salem, Alabama—charges the established "competitive" rate to Columbus, 292 miles, and adds thereto the local rate for nineteen miles, Columbus to Salem: thus, on fertilizers, per ton, \$3 plus \$1.40—\$4.40, Savannah to Salem; being \$3 for 292 miles, to which is added \$1.40 for the last nineteen miles of the haul, making \$4.40 total rate.

Under the use of this system the railroads have to a very large extent absorbed the business which in the past was done by steamboats at competitive points, and this is true at Columbus, one of the points in question, as to which it is said in the answer "the water competition on western products by steamboats has practically ceased during the past three or four years, owing to the reduction of rates by rail lines to that point from the West; but should the rates be raised from the West to Columbus, competition would again ensue similar to what it was prior to 1881." Thus it is claimed generally that rates to these competing points cannot be raised without endangering the business of the roads, while rates at intermediate points cannot be lowered without serious embarrassment to their revenue. As has been seen above, Opelika is "neither fish nor fowl." Its treatment has not been consistent, nor has it been satisfactory either to the railroads or its citizens. It does not receive the low rates of the trade centers, nor are the high rates charged at intermediate points exacted. It urgently desires to become a trade center, and insists that its situation as a branching point for several railroads is one that entitles it to such consideration, even at the expense of the neighboring communities; while railroads have been unwilling to concede to it any other position than that conceded to local points between competitive points, using the fact of the injustice to neighboring communities as an excuse in this behalf.

It was the hope of the Commission after the announcement of its decision upon the subject of the application of the fourth section on June 15, 1887, in the *Louisville and Nashville Case*, that the railroads in the South, as well as in other parts of the Union, would endeavor to reform their tariff schedules so as to bring them gradually into conformity with the general provision of the Law. It was said in that opinion that "Our observation and investigations so far made lead to the conclusion that strict conformity to the general rule is possible in large sections of the country without material injury to either public or private interests; and that in other sections the exceptions can be made and ought to be made much less numerous than they have been hitherto, and that when exceptions are admitted the charges should be less disproportionate." [See *ante*, 290.]

Since the promulgation of that opinion and the full announcement of the views of the Commission therein made concerning the construction of the fourth section, the tariffs which are being daily received show that a reconstruction of the rates has been going on continually, with more or less effort to bring the same into harmony with the views then expressed. This effort has been observable upon many of the roads of the Southern

States, as well as in other portions of the country.

The Commission has failed to observe upon the lines controlled by the Central Railroad Company of Georgia any decided effort towards a reconstruction of its rates in the directions suggested by its former opinion as required in order to conform to the provisions of the Act to Regulate Commerce. So far as the observation of the Commission goes, the system in force prior to April 5, 1887, is still substantially maintained upon that line. The old trade center rates are made to "competing points," and the local rates to interior points are added as before.

It is possible that the irregularities and inequalities in existing tariffs cannot be made entirely to disappear without a general readjustment of the arrangements under which traffic is interchanged, involving the adoption of a new system of the division of earnings between connecting lines, and a new system of making rates; but the Commission is satisfied that very extensive improvements are possible at once, and that very material changes in the present methods are required by the Law.

These suggestions arise directly from the position taken by the defendants in their answers. It is not the intention of the Commission to dispose of such questions hastily, nor in the absence of a distinct understanding that they are presented for consideration and adjudication.

In disposing of the present petition it must be borne in mind that the complainants charge a violation only of the second and third sections of the Act to Regulate Commerce; but in attempting to justify the discriminations adopted and enforced in the Opelika rates the defendants claim that what are styled competitive rates are too low upon any view, except that they are forced upon the roads by water competition; that the roads would raise them and equalize their rates generally but for that fact, which prevents their doing so, and that it is not unjust discrimination or undue or unreasonable prejudice, which is based upon physical facts and which recognizes only natural diversities of situation.

The weight of these claims has been conceded by the Commission in the case above referred to. Dissimilar circumstances and conditions, it was said, may be made out by "the existence of actual competition, which is of controlling force in respect to traffic important in amount." Those words were chosen with care, and the limitations which they suggest are applicable when the controlling force of water competition is invoked in respect to the second and third sections of the Act, as well as in respect to the fourth. The Commission, in expressing the result reached, named as an exceptional circumstance, to be proved if existent, the fact of "actual competition"—not possible competition likely to arise if rates are raised—"of controlling force"—not when the rail line is the controlling force, but when the competing water line is able to dictate rates which will control the traffic unless met by the railroad—"in respect to traffic important in amount"—not when competition in a single direction or for the transportation of a single article or class of articles exists, but genera

would involve, nevertheless, they admit that they are making such concessions at the present time to a considerable extent. Mr. Alexander's answer is very explicit in its statement that he is not unwilling to reduce the Opelika rates, provided he may do so without making the reduction general to all other stations, while Mr. Gabbett's answer is equally explicit in showing that Opelika already enjoys large advantages over Gold Hill, Youngsboro', Auburn, Cusseta, and its neighboring towns generally.

That this result is the natural outcome of that system of rate making which the Interstate Commerce Law found in force upon most of the railroads in the Southern States is admitted by Mr. Gabbett, who, in his answer, says: "Samples can be found all throughout the South similar to that of Opelika, where rival roads have not reduced the rates to an undesirable figure. None of such points can get freight from the West and sell to any station beyond them at as low an aggregate as Montgomery, Columbus, and Selma can; nor can the rates be constructed to allow this without making the rates to all railroad stations in the State the same, which would destroy the railroad property in this State."

It was in view of cases like the present that the opinion of the Commission, in deciding upon the application of the Louisville & Nashville Railroad Company for relief under the fourth section of the Act, discussed the subject of "trade centers" in the South, using, among other things, the following language: "The prevalence of such ideas and the acting upon them in making freight tariffs give to railroad managers a power of determining within certain limits what towns shall be trade centers and what their relative advantages; and while it may be, as they assert it is, that, in deciding upon rates under the pressure of the competition of trade centers, they endeavor to do justice between them, yet, as they do not, at the same time, feel a like pressure from noncompetitive points, it is obvious that justice to such points is in great danger of being overlooked, and it is altogether likely that it is to some extent."

"One result is that towns recognized by railroad managers as trade centers come to be looked upon as towns with special advantages, and other towns strive for recognition as such, and complain, perhaps, of injustice when they fail." [See *ante*, 289, 290.]

The system of rate making in the Southern States, which was quite generally operative when the Act to Regulate Commerce took effect, and which is still employed upon the roads here in question, is this: Certain large cities and towns situated on the coast at interior river points and at railroad junctions are called competitive, and receive quite low rates on all interstate traffic; all other stations are called local, and are charged much higher rates. The rates to local points are made by adding to the competitive rate at the nearest competitive point the local rate from that point. These local rates are ascertained upon a short distance mileage basis, frequently by using the table established or approved by State Railroad Commissioners. The intermediate or local stations are "given the benefit" of what is

called the lowest combination—that is, if the rate to the competitive point, plus the local rate to the given point beyond, exceeds the rate to the next competitive point, plus the local rate back to the given point, the latter rate is taken.

Thus between every two competitive points the graphic representation of the rates upon paper would show a rise, increasing rapidly until the highest point is reached at some station intermediate, and then descending as rapidly to the other end of the line. Under this system the rates on first class freight from Louisville to the various stations on the road between Atlanta and Montgomery are as follows (Louisville & Nashville Railroad Company Tariff, August 20, 1887; distance Louisville to Atlanta, 476 miles; Louisville to Montgomery, 490 miles):

Station.	Rate.	Distance from Atlanta.
		Miles.
Atlanta - - - - -	\$1 07	
East Point - - - - -	1 23	6
Fairburn - - - - -	1 31	18
Palmetto - - - - -	1 36	25
Newman - - - - -	1 39	30
Grantville - - - - -	1 47	51
Hogansville - - - - -	1 47	58
La Grange - - - - -	1 54	71
Gabbettville - - - - -	1 54	80
West Point - - - - -	1 53	87
Cusseta - - - - -	1 51	98
Opelika - - - - -	1 30	109
Auburn - - - - -	1 45	116
Loachapoka - - - - -	1 43	123
Notasulga - - - - -	1 41	129
Chehaw - - - - -	1 36	136
Cowles - - - - -	1 30	145
Shorter's - - - - -	1 26	152
Mount Meigs - - - - -	1 20	161
Montgomery - - - - -	98	

It will be seen that the rates to points between Montgomery and Atlanta (except Opelika, which is treated exceptionally) are made by adding the local rates to the rate of one of said special points or "trade centers;" and that the rates are highest at La Grange and Gabbettville, about midway of the total distance, where they are 59 per cent higher than at Montgomery. The evidence before us shows that business from Louisville for these local points is about as likely to go through Montgomery as through Atlanta. The rate either way is the same, and so of all other northern and western points. The disproportion of the charges made to the above enumerated local points in the last few miles of a 500 mile haul is obvious.

It is true that in this instance the freight is received at Atlanta or at Montgomery by a new carrier, but the same system is applied in case a so-called competitive point is passed on the line of the same carrier.

In the distance tariff furnished by the Railroad Commission of Georgia the increase in the tariff on first class freight between 400 and 420 miles is three cents, while the charge for a single haul of twenty miles is twenty cents; yet on freight from Cincinnati, Ohio, to East Point, the Atlanta & West Point Railroad Company adds to the Atlanta rate as much as it charges upon freight to East Point which originates in Atlanta, and so of all other stations on its line, and the Central Railroad Com-

and formerly shipped 26,000 bales per year, now reduced to from 12,000 to 15,000 bales. The rate on cotton from Montgomery to New Orleans is forty-five cents per 100, and the local rate charged Opelika on cotton to Montgomery is twenty-seven cents, making seventy-two cents to New Orleans, which shuts the door against that market, leaving it only the Savannah outlet.

These facts are not denied by the defendants. All that we have upon this subject from them is contained in the following paragraph from the answer filed by Mr. Gabbett for the Western Railway of Alabama:

"As to the charge that no through bills of lading are being issued by this road from Opelika to New Orleans, Louisiana, we would say that they were issued on the same basis that freights between Opelika and other places were charged, until a promise of rebates or secret rates to some of the merchants of Opelika by certain officers or agents of competing lines from Montgomery, an attempt was made to divert cotton from its ordinary and proper channel to New Orleans, was communicated to this company.

"With this information before us we ceased to give any through bills over the lines that we had reason to believe were seeking in an improper and underhanded way to draw freight from the roads over which it would naturally pass. We did this, as we were informed, in strict conformity to our legal right, to become responsible only beyond our own line for such roads, as our own judgment and experience taught us to be safe, and to our interest."

This averment is not supported by any proof, and, if true, it amounts simply to this: that some undisclosed connection of the defendant once made an offer of rebates to the merchants of Opelika for the purpose of getting the business away from what defendant considered its "ordinary and proper channel to New Orleans." It is not averred that the lines to New Orleans will not now unite in making the usual through rates, and no reason whatever is stated why through rates and through bills of lading on cotton are not given over the line which forms the aforesaid "ordinary and proper channel."

It appears from the papers in the case and from statements made on the hearing that through rates on cotton were formerly made from Opelika to New Orleans on the same basis that other freights were treated, as above described; also that after Opelika was punished in the manner stated by Mr. Gabbett for the efforts of competing lines to divert the traffic, through rates were given to New Orleans on cotton passing directly through Opelika from other points. It is not stated that the alleged "rebates or secret rates" have been offered since the passage of the Act to Regulate Commerce, and it is understood that the through rates to New Orleans were taken away from Opelika some time before that date and have not been restored, although such rebates would be now illegal. It is not even said that any Opelika dealer ever received such a rebate, but only that a "promise" of that nature was "communicated to this company."

Through bills of lading on cotton are an im-

portant facility in its transportation as now conducted; drafts drawn with such bills of lading attached are a basis of credit throughout the South. They ought not, therefore, to be refused without some substantial reason, and none is shown here.

From all the evidence before the Commission it finds the facts to be that through rates and through bills of lading on cotton offered for shipment at Opelika for New Orleans are unjustly and unreasonably refused by the defendant, the Western Railway of Alabama, while given by said road on other commodities and at other points similarly situated, and while said defendant's connecting lines making the route to New Orleans are ready and willing to unite therein, and also that Opelika is thereby subjected to undue and unreasonable prejudice and disadvantage, in violation of the provisions of the third section of the Act to Regulate Commerce.

An order will be made requiring said defendant to cease and desist from such violation within ten days after receiving a copy of the same.

The petition in other respects is retained, with leave to complainants to file amendments or an amended petition in accordance with the views above expressed.

William H. COUNCILL

v.

WESTERN & ATLANTIC R. R. CO.*

1. There is no undue prejudice or unjust preference shown by railroad companies in separating their white and colored passengers by providing cars for each, if the cars so provided are equally safe and comfortable. But fair dealing and common honesty require that a colored passenger should have the security and conveniences of travel for which his money has been accepted. Where a colored passenger had purchased a first class ticket, and there was but one car on the train furnishing the accommodation for which he had paid and was entitled to have, and after he had entered this car, he was forcibly removed to a car assigned to passengers of his race, which was a half car, half lighted, in which men and women were huddled together and where men, white and black, smoked at pleasure, the car being designated as a "second class" car, being dismal, less clean and less comfortable than the car in which he was first seated, the railroad company was held to have subjected him to undue prejudice, and unreasonable disadvantage in violation of section 3 of the Act to Regulate Commerce; and these unlawful acts and all unjust discriminations were ordered to be discontinued.
2. The complainant having offered evidence of pecuniary damages as a basis for an award for injuries done in his violent removal from the car and for reasonable fees of attorneys he has

* See ante, 232, 255.

demand was made upon any other of the passengers to vacate their seats, but it alleges that no others were there in violation of the rules. It admits that complainant left the train at Dalton, Georgia, as it avers, for no other reason than that he chose to do so.

It admits "its obligation to furnish to all passengers who pay the same fare equal or like accommodations, and that it has no right to discriminate between classes on account of color, sex, or otherwise, by offering one better accommodations and another inferior accommodations for the same money."

Further answering, the defendant railroad company avers that it has the right to promote good government of its trains and the convenience and comfort of passengers by classifying and requiring those of one color or sex to ride in one car and those of another in a different car, and to avoid confusion and trouble which might result from "crowding persons of the two races together in the same car." It had established a permanent rule or regulation of the Company. By this rule a car was and is set apart, called the ladies' car, which no one but a lady, or a gentleman accompanied by a lady, or a lady and children can enter and occupy until these are seated. If there are vacant seats after the persons entitled to occupy the car are seated white male persons can occupy them until required for ladies who may come on the car. Another car is provided for colored people which white persons are not permitted to occupy without consent of the colored passengers. It is part of this rule that colored persons going into the ladies' car shall be notified by the conductor or brakeman to go into the car provided for them.

Defendant denies that complainant had a right to occupy a seat in the ladies' car and avers that he was aware of defendant's rule, and that he had taken and was occupying a seat in violation thereof; that he was notified that a car on the train had been set apart for colored persons, which he was requested to occupy and which he refused to occupy, insisting that, having paid full fare, he was entitled to ride where he was seated. Defendant further avers that it was the duty of its conductor to have removed complainant to the car provided for colored persons, using as little violence as possible, but that the passengers, offended by his presence in the ladies' car and by his refusal on request to leave it, took the matter in hand, used violence, and ejected complainant from the car, and that no conductor, brakeman, or other of its officers or employees, or anyone having any control over the train took any part in the chastisement that was administered to the complainant; "that, on the contrary, they were not aware of any intention to inflict the punishment and did not in any manner countenance or justify the violence to which complainant was subjected."

Defendant, further answering, says that the car provided for the accommodation of colored persons on said train was first class and denies that it subjected complainant or permitted him to be subjected, as far as it was able to prevent it, to any undue or unreasonable prejudice or disadvantage because of his being a colored person or for any reason whatsoever; and defendant insists that whatever injury, preju-

dice, or disadvantage complainant suffered, it was the result of his own conduct and not the fault of defendant.

On investigation the following facts are found from the depositions and oral testimony of witnesses, which are, in addition to the facts found in the statements of the complaint, not denied in the answer :

1. Regulations setting apart cars for separate use of white and colored persons had been established for said Railroad Company substantially as stated in its answer. Similar regulations are customary on the railroads of Georgia, Tennessee, and neighboring States. On defendant's road these regulations are not well defined and are seldom enforced, except as to colored persons.

2. The passenger cars in the train were the colored people's car, first after the baggage car; next, the ladies' car, from which the complainant was ejected, and last the sleeping car. The ladies' and colored people's car were of the same pattern and of like substantial build. The one designated the colored people's car was divided by a partition into two nearly equal apartments, with a door between them opening either way by slight pressure and without a fastening when closed. The rear half end or apartment was the smoking car for white and colored men by the rules, but for white men in practice. The front half end or apartment, in which smoking was frequent, was the colored car for both sexes. It was badly lighted by a single burner, and contained, for the use of the passengers of both divisions, the one necessity of railroad travel which adds to the convenience without contributing to the cleanliness of the car.

3. If the officers, agents, and employees of the Railroad Company in control of the train did not plan and participate in the assault on complainant, and in his removal from the car, they omitted to discourage or discountenance it. At least two of them—the brakeman and baggage master—were present in the car and made no effort to protect complainant from the violence done him.

The complainant alleges that he has been subjected to unreasonable prejudice and unjust discrimination, and claims large money damages for injuries done him and for reasonable fees of attorneys he has been compelled to employ. Under the Seventh Amendment to the Constitution of the United States the defendant, in any case at common law, is entitled to a trial by jury. This claim is, in its nature, an action of trespass, and, therefore, presents such a case; and when, on the hearing, the complainant offered evidence of pecuniary damages as a basis for an award, the Commission, because it could not give such a trial, declined to go into that question. The complainant is, therefore, left to his appropriate remedy in the courts for the alleged trespass and assault upon him. In such a proceeding the defendant may be held liable for counsel or attorneys' fees, "to be fixed by the court," as provided in section 8 of the Act to Regulate Commerce, and which this Commission is not authorized to award. The claim for damages and attorneys' fees being thus disposed of, it remains to be considered whether railroad companies may lawfully separate their white

been compelled to employ and the defendant railroad company under the Seventh Amendment of the Constitution of the United States being entitled to a trial by jury, the Commission, because it could not give such a trial, declined to go into that question leaving the complainant to his appropriate remedy in the courts for the alleged trespass and assault upon him, in which, under section 8 of the Act to Regulate Commerce, the defendant may be held liable for counsel or attorneys' fees "to be fixed by the court."

(Decided December 8, 1887.)

COMPLAINT that the petitioner has been subjected to unreasonable prejudice and unjust discrimination by the refusal of the defendant to furnish the accommodations for which he had paid, and claiming large money damages for injuries done him and for reasonable fees of attorneys he had been compelled to employ. The Commission declined to proceed upon the claim so far as it was in its nature an action of trespass, but entered an order requiring that such unlawful acts and all unjust discriminations should be discontinued.

The facts are stated in the opinion of the Commission.

Messrs. Brandon & Hundly, for plaintiff.

Mr. Julius L. Browne, for defendant.

REPORT AND OPINION OF THE COMMISSION.

Morrison, Commissioner:

The complaint of William H. Council against the Western & Atlantic Railroad Company states that he is a minister of the Gospel of the African Methodist Church, a school teacher, a citizen of the United States, a resident of Huntsville, in the State of Alabama, where he is principal of the State Colored Normal and Industrial School; and that said Railroad Company is a common carrier of passengers and property from Chattanooga, in the State of Tennessee, to Atlanta, in the State of Georgia; that, having occasion to visit some of the States east of Alabama in the interest of said school, he had, on April 7, 1887, proceeded as far as Chattanooga, where he purchased of said Railroad Company a first class ticket over its road from Chattanooga to Atlanta, and, shortly before the train started, entered a car and seated himself without direction from anyone as to the car he should take or the seat he should occupy. Soon after he went aboard and the train had started, and before his ticket had been asked for, he was told by a man to go into another car. The person making this request did not announce his official character, and the same being unknown to complainant the request was not heeded. And complainant avers that, whether or not such person was an officer, agent, or employee of said company, he had no right or authority to require complainant to change his seat.

The complainant was soon again told to go into another car, this time by a brakeman or person in railroad garb, to whom complainant answered that when the conductor came for

his ticket he, complainant, would go into another car if the conductor so directed. Soon after the second direction to go into another car, the brakeman or employee by whom it was given, returned with two other persons, one carrying a railroad lantern, who again told complainant to go into another car, to which he responded as before, that he would go if told to do so by the conductor. The person holding the lantern, without provocation, struck the complainant with it several blows, cut and bruised his face, and the three together forcibly ejected him from the car and compelled him to go into and occupy another car, in which he rode until the train reached Dalton, Georgia, at which place, in consequence of the injuries and bruises inflicted on him, he left the train. His ticket over the road to Atlanta had been surrendered. These injuries and wrongs were done to complainant in the presence of the passengers seated in the car which he was compelled to vacate, and none of said passengers were told to change their seats nor were they otherwise molested; that the conductor witnessed the violence and had information that it was intended and made no effort to prevent it, and when requested by complainant to protect him and see that his rights as a passenger on said train was respected, his reasonable request was answered by the conductor with harsh and abusive language.

That defendant did, on April 7, 1887, in respect of the matter stated by complainant, subject him to unreasonable prejudice and disadvantage in violation of the Act to Regulate Commerce, and especially of the third section of said Act; that, being a colored man, he was in consequence thereof not allowed a seat in said car, while white passengers who had purchased tickets at the same price paid by complainant were allowed to ride in said car, and that, because of his color, he was unreasonably discriminated against and subjected to unreasonable prejudice and disadvantage; that, by reason of the public manner of the assault, ejection from the car, bruises received, pain endured, mental anxiety and humiliation, delay in making his journey, and the unjust discrimination against him, he had been damaged in the sum of \$35,000, which he asks may be awarded to him, together with \$1,500 for the reasonable pay of counsel he has been compelled to employ.

The answer of the defendant railroad company admits, or does not contest, the occupation, citizenship, and residence of the complainant as stated in his complaint. It admits that defendant is a common carrier of passengers, that complainant is a colored man and purchased a ticket over its road as stated by him, and does not contest his statement that he, on April 7, 1887, entered the car and seated himself without direction from anyone as to the car he might take or the seat he might occupy. Defendant admits that complainant was twice told by employees, its agents, or, as it claims, was politely requested, once by the conductor and once by the brakeman, to go into another car, and that complainant was removed from that car to another by violence, but, as it alleges, not by its agents. It admits that the violence was used in the presence of the passengers in the ladies' car, and that no

jectures. They have to deal with business as they find it. Where, from the very sparsely settled country through which the defendant railroad company operates its lines, outside of the through business which is furnished to it at Wallula by the Northern Pacific Railway, and by the Oregon short line at Umatilla, one of the chief articles of freight on which it must depend is the transportation of wheat to Portland; where, as compared with other roads transporting wheat which pass through more populous communities, in addition to the through freights furnished by their connections, they have a greater variety of local and way freights, and are not compelled to depend, as is the defendant, so largely upon what they receive for the transportation of any one local commodity, such as wheat, and can for this reason alone safely make their rates less on wheat than the defendant; where the wheat hauled by the defendant is transported in sacks—a more expensive mode of shipping and delivering than that usually adopted by other roads with which it has been compared, which is in car loads of solid wheat received from and delivered to elevators along their lines; where the volume of through freights forming a large proportion of the business of the defendant fluctuates very greatly, influenced by causes beyond the control of a remote carrier like the defendant; where the expense of frequently hauling empty cars to reach wheat before it can be received for carriage back to Portland, largely affects the question of the reasonableness of the rate upon wheat shipped from Walla Walla to Portland, Oregon, where shortly after the petitions were filed the defendant, as it had a right to do under the statute, reduced its rate on wheat from Walla Walla to Portland from \$6 per ton to \$5 per ton or twenty-five cents per 100 weight, and made since April, 1887, large and general reductions on a fine line of freight; and as rates are to a considerable extent so related to each other in the manner in which they are laid for the revenue of a railroad, that the instances are very frequent, the present being one, where a change of rate upon one important article of commerce involves a consideration of the relative rates on other articles, and where the defendant's lines are phenomenally well situated in their relation to through transportation facilities, and the large field of growing commerce and agriculture, and upon the statement in the answer of the defendant that further reductions on wheat rates are intended to be made by defendant as soon as this can be done, and upon the general course of dealing of defendant, as shown in the proofs, that the rate for the next season on wheat will doubtless be further modified—it is ordered that on and after the

15th day of December, 1887, the defendant must cease to charge more than 23 1-2 cents per 100 pounds, or \$4.70 per ton, on wheat transported by it over its lines from Walla Walla, in Washington Territory, to Portland, in the State of Oregon, during the present grain season.

(Heard Oct. 12, Decided Dec. 3, 1887.)

COMPLAINT charging the exaction of an unreasonable and extortionate charge of thirty cents per 100 pounds upon the transportation of wheat from Walla Walla to Portland by the defendant, and asking that it be reduced to fifteen cents per 100 pounds. For complaint and answer in *Reed, Petitioner*, see ante, 314, 328. For complaint and answer in *Evans, Petitioner*, see ante, 314, 326. *Reduction of freight charges ordered.*

Messrs. B. L. & J. L. Sharpstein, for plaintiff Evans, and *Reed pro se*.

Messrs. C. B. Bellinger, and McDonald, Bright & Fay, for defendant.

REPORT AND OPINION OF THE INTERSTATE COMMERCE COMMISSION.

Bragg, Commissioner:

These complaints involve the same question as to the reasonableness of the freight rates of the Oregon Railway and Navigation Company on wheat shipped from Walla Walla, in Washington Territory, over its line to Portland, Oregon. By consent of the parties they were heard together and will be disposed of by us in the same manner.

The complaint of the petitioner, Milton Evans, is that on the 26th day of April, 1887, the defendant charged and collected from him \$31 for transporting 27,000 pounds of wheat from Walla Walla City to the City of Portland, which he claims was an unreasonable and extortionate charge.

The complaint of William H. Reed alleges that on the 26th day of May, 1887, the defendant charged him \$72 on a shipment of 24,000 pounds of wheat from Walla Walla City to Portland, Oregon, which he alleges was an unreasonable and extortionate charge. The charge in each instance was thirty cents per 100 pounds. The prayer of each petition is that the rates of defendant on wheat from Walla Walla to Portland shall be reduced to \$3 per ton or fifteen cents per 100 pounds.

The defendant admits the making of each of these charges, and insists that they are reasonable and just. The grounds upon which the defendant in its answer justifies these charges are substantially the same as to each complaint, and may be briefly stated as follows:

That its road extends from the City of Portland, in the State of Oregon, to the City of Walla Walla, in Washington Territory, a distance of 246 miles, and is necessarily constructed and operated for the most part through a rugged and mountainous country, with extraordinary grades and curves, and, being so constructed, is operated at exceptionally great expense.

That between the City of Portland and Dalles City, a distance of eighty-eight miles, its road

and colored passengers by providing cars for each, and if the car for colored people on the defendant's road was as safe and comfortable as that provided for white people.

It is both the right and the duty of railroad companies to make such reasonable regulations as will secure order and promote the comfort of their passengers. In the exercise of this right and the performance of this duty, carriers have established rules providing separate cars for ladies, and for gentlemen accompanied by ladies; and their right to make such rules as to sexes is nowhere questioned. A man, white or colored, excluded from the ladies' car by such a rule could hardly claim successfully under the Act to Regulate Commerce that he had been subjected to unjust discrimination and unreasonable prejudice or disadvantage. It is a custom of the railroad companies in the States where the defendant's road is located, and in all the States where the colored population is considerable, to provide separate cars for the exclusive use of colored and of white people.

In Pennsylvania, where, by regulation, separate seats were provided, a colored woman refused to occupy the seat assigned to her; she was put off the train, and the supreme court of the State in that case declared the separation of white and colored passengers in a public conveyance to be a subject of "sound regulation to secure order, promote comfort, preserve peace, and maintain the rights of both carriers and passengers." In a later case in Illinois the supreme court held that public carriers have no right to discriminate between passengers on account of color "until they do furnish separate seats equal in comfort and safety to those furnished to other travelers," the obvious meaning of which is that to furnish separate seats equal in comfort and safety is not unjust discrimination.

These interpretations of the law are in conformity with the decision of *Justice Woods*, late of the United States Supreme Court, denying to the children of colored parents in Louisiana, under the laws of that State, the right to "attend the same public schools as those in which white children are educated." In this case *Justice Woods* said "equality of rights does not necessarily imply identity of rights."

The people of the United States, by the votes of their representatives in Congress, support the public schools of the country's capital city, and here white and colored children are educated in separate schools. Congress votes public moneys to separate charities; men, black and white, pitch their tents at the base of Washington's Monument to compete in the arts of war in separate organizations. Trades unions, assemblies, and industrial associations maintain and march in separate organizations of white and colored persons.

Public sentiment, wherever the colored population is large, sanctions and requires this separation of races, and this was recognized by counsel representing both complainant and defendant at the hearing. We cannot, therefore, say that there is any undue prejudice or unjust preferences in recognizing and acting upon this general sentiment, provided it is done on fair and equal terms. This separation may be carried out on railroad trains without

INTER 8.

disadvantage to either race and with increased comfort to both.

But the right of the carrier to assign a white man to another car than the ladies' car, or a colored man to a car for his own race, takes nothing from the right of either to have accommodations substantially equal to those of other passengers paying the same fare. The complainant had paid the same fare with other "first class," passengers. It was no more than fair dealing and common honesty that he should have the security and conveniences of travel for which his money had been accepted. This was denied to him. He was told to go, and then forcibly removed to the car assigned to passengers of his race. This was a half car, half lighted, in which men and women were huddled together, and where men, white and black, smoked at pleasure. The defendant's witness, who testified that he struck the complainant several blows and removed him, designated the car into which he forced complainant a "second class" car; and such it was, being dismal, less clean, and less comfortable than the car in which he was first seated and not permitted to ride.

The manner of his removal need not be discussed here, since the alleged assault and trespass is not to be here considered.

There was in the train no car furnishing the accommodations for which the complainant had paid and was entitled to have, other than the one from which he was removed because he was a colored man. In denying to complainant equal accommodations furnished the other passengers paying the same fare the Railroad Company subjected him to undue prejudice and unreasonable disadvantage, in violation of the Act to Regulate Commerce; and these unlawful acts and all unjust discriminations must be discontinued.

The Western & Atlantic Railroad Company will be notified to cease and desist from subjecting colored persons to undue and unreasonable prejudice and disadvantage in violation of section 8 of the Act to Regulate Commerce, and from furnishing to colored persons purchasing first class tickets on its road accommodations which are not equally safe and comfortable with those furnished other first class passengers.

Milton EVANS, *Petitioner*,

v.

THE OREGON RAILWAY & NAVIGATION CO., *Def.*

William H. REED, *Petitioner*,

v.

THE OREGON RAILWAY & NAVIGATION CO., *Def.*

1. A variety of practical considerations must enter into the making of freight rates by a railroad company, and determine to a great extent in every instance the question whether such rates are reasonable or not. Railroad companies cannot be required to make freight rates upon mere theories or con-

struction of branch lines into sections of the country which are without transportation facilities.

The defendant alleges that the adoption of a rate of freight charges for its road as low as that prayed for in these complaints would make it impossible to operate its road and pay operating expenses and cost of repairs, to say nothing of dividends or interest; and that such rate would prevent the construction of the new lines now under way and in contemplation by defendant, and would, in effect, destroy its entire property as an investment.

The evidence in these cases, by deposition, orally, and submitted in the shape of documentary evidence, has taken a wide range, not more so, perhaps, than is usual and permissible in cases of this description, where the question involved is one of the reasonableness of rates and which must always be determined from a variety of circumstances, conditions, and considerations. On the part of the petitioners it relates to the topography of the country over which the road bed of the defendant is constructed; the value of the wheat in the market at Portland and Walla Walla; the freight rates charged on wheat by railroads in Dakota, Minnesota, Iowa, Wisconsin, and Illinois; the recommendations of the State Railroad Commissioners of Oregon in cases that it is claimed are similar, and to the receipts and expenditures and income derived by the defendant from the business of its lines from which it is claimed by the petitioners that the net earnings, after deducting the interest paid on the bonded indebtedness, would leave to be paid on the capital stock of the defendant an amount of between 10 and 11 per cent per annum. On the part of the defendant the evidence taken is directed to maintaining the points of defense made in its answers above enumerated.

Without reciting the details of this mass of evidence, which, for the purposes of this report and opinion, would be wholly unnecessary, but all of which we have carefully considered, we content ourselves with stating, in substance, the facts we find from it material to the inquiry involved. Exclusive of the Columbia and Palouse Railroad, the Oregon Railway & Navigation Company operates a main track of 576 miles. That portion of its system which extends from Portland to Walla Walla is 246 miles in length, and is constructed along the Columbia River a distance of 187 miles to Umatilla Junction. From Umatilla Junction one branch of this railroad is constructed southeasterly through the Counties of Umatilla, Union, and Baker, in the State of Oregon, to Huntington, where it connects with the Oregon Short Line, and with that and the Union Pacific forms a through line from the Missouri River to Portland. The other line of this railroad extends from Umatilla Junction up the Columbia River about twenty-seven miles to Wallula, where it connects with the Northern Pacific, the two forming a through line from St. Paul to Portland. From Wallula Junction there is a branch of this road easterly about thirty-two miles to Walla Walla City, at which point it connects with the Pendleton Branch of defendant's system from the South. From

Walla Walla the road runs northeasterly twenty-three miles to Bolles' Junction, at which point it branches, one branch running easterly thirteen miles to Dayton, the other extending northerly twenty-three miles to Starbuck, where it branches again, one branch going easterly about thirty miles to Pomeroy, the other branch continuing northerly about nine miles to Snake River. The maximum up grade per mile on said road from the City of Portland easterly to Walla Walla is fifty-nine feet. The highest altitude above mean low tide at Astoria of said road, where it crosses the Cascade Mountains between Portland and Dalles, is 134 feet, and the highest elevation of the road bed of said road above high water mark of the Columbia River between said points is 119 feet.

During the year 1884-'5 the removal of snow blockades between Portland and Dalles cost this Company \$190,005.66; during the year 1885-'6, \$19,207.06; during the year 1886-'7, \$10,702.07. During the year 1886 the defendant employed a force of sand shovellers to prevent this road from being obstructed by sand drifts, for which it paid \$11,205.93; and in the year 1887, for the same service, \$15,565.25. Between Portland and Dalles City, a distance of eighty-eight miles, the defendant's railroad runs for most of the distance along the Columbia River, and the defendant owns and runs a daily line of steamers between said cities, carrying both way and through freights and passengers. The amount of wheat shipped over this road from stations between Wallula Junction and Dalles City, including Wallula Junction, during the fall of 1886 and the winter of 1886-'87 was 8,340 tons. The time of this shipment extends from September to March, inclusive, a period during which the great bulk of wheat shipments are made, though occasionally small shipments are made in April, May, and June, and the wheat shipped is the product of both sides of the Columbia River. There has been a steady and large increase in shipments of wheat over defendant's road every year during the last four or five years. Since the defendant began the operation of this road through from Portland to Walla Walla it has reduced freights on wheat shipments between these points from \$12 per ton to \$6 per ton, and this without any competition which forced it. The bulk of defendant's traffic is received from the Northern Pacific at Wallula Junction, from the Mountain Division of defendant's road at Umatilla Junction and from the eastern extension of defendant's road from Snake River, Walla Walla being an intermediate point on this last named road between its eastern terminus and Portland, and this freight is transported to Portland. The greater portion of this business passes over this line or a portion of this line between Walla Walla and Portland. The freight received from Walla Walla, although that amounts to about 15,000 tons of wheat annually, is small compared with its receipts from the other lines named, its entire receipts of wheat for the year 1886-'7, being about 121,000 tons. The wheat industry of Oregon and Washington Territory on the valley of the Columbia River is very large and is rapidly growing from year to year, the crop of the

competition of the character stated, controlling the carriage of the traffic on which the discrimination is made.

As has been said, the answer of the Columbus & Western Railroad Company, speaking of the lower rates now enjoyed by Montgomery and Columbus, says: "The reason is very plain; the railroads have water competition and are compelled to meet it." But that fact, without more, has not been held sufficient to justify the lesser charge for the greater distance, much less to justify the making of such tariffs as have been applied on the roads in question. The results are abnormal, not only at Opelika, but all along the line. They are simply less disproportionate at Opelika than at other points in its vicinity. There is no proof now before the Commission of actual competition, of controlling force, at Columbus. The evidence is to the contrary. Were it not for the knowledge heretofore acquired by the Commission respecting the competitive factors at Montgomery, it could hardly be claimed that anything in the nature of a justification is shown. The Commission is aware that an independent and active line of river steamers connects that point with the Atlantic seaboard via Mobile. How the defendants would attempt to justify such a disparity of rates as exists, for example, between Cowles and La Grange, or even between Opelika and La Grange, has not yet been made manifest.

As the case is now presented it seems clear that Opelika and other places in its vicinity are unjustly discriminated against, under the system of rate making now in force; but it is not so clear that any relief can be given to Opelika upon the present petition.

It would tend to a correction of the discrimination if the interstate rates to Columbus and Montgomery should be raised, leaving intermediate rates as they are; but we do not understand that this is asked or expected by the petitioners; and we should not be willing to entertain such a suggestion without awarding to the communities to be affected the opportunity of being heard thereon.

It is evident that the petitioners, in their evidence and in their proposed relief are proceeding upon an assumption that the existing system is founded in the nature of things and is to be perpetuated. Under that system there are trade centers which enjoy special privileges, and Opelika deserves to be entitled to be placed in that class and to enjoy like privileges. It does not explicitly ask to have the long and short haul clause of the Statute enforced, and it is doubtful whether its enforcement would be for the interest of the merchants of Opelika.

What the petitioners ask is that the discrimination against their town in favor of Montgomery and Columbus be stopped. What they mean is that the rates at Opelika be reduced; but the order which they seek would increase the existing discrimination under the Ball Arbitraries in favor of Opelika, as against the local points on each side of it; this the Commission cannot now consent to direct. The relief of Opelika, in order to do no injustice to other points and to involve no violation of law in granting it, must be attended with a readjustment so general that other in-

terests and localities should be first heard and their respective claims considered.

If the Commission were to grant such an order as the petitioners desire, it might be understood, in view of existing conditions and of the position taken in defendant's answer, to decide that the circumstances prevailing in the district about Opelika are such as to justify making that city an exception under the fourth section of the Act to Regulate Commerce, as against the local stations about it; but no order can be made in this case at the present time which shall authorize such an exception for two very obvious reasons: first, the question whether the circumstances and conditions are exceptional in fact to an extent that would warrant an order was not presented by the petition in the case, and no proofs upon that subject are before us showing any ground for such exception; second, the points that would be injuriously affected by such an order are not before the Commission and have had no opportunity to be heard.

In view of what has been above said, it may be that the defendants will recognize the necessity of making a revision of their rates with a view to lessen the discrepancy between the rates at Montgomery and Columbus and those at intermediate points. Should they do so to the satisfaction of the complainants no further proceedings upon this petition will be necessary.

But if that is not done and complainants desire to proceed further they should be allowed to amend their petition so as to set out the facts on which they claim for themselves lower rates than are given to towns nearer Atlanta, Montgomery, and Columbus. The Commission will then make an order for notifying the localities to be affected and for further hearing upon the questions so presented. If the general subject of freight rates from points in other States to the various points on the line of defendants' roads, including Opelika, is to be brought before the Commission, the petition may be so amended as to distinctly state, for defendants' action would be materially influenced by the nature of the relief asked, and the other towns could also be advised of the matters pending affecting their interests; and if, on the other hand, complainants shall see fit to ask for a strict enforcement of the long and short haul clause as against Columbus and Montgomery, or either, they will still need an amendment to their petition, and in that case the towns which are now favored with the lower charges on the shorter hauls could be given an opportunity for a hearing.

The complaint makes an independent point of the treatment to which Opelika is subjected by the carriers in respect to the article of cotton. It is said that the rate from Opelika to Savannah, via Columbus and the Georgia Central is fifty-two cents per 100 while the rate to the same point by the same system from both Montgomery and Columbus is but forty-five cents. The causes and methods operating to produce this result are the same above described and commented on. It is further said that Opelika has no through rate to New Orleans at all on cotton, and can get none from the railroad authorities, although it has good and ample facilities for the handling of cotton.

ROAD.	POINTS.		Distance—miles.	Carload rates—cents per 100 pounds.
	From—	To—		
Missouri Pacific	Marion, Kan.	Atchison, Kan.	253	20
Chicago, Milwaukee & St. Paul	Leonora, Kan.	Atchison, Kan.	300	20
Chicago & Northwestern Railway	New Hall, Ia.	Chicago, Ill.	218	20
	Glenville, Ia.	Burlington, Ia.	245	11.5
		Chicago, Ill.	245	15
		Chicago, Ill.	249	16
		St. Paul, Minn.	244	20
		St. Paul, Minn.	270	27
		St. Paul, Minn.	215	20
		St. Paul, Minn.	241	20
	Marshalltown, Ia.	Chicago, Ill.	247	15
	Raymond, Kansas	Atchison, Kan.	249	18.5
	On points from Boone, Walla Walla	Portland	250 and 300	17
			245	20

estimated wheat crop along the defendant's railroad division is about one third greater the present year than ever before. We speak of the defendant's "railroad division" because it also owns a river division operated by steamboats on the Columbia River, and an ocean division operated by steamships on the Pacific Ocean, besides other properties. We also find that the defendant transports wheat in sacks from Walla Walla to Portland, and that this is a more expensive mode to the carrier of transporting wheat than in car load quantities of solid wheat received from and delivered to elevators located along railroad lines.

Having considered the evidence and arguments of counsel and parties, we are of opinion that the rate of thirty cents per 100 pounds charged each of the petitioners was too high. We are also of opinion that a rate of 23½ cents per 100 pounds from Walla Walla to Portland, under all the circumstances, would be reasonable. Further than this we are not prepared to say that this wheat rate should now be reduced.

A variety of considerations of a very practical nature must always enter into the making of freight rates by a railroad company, and these also go very far in every instance to determine the question of whether such rates are reasonable or unreasonable. It would be very dan-

gerous to the successful existence of such companies for them to make or be required to make freight rates upon mere theories or conjectures. They have to deal with business as they find it. It is evident in this instance, from the very sparsely settled country through which its railroad lines are operated, that, outside of the through business which is furnished to the defendant at Wallula by the Northern Pacific Railway and by the Oregon Short Line at Umatilla, one of the chief articles of freight upon which it must depend is the transportation of wheat to Portland. There is this difference between the business of the defendant and each of the other roads with which it has been compared as to the transportation of wheat, and it is a very great difference. Passing through more populous communities, in addition to the through freights furnished by their connections they have a greater variety of local and way freights, and are not compelled to depend, as is the defendant, so largely upon what they receive for the transportation of any one local commodity, such as wheat. They therefore derive revenue from these other sources of local and way freights to a much greater extent than the defendant, and can with confidence rely upon them, and for this reason alone can safely make their rates less on wheat than the defendant. Besides, the wheat hauled by the defendant is transported in sacks, which is a more expensive mode of shipping and delivering wheat than that usually adopted by the other roads with which it has been compared, which is in car loads of solid wheat received from and delivered to elevators along their lines.

A very large proportion of the business of the defendant is derived from through freights and cannot at present be otherwise than received from through freights. The volume of through freights fluctuates very greatly, in some seasons being more and in others less, and is frequently influenced by causes beyond the control of a remote carrier like the defendant. These fluctuations are occasionally hazardous to the business of such a carrier. The expense of frequently hauling empty cars to reach this wheat before it can be received for carriage back to Portland is a circumstance that cannot be overlooked in an inquiry of this description, where the reasonableness of the rate charged upon it is the only question involved. The bare statement of these combined considerations, without amplifying them at length, as we could do, by abundant statistics and obvious reasoning, shows them to be vital and of very controlling weight, and that they cannot be ignored in a proceeding of this character.

The defendant's railroad lines are phenomenally well situated in their relation to other transportation facilities and a large field of growing commerce and agriculture; and the consideration of their alleged large earnings has been urged upon us as a circumstance to show that it ought to reduce its rates upon wheat very greatly from Walla Walla to Portland. It is plain to be seen that the revenue derived by the defendant from this valuable property is very remunerative, but as to its amount the evidence is conflicting, and leaves

been compelled to employ and the defendant railroad company under the Seventh Amendment of the Constitution of the United States being entitled to a trial by jury, the Commission, because it could not give such a trial, declined to go into that question leaving the complainant to his appropriate remedy in the courts for the alleged trespass and assault upon him, in which, under section 8 of the Act to Regulate Commerce, the defendant may be held liable for counsel or attorneys' fees "to be fixed by the court."

(Decided December 8, 1887.)

COMPLAINT that the petitioner has been subjected to unreasonable prejudice and unjust discrimination by the refusal of the defendant to furnish the accommodations for which he had paid, and claiming large money damages for injuries done him and for reasonable fees of attorneys he had been compelled to employ. The Commission declined to proceed upon the claim so far as it was in its nature an action of trespass, but entered an order requiring that such unlawful acts and all unjust discriminations should be discontinued.

The facts are stated in the opinion of the Commission.

Messrs. Brandon & Hundly, for plaintiff.

Mr. Julius L. Browne, for defendant.

REPORT AND OPINION OF THE COMMISSION.

Morrison, Commissioner:

The complaint of William H. Councilll against the Western & Atlantic Railroad Company states that he is a minister of the Gospel of the African Methodist Church, a school teacher, a citizen of the United States, a resident of Huntsville, in the State of Alabama, where he is principal of the State Colored Normal and Industrial School; and that said Railroad Company is a common carrier of passengers and property from Chattanooga, in the State of Tennessee, to Atlanta, in the State of Georgia; that, having occasion to visit some of the States east of Alabama in the interest of said school, he had, on April 7, 1887, proceeded as far as Chattanooga, where he purchased of said Railroad Company a first class ticket over its road from Chattanooga to Atlanta, and, shortly before the train started, entered a car and seated himself without direction from anyone as to the car he should take or the seat he should occupy. Soon after he went aboard and the train had started, and before his ticket had been asked for, he was told by a man to go into another car. The person making this request did not announce his official character, and the same being unknown to complainant the request was not heeded. And complainant avers that, whether or not such person was an officer, agent, or employee of said company, he had no right or authority to require complainant to change his seat.

The complainant was soon again told to go into another car, this time by a brakeman or person in railroad garb, to whom complainant answered that when the conductor came for

his ticket he, complainant, would go into another car if the conductor so directed. Soon after the second direction to go into another car, the brakeman or employee by whom it was given, returned with two other persons, one carrying a railroad lantern, who again told complainant to go into another car, to which he responded as before, that he would go if told to do so by the conductor. The person holding the lantern, without provocation, struck the complainant with it several blows, cut and bruised his face, and the three together forcibly ejected him from the car and compelled him to go into and occupy another car, in which he rode until the train reached Dalton, Georgia, at which place, in consequence of the injuries and bruises inflicted on him, he left the train. His ticket over the road to Atlanta had been surrendered. These injuries and wrongs were done to complainant in the presence of the passengers seated in the car which he was compelled to vacate, and none of said passengers were told to change their seats nor were they otherwise molested; that the conductor witnessed the violence and had information that it was intended and made no effort to prevent it, and when requested by complainant to protect him and see that his rights as a passenger on said train was respected, his reasonable request was answered by the conductor with harsh and abusive language.

That defendant did, on April 7, 1887, in respect of the matter stated by complainant, subject him to unreasonable prejudice and disadvantage in violation of the Act to Regulate Commerce, and especially of the third section of said Act; that, being a colored man, he was in consequence thereof not allowed a seat in said car, while white passengers who had purchased tickets at the same price paid by complainant were allowed to ride in said car, and that, because of his color, he was unreasonably discriminated against and subjected to unreasonable prejudice and disadvantage; that, by reason of the public manner of the assault, ejection from the car, bruises received, pain endured, mental anxiety and humiliation, delay in making his journey, and the unjust discrimination against him, he had been damaged in the sum of \$25,000, which he asks may be awarded to him, together with \$1,500 for the reasonable pay of counsel he has been compelled to employ.

The answer of the defendant railroad company admits, or does not contest, the occupation, citizenship, and residence of the complainant as stated in his complaint. It admits that defendant is a common carrier of passengers, that complainant is a colored man and purchased a ticket over its road as stated by him, and does not contest his statement that he, on April 7, 1887, entered the car and seated himself without direction from anyone as to the car he might take or the seat he might occupy. Defendant admits that complainant was twice told by employees, its agents, or, as it claims, was politely requested, once by the conductor and once by the brakeman, to go into another car, and that complainant was removed from that car to another by violence, but, as it alleges, not by its agents. It admits that the violence was used in the presence of the passengers in the ladies' car, and that no

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The LINCOLN BOARD OF TRADE

v.

The MISSOURI PACIFIC R. R. CO.

(No. 95.)

ABSTRACT of complaint filed November 17, 1887, alleging the imposition of unreasonable rates between St. Louis, Missouri, and Lincoln and other places in Nebraska.

Complain that the rates between St. Louis, Missouri and Lincoln, Nebraska and adjacent and competitive points in Nebraska are unreasonable as compared with former rates and rates to other points on their system (specifying cases), being from 10 to 50 per cent higher than from St. Louis to Weeping Water or Omaha. For twelve years previous to the Act Lincoln enjoyed Omaha rates.

Lincoln should not be considered a local station but "a rate basing point from which rates are graded."

Lincoln is a jobbing point of 45,000 population.

The charges are too great in themselves and constitute discrimination against Lincoln, inasmuch as they give preference to certain localities.

PLUMMER, PERRY AND CO.

v.

The UNION PACIFIC R. CO. and Southern Pacific Co.

(No. 96.)

ABSTRACT of complaint filed November 17, 1887, alleging an imposition of an extra and discriminative charge for the transportation of sugar.

Complainants are wholesale grocers at Lincoln, Nebraska.

The Union Pacific owns and operates the Omaha & Republican Valley Railway (giving points of connections of the roads).

Defendants, pursuant to an agreement, combination etc., operate lines of railway constituting a through line connecting San Francisco with Omaha and Lincoln, Nebraska.

That the said Union Pacific Railway Company and the said Southern Pacific Company by virtue of said agreement, had fixed a schedule of prices and rates for carrying goods and passengers from San Francisco to Omaha; but when the rates to interior points and towns west of the Missouri River in Nebraska were agreed upon and schedule of prices fixed, the complainants are not informed.

On information, etc., complainants allege that it was a part of said agreement and "such has been the practice of said companies that the rate only should be quoted from the City of Francisco to the City of Omaha, Nebraska, so that the Union Pacific Railway Company could rebill all goods at the City of Omaha to interior points and towns on their line of Railway and get the benefit of a charge for local rates."

Complainants allege that heretofore to wit: on the 24th and 25th days of June, 1887, the American Sugar Refining Company of San Francisco, California, shipped at that point "the goods and property having been pur-

chased and billed at one time" consigned to complainants at Lincoln, Nebraska, 375 barrels of sugar by way of defendants' lines at rates set forth in exhibits annexed; said shipment was by continuous carriage, without break of bulk or change of cars, from San Francisco to Lincoln.

For the purpose of evading the Act and in pursuance of said agreement, etc., the Southern Pacific Railway Company declined to make a rate from San Francisco to Lincoln; but pursuant to request of Union Pacific Company and said agreement guaranteed that the rate to Omaha should not exceed sixty cents per 100 pounds on car load lots.

The Union Pacific, in pursuance of agreement, refused to switch the goods by way of the Omaha & Republican Valley Railroad direct to their destination, but sent them to Omaha where they were rebilled. Causing the goods to be shipped to Omaha and there rebilled involved additional distance of transit of seventy miles and imposed an extra charge on complainants—thereby discriminating against them.

The NEW ORLEANS COTTON EXCHANGE, a Corporation Established under the Laws of Louisiana,

v.

NEW ORLEANS, CINCINNATI & TEXAS PACIFIC R. CO. "A Corporation Owning and Managing Several Lines of Railroad."

(No. 97.)

ABSTRACT of complaint filed November 15, 1887, charging violation of section 1 of the Act, by making unjust and unreasonable rates for handling cotton.

Defendant is "a common carrier engaged in the transportation of passengers and property by railroad under a common control, etc.," "for a continuous carrying or shipment from one State of the United States to other States of the United States, to wit:" from New Orleans, Louisiana, to and through Louisiana, Mississippi, Tennessee, Kentucky, Pennsylvania, New York and other States to the Cities of Lowell and Boston, Massachusetts, and New York City, and in the opposite direction from said respective places to New Orleans.

Defendant for the last six months has been and still is making unjust and unreasonable rates for hauling cotton from Meridian, Mississippi, to New Orleans, Louisiana, and from points between Meridian and New Orleans to New Orleans in violation of the last clause of the first section of the Act. Has charged "or received from" some persons more than others for doing a "like, etc.," service, under substantially, etc. (Quoting words of Act.) Has given undue and unreasonable advantage, etc., to Lowell and Boston and subjected to undue, etc., disadvantages, New Orleans. Specifies:

Has charged and does charge for transporting cotton from Meridian, Mississippi, to Boston and Lowell, Massachusetts (1,500 miles, or less), seventy-five cents per 100 pounds and pays out of that sum ten cents per 100 pounds for compressing—making net rate to Boston and Lowell sixty-five cents per 100 pounds also.

the actual result in inextricable doubt at this time. Upon the theory of petitioners it would be between 10 and 11 per cent net per annum; upon the theory of defendant, and taking into the estimate the several judgments rendered against it for \$210,000 by the Federal Court in Oregon, and now pending on appeal in the Supreme Court of the United States, it would be about 6 per cent per annum. We have considered this, but it does not change the conclusion we have reached and which has been already stated.

A certified copy of a recommendation made on the second day of June, 1887, by the honorable Board of Railroad Commissioners of the State of Oregon to the Oregon Railway & Navigation Company, recommending, among other things, to reduce its rates on wheat to twenty cents per 100 pounds in car load lots from certain points east in that State to Portland has been introduced in evidence by petitioners and is relied on by them as sustaining their view of this case. Among the points thus named are Centreville, Blue Mountain, and Pendleton. A recommendation of that honorable board as evidence upon any matter to which it relates receives, as it deserves to receive, at our hands a very high and respectful consideration; but we do not know the evidence upon which that recommendation was made, and if we did we would still be constrained to be governed by the evidence that is before us in this proceeding, which involves interstate commerce and is within a peculiar jurisdiction, which is devolved upon us by the Statute.

Shortly after these petitions were filed the defendant, as it had a right to do under the statute, reduced its rate on wheat from Walla Walla to Portland from \$6 per ton to \$5 per ton, or twenty-five cents per 100 weight.

Since the first of April, 1887, the defendant has reduced its rates as follows:

	Cents per 100 lbs.
Dry goods, boots, and shoes,	33
Sugar, in less than car loads,	15
Coffee,	15
Bacon, in less than car loads,	37
Bacon, in car loads,	15
Nails, in car loads and less than car loads,	15
Hardware,	12
Agricultural implements in less than car loads,	33
Lime, in car loads,	33
Soap,	15
Starch, less than car loads,	43
Starch, in car loads,	38
Barbed wire,	15
Coal oil, less than car loads,	83
Dried fruit,	43

These are large and general reductions on a fine line of freights, and they are fairly entitled to be taken into consideration in a proceeding of this nature. Rates are, and should be, to a considerable extent, so related to each other in the manner in which they are laid for the revenue of a railroad that the instances are very frequent in which a change of the freight upon one important article of commerce involves a consideration of the relative rates on other articles. This case is one of that description. A reduction of rates, such as is claimed by petitioners, to fifteen cents per 100 pounds, or \$3 per ton, on wheat shipments from Walla Walla to Portland is one that

INTER S.

would be antirely too great under the circumstances by which the defendant is surrounded at this time.

The order, therefore, is that on and after the 15th day of December, 1887, the defendant must cease to charge more than 23½ cents per 100 pounds, or \$4.70 per ton, on wheat transported by it over its railroad lines from Walla Walla, in Washington Territory, to Portland, in the State of Oregon, during the present grain season.

The order is also made in this form as to the present grain season upon the statement in the answer of the defendant that further reductions on wheat rates are intended to be made by defendant as soon as this can be done, and upon the general course of dealing of defendant, as shown in the proofs, that the rate for the next season on wheat will doubtless be further modified.

LINCOLN BOARD OF TRADE

v.

CHICAGO, BURLINGTON & QUINCY
R. R. CO., Burlington & Missouri River R.
R. Co. in Nebraska; Denver & Rio Grande
R. R. Co.; Rio Grande Western R. R. Co.;
and Southern Pacific Co.

(No. 94.)

ABSTRACT of complaint filed November 17, 1887, alleging the imposition of unreasonable rates between Chicago and Lincoln.

Complains that the rates between Chicago and Lincoln are unreasonable being 10 to 40 per cent higher than to Louisville or Omaha.

That the Chicago, Burlington & Quincy with its connections, transports by a through line to San Francisco in accordance with a joint traffic arrangement. It transports from San Francisco (principally sugar and canned goods) to Denver, Lincoln, Omaha and Chicago, and has published a joint tariff.

Canned goods sugar.

San Francisco to Lincoln	1.46.	.75
Omaha to Chicago	.75	.60

Freight over Chicago, Burlington & Quincy from San Francisco to Omaha and Chicago passes through Lincoln.

Present rates to and from Lincoln discriminate against this locality.

Defendants violate:

Sec. 1. Charges unreasonable in themselves etc.

Sec. 2. Constitutes unjust discriminations etc.

Sec. 3. Gives preference to certain firms and localities.

Sec. 6 *. Shall not receive or collect greater or less charges than published rates.

Sec. 7 *. No interruption shall be made of continuous carriage to evade Act.

*This is the way the charge is made in the complaint under sections 6 and 7 reciting the words of the Act, but only by inference from what precedes, stating that it is violated.

Complaints of discrimination against small shippers by virtue of the classification of freight adopted by the defendants in common, in which a distinction is made (or was not done before April 1, 1887) between car load lots and less than car load lots.

Complainants are retail merchants, usually buy in less than car load lots, and by the discrimination are now compelled to buy in local markets.

The classification violates section 1, as being *per se* unjust and sections 2 and 3 as discriminating in favor of large shippers.

Thomas L. Greene, of New York, Manager of N. Y. Freight Bureau, is authorized to present the petition.

Prays for a decree requiring defendants to cease, etc., from acts complained of, and for general relief, and that this complaint may be heard at same time and place as other complaints of retailers.

REPORT OF THE INTERSTATE COMMERCE COMMISSION.*

HON. LUCIUS Q. C. LAMAR,
Secretary of the Interior:

SIR: The undersigned, Commissioners ap-

pointed under "An Act to Regulate Commerce" approved February 4, 1887, in discharge of the duty imposed by the twenty first section of said Act, which directs the Commission on or before the first day of December in each year to make a report to the Secretary of the Interior, to be by him transmitted to Congress; the report to "contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of Commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary," beg leave respectfully to report:

It is provided in the Act referred to that its provisions shall apply to—

Any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country, and carried

*This first annual report of the Interstate Commerce Commission seems proper to be published in these pages, since it has all the interest and almost the weight of an actual decision in an individual case raising all the questions discussed, and shows the views of the Commission upon the intent and scope of the Interstate Commerce Act, and upon its construction and application. It will be found to be one of the most elaborate, as it is certainly the most authoritative, of the commentaries which have appeared upon this important and far reaching Act, and to be of the utmost importance to all who are interested in the operation of the Act or in proceedings before the Commission. [Ed.]

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from such place to a port of transshipment or shipped from a foreign country to any place in the United States, and carried to such place from a port of entry either in the United States or an adjacent foreign country; *Provided, however*, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid:

It is further provided that—

The term "railroad," as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

The railroad mileage of the United States, computed to the close of the fiscal year 1886, of the companies respectively, was 133,606. The number of corporations represented in this mileage was 1,425, but by the consolidation or leasing of roads, the number of corporations controlling and operating roads as carriers was reduced to 700. It is estimated that 4,380 miles of road have been constructed since the foregoing statistics were obtained, making a total mileage at this time of 137,986. It is impossible to say with entire accuracy what is the number of railroad companies subject to the provisions of the Act; but it is believed that not less than 1,200, operated by about 500 corporations as carriers, engage either regularly or at times in interstate commerce, so as to make the Act applicable. The Commission has as yet no statistics of its own collection to lay before the public; but in a manual generally accepted as reliable, the cost of construction and equipment of the 133,606 miles of road is estimated at \$7,254,995,223, and the funded debt of the companies at \$3,882,966,330. Interest according to the same authority was paid by these companies for the last fiscal year to the amount of \$187,856,540; and the aggregate payment to stockholders in dividends was \$80,094,188.

Some idea of the magnitude of the interest which the Act undertakes to regulate may be obtained from these figures, but they fall far short of measuring, or even of indicating its importance. The regulation of no other business would concern so many or such diversified interests, or would affect in so many ways the

of this power of regulation was made by the Constitution the commerce between the States which might be controlled under it was quite insignificant both in volume and value. It was for the most part carried on by means of coast wise vessels and by water craft of various kinds which were sailed or otherwise propelled on the lakes, rivers, and smaller streams of the interior. On the land there was very little that could be said to rise to the dignity of interstate commerce; and the regulation of that little, as also of that which was exclusive State traffic, was for the most part left to the rules of the common law. The exceptional regulations, if any seemed to be called for, were made by the state laws. In a few cases where persons had associated themselves together as regular carriers of persons on definite routes, exclusive rights were granted to them by the States, as such carriers, the motive to such grants being a belief on the part of the state authorities that without the exclusive privilege the regular transportation would not be adequately and reliably provided for.

For the the regulation of commerce on the ocean and other navigable waters Congress very promptly passed the necessary laws; but its jurisdiction within the limits of the States was not very clearly understood, and it was not until the great case of *Ogden v. Gibbons* decided in 1824, that it was authoritatively and finally determined that the waters of a State, when they constituted a highway for foreign and interstate commerce, are, so far as concerns such commerce, as much within the reach of federal legislation as are the high seas, and consequently that exclusive rights for their navigation cannot be granted by States whose limits embrace them.

But while providing from time to time for the regulation of commerce by water, Congress still abstained from undertaking the regulation of commerce by land. The reasons for this continued to be the same as at the first. The land commerce was insignificant in amount, and the rules of the common law were in general found adequate to the settlement of the questions arising out of it. The commerce of trappers and hunters, of traders with the Indians, or that of the early settlers in the wilderness, needed only the most primitive modes of conveyance: the emigrant wagon

and imperative demand for other and very different highways to those which accommodated the pack-horses and heavy wagons of the early traders and settlers. But even then the circumstances were favorable to a prolongation of state control. The first improved highways were turnpikes; the next in grade were canals; but the highways by water as well as the highways by land were provided for by the States. The General Government made some appropriations for canals where they were needed as improvements in existing navigation; but the great artificial channels of water transportation were state creations. Such was the case with the Erie Canal, which during the period when emigration to the wilderness was greatest, and when improvement in the new Territories was most rapid, constituted the most important of all the highways connecting the interior with the sea-board. Such also were the canals which were constructed to connect the Delaware with the Hudson, the Chesapeake with the Ohio, the waters of Lake Erie with the Ohio at Portsmouth, at Cincinnati and at Evansville, the waters of Lake Michigan with the Mississippi, and many others now almost forgotten, but which were of great temporary importance and value.

As the States constructed these great interstate highways, it was not unnatural that they should be left in charge of the regulation of trade upon them, especially as no complaint was made that their regulations were unjust, or that they discriminated unfairly as against the citizens or the business of the other States. When in 1830 steam power began to be applied to the propulsion of vehicles upon land, the same reasons as regards control continued to prevail. The roads constructed for such vehicles were authorized by and built under the authority of the States; the corporate charters under which they were operated, and which prescribed the rights, privileges, and powers of the associated owners were state laws; the States determined for them the measure of their taxation, and limited if it seemed politic their charges and their profits. The States thus touched them so nearly in all their interests and all their functions that federal intervention seemed not only unnecessary but intrusive unless state power should be abused; and the abuse not often appearing, intervention was scarcely thought of by anyone.

For a long time, therefore, the power of the Federal Government in the regulation of commerce between the States was put forth by way of negation, rather than affirmatively; that is to say, it was put forth in restraint of excessive state power when it appeared, instead of by way of affirmative national regulation. The national restraint, when there was any, was commonly effected by invoking the action of the Judicial Department of the Government, and by its assistance arresting such State action as appeared to constitute unauthorized interference with interstate traffic and intercourse. This special intervention, whether in the exercise of an original jurisdiction, as in the *Wheeling Bridge Case*, reported in 18 Howard, 518, or under an appellate authority, as in *Ward v. Maryland* (12 Wallace, 418), and *Welton v. Missouri* (91 United States Reports, 275), has been important and useful in a considerable

number of cases, but in the nature of things it could not accomplish the purposes of general regulation. On the other hand, the effect was to leave the corporations, into whose hands the internal commerce of the country had principally fallen, to make the law for themselves in many important particulars—the state power being inadequate to complete regulation, and the national power not being put forth for that purpose.

The common law still remained operative, but there were many reasons why it was inadequate for the purposes of complete regulation. One very obvious reason was that the new method of land transportation was wholly unknown to the common law, and was so different from those under which common-law rules had grown up, that doubts and differences of opinion as to the extent to which those rules could be made applicable were inevitable. A highway of which the ownership is in private citizens or corporations who permit no other vehicles but their own to run upon it bears obviously but faint resemblance to the common highway upon which every man may walk or ride or drive his wagon or his carriage. If we undertake to apply to the one the rules which have grown up in regulation of the others, there must necessarily be a considerable period in which the state of the law will, in many important particulars, be uncertain; and while that continues to be the case, those who have the power to act and who must necessarily act by rule and according to some established system, will for all practical purposes make the law, because the rule and the system will be of their establishment.

Such, to a considerable extent, has been the fact regarding the business of transporting persons and property by rail.

Those who have controlled the railroads have not only made rules for the government of their own corporate affairs, but very largely also they have determined at pleasure what should be the terms of their contract relations with others, and others have acquiesced though oftentimes unwillingly, because they could not with confidence affirm that the law would not compel it, and a test of the question would be difficult and expensive. The carriers of the country were thus enabled to determine in great measure what rules should govern the transportation of persons and property; rules which intimately concerned the commercial, industrial, and social life of the people.

The circumstances of railroad development tended to make this indirect and abnormal law-making exceedingly unequal and oftentimes oppressive. When railroads began to be built the demand for participation in their benefits went up from every city and hamlet in the land, and the public was impatient of any obstacles to their free construction and of any doubts that might be suggested as to the substantial benefit to flow from any possible line that might be built. Under an imperative popular demand general laws were enacted in many States which enabled projectors of roads to organize at pleasure and select their own lines; and where there were no such laws the grant of a special charter was almost a matter of course, and the securities against

abuse of corporate powers were little more than nominal. For a long time the promoter of a railway was looked upon as a public benefactor, and laws were passed under which municipal bodies were allowed to give public money or loan public credit in aid of his schemes, on an assumption that almost any road would prove reasonably remunerative, but that in any event the indirect advantages which the public would reap must more than compensate for the expenditures.

In time it came to be perceived that these sanguine expectations were delusive. A very large proportion of all the public money invested in railroads was wholly sunk and lost. Many roads were undertaken by parties who were without capital, and who relied upon obtaining it by a sale of bonds to a credulous public. The corporation thus without capital was bankrupt from its inception, and the corporators were very likely to be mere adventurers who would employ their chartered powers in such manner as would most conduce to their personal ends.

It is striking proof of the recklessness of corporate management that 108 roads, representing a mileage of 11,066, are now in the hands of receivers, managing them under the direction of courts, whose attention is thus necessarily withdrawn from the ordinary and more appropriate duties of judicial bodies. So serious has been the evil of bringing worthless schemes into existence and making them the basis for an appropriation of public moneys or for the issue of worthless evidences of debt, that a number of the States have so amended their constitutions as to take from the Legislature the power either to lend the credit of the State in aid of corporations proposing to construct railroads, or to authorize municipal bodies to render aid, either money or credit. State legislation has at the same time been in the direction of making compulsory the actual payment of a *bona fide* capital before a corporation shall be at liberty to test the credulity of the public by an issue of negotiable securities.

When roads were built for which the business was inadequate, the managers were likely to seek support by entering upon competition for business which more legitimately belonged to the other roads, and which could only be obtained by offering rates so low that if long continued they must prove destructive. A competitive warfare was thus opened up in which each party endeavored to underbid the other, with little regard to prudential considerations, and freights were in a great many cases carried at a loss, in the hope that in time the power of the rival to continue the strife would be crippled and the field practically left to a victor who could then make its own terms with customers. When the competition was less extreme than this, there was still a great deal of earnest strife for business, some of which was open and with equal offerings of rates and accommodations to all, but very much of which was carried on secretly, and then the very large dealers practically made their own terms, being not only accommodated with side tracks and other special conveniences, but also given what were sometimes spoken of as wholesale rates,

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or perhaps secret rebates, which reduce cost to them of transportation very greatly below what smaller dealers in the same line of business were compelled to pay. Allowances were sufficient of themselves in very many cases to render successful competition, as against those who had them, practically impossible.

The system of making special arrangements with shippers was in many parts of the country not confined to large manufacturers and dealers, but was extended from person to person under the pressure of alleged business necessity, or because of personal import or favoritism, and even in some cases from a desire to relieve individuals from the consequences of previous unfair concessions to rivals in business. The result was that arrangements of importance were commonly made under special bargains entered into for a limited occasion, or to stand until revoked, of which the shipper and the representative of the public were the only parties having knowledge. These arrangements took the form of special rates, rebates, and drawbacks, underbidding reduced classification, or whatever might be best adapted to keep the transaction from coming to the public; but the public very well understood that private arrangements were to be made, and the proper motives were presented. A memorandum book carried in the pocket of the general freight agent often contained only record of the rates made to the different patrons of the road; and it was in his power to place a man or a community under a moral obligation by conceding a special rate on one day, and to nullify the effect of the next by doing even better by a competitor.

The system, if it can be called such, involved a great measure of secrecy, and the necessary conditions were such as to prevent effective efforts to break it down, though the willingness to make the effort was not wanting among intelligent shippers. It was the last importance to the shipper that he should on good terms with those who made them; he must pay; to contend against them was sometimes regarded as a species of presumption which was best dealt with by increasing existing burdens; and the shipper was cautious about incurring the risk. Nevertheless it was a common observation, even among those who might hope for special favors, that a system of rates, open to all and fair between localities, would be far preferable to a system of special contracts into which a large personal element entered or was commonly supposed to enter. Permanent rates was also seen to be of very high importance to every man engaging in business enterprises, since without it business could be no more than lottery ventures. It was also perceived that the absolute sum of the money charged for transportation, if not clearly beyond the bounds of reason, was of less importance in comparison with the obtaining of rates that should be open, equal, related just as between places, and as steady in the nature of things was practicable.

Special favors or rebates to large dealers were not always given because of any special interest which was anticipated from the business obtained by allowing them; there were

reasons to influence their allowance. It was early perceived that shares in railroad corporations were an enticing subject for speculation, and that the ease with which the hopes and expectations of buyers and holders could be operated upon pointed out a possible road to speedy wealth for those who should have the management of the roads. For speculative purposes an increase in the volume of business might be as useful as an increase in net returns; for it might easily be made to look, to those who knew nothing of its cause, like the beginning of great and increasing prosperity to the road. But a temporary increase was sometimes worked up for still other reasons; such as to render plausible some demand for an extension of line, or for some other great expenditure, or to assist in making terms in a consolidation, or to strengthen the demand for a larger share in a pool.

Whatever was the motive, the allowance of the special rate or rebate was essentially unjust and corrupting; it wronged the smaller dealer, oftentimes to an extent that was ruinous, and it was very generally accompanied by an allowance of free personal transportation to the larger dealer, which had the effect to emphasize its evils. There was not the least doubt that had the case been properly brought to a judicial test these transactions would in many cases have been held to be illegal at the common law; but the proof was in general difficult, the remedy doubtful or obscure, and the very resort to a remedy against the party which fixed the rates of transportation at pleasure, as has already been explained, might prove more injurious than the rebate itself. Parties affected by it, therefore, instead of seeking redress in the courts, were more likely to direct their efforts to the securing of similar favors on their own behalf. They acquiesced in the supposition that there must or would be a privileged class in respect to rates, and they endeavored to secure for themselves a place in it.

Personal discrimination in rates was sometimes made under the plausible pretense of encouraging manufacturers or other industries. It was perhaps made a bargain in the establishment of some new business or in its removal from one place to another that its proprietors should have rates more favorable than were given to the public at large; and this, though really a public wrong (because tending to destroy existing industries in proportion as it unfairly built up others) was generally defended by the parties to it on the ground of public benefit.

Local discriminations, though not at first blush so unjust and offensive, have nevertheless been exceedingly mischievous; and if some towns have grown, others have withered away under their influence. In some sections of the country if rates were maintained as they were at the time the Interstate Commerce Law took effect, it would have been practically impossible for a new town, however great its natural advantages, to acquire the prosperity and the strength which would make it a rival of the towns which were specially favored in rates; for the rates themselves would establish for it indefinitely a condition of subordi-

nation and dependence to "trade centers." The tendency of railroad competition has been to press the rates down and still further down at these trade centers, while the depression at intermediate points has been rather upon business than upon rates. In very many cases it has resulted in the charging of more for a short than for a long haul on the same line in the same direction; and though this has been justified by railroad managers as resulting from the necessities of the situation, it is not to be denied that the necessity has in many cases been artificially created and without sufficient reason.

The inevitable result was that this management of the business had a direct and very decided tendency to strengthen unjustly the strong among the customers and to depress the weak. These were very great evils, and the indirect consequences were even greater and more pernicious than the direct; for they tended to fix in the public mind a belief that injustice and inequality in the employment of public agencies were not condemned by the law, and that success in business was to be sought for in favoritism rather than in legitimate competition and enterprise.

The evils of free transportation of persons were not less conspicuous than those which have been mentioned. This, where it extended beyond the persons engaged in railroad service, was commonly favoritism in a most unjust and offensive form. Free transportation was given not only to secure business but to conciliate the favor of localities and of public bodies; and, while it was often demanded by persons who had, or claimed to have, influence which was capable of being made use of to the prejudice of the railroads, it was also accepted by public officers of all grades and of all varieties of service. In those last cases the pass system was particularly obnoxious and baneful; for if any return was to be made or was expected of public officers, it was of something which was not theirs to give, but which belonged to the public or to constituents. A ticket entitling one to free passage by rail was often more effective in enlisting the assistance and support of the holder than its value in money would have been; and in a great many cases it would be received and availed of when the offer of money, made to accomplish the same end, would have been spurned as a bribe. Much suspicion of public men resulted, which was sometimes just, but also sometimes unjust and cruel; and some deterioration of the moral sense of the community, traceable to this cause, was unavoidable while the abuse continued. The parties most frequently and most largely favored were those possessing large means and having large business interests.

The general fact came to be that in proportion to the distance they were carried those able to pay the most paid the least; for the poor man had seldom any ground on which to demand free transportation, while the rich man was likely to have many grounds on which he could make it for the interest of the railroad company to favor him, and he was sometimes favored with free transportation not only for himself and his family but for business agents also, and even sometimes for his customers. The demand for free transportation was often

in the nature of blackmail, and was yielded to unwillingly and through fear of damaging consequences from a refusal. But the evils were present as much when it was extorted as when it was freely given.

These were some of the evils that made interference by national legislation imperative. But there were others that were of no small importance. Rates when there was no competition were sometimes so high as to be oppressive; and when competition existed by lines upon which the public confidently relied to protect them against such a wrong, a consolidation was effected and the high rates perpetuated by that means. In some cases the roads, created as conveniences in transportation, were so managed in respect to business passing or destined to pass over other roads that they constituted hinderances instead of help, to the great annoyance of travel and to the serious loss of those who intrusted their property to them. Then their rates were changed at pleasure and without public notification; their dealings to a large extent were kept from the public eye, the obligation of publicity not being recognized; and the public were therefore without the means of judging whether their charges for railroad service were reasonable and just or the contrary.

But the publications actually made only increased the difficulties. Railroad rates, difficult enough to be understood by the uninitiated when printed plainly in one general tariff with classification annexed, became mysterious enigmas when several different tariffs were printed, as was the case in some sections; some relating to competitive points and others to what were called local points, and each referring to voluminous and perhaps different classifications, which were printed but not posted, and which were observed or disregarded at will in the rates as published. Such unsystematic and misleading publications naturally led to many overcharges and controversies, and naturally invited and favored special rates and injurious preferences.

These were serious evils; and they not only to some extent blunted the sense of right and wrong among the people and tended to fix an impression upon the public mind that unfair advantages in the competition of business were perfectly admissible when not criminal, but they built up or strengthened a class feeling and embittered the relations between those who for every reason of interest ought to be in harmony. It was high time that adequate power should be put forth to bring them to an end. Railroads are a public agency. The authority to construct them with extraordinary privileges in management and operation is an expression of sovereign power, only given from a consideration of great public benefits which might be expected to result therefrom. From every grant of such a privilege resulted a duty of protection and regulation, that the grant might not be abused and the public defrauded of the anticipated benefits.

The abuses of corporate authority to the injury of the public were not the only reasons operating upon the public mind to bring about the legislation now under consideration; some other things which in their direct effects were wrongs to stockholders only had their influence

also, and this by no means a light one. The manner in which corporate stocks were manipulated for the benefit of managers and to the destruction of the interest of the owners was often a great scandal, resulting sometimes in the bankruptcy and practical destruction of roads which, if properly managed, would have been not only profitable but widely useful. This in its direct results might be a wrong to individuals only, but in its direct influence it was a great public wrong also.

The most striking and obvious fact in such a case commonly is that persons having control of railroads have in a very short time by means of the control amassed great fortunes. The natural conclusion which one draws who must judge from surface appearances is, that these fortunes are unfairly acquired at the expense of the public; that they represent excessive charges on railroad business, or unfair employment of inside privileges, and furnish in themselves conclusive evidence that current rates are wrong and probably extortionate. An impression of this sort, when it happens to be wide of the fact is for many reasons unfortunate. It creates or strengthens a prejudice against all railroad management—the honest as well as the dishonest—which affects the public view of all railroad questions; it renders it more difficult to deal with such questions calmly and dispassionately; it makes the public restive under the charges they are subjected to, even though they be moderate and necessary; it tends to strengthen a feeling among the unthinking that capital represents extortion. However careful, considerate, fair, and just the management of any particular road may be, and however closely it may confine itself to its legitimate business, it is impossible that it should wholly escape the ill effects of this prejudice, which are visited upon all roads because some conspicuous railroad managers have by their misconduct given in the public mind a character to all.

Evils of the class last mentioned were difficult of legislative correction, because they sprang from the over-confidence of stockholders in the officers chosen to manage their interests, and whose acts at the time they perhaps assented to. But if capable of correction by any legislative authority, it was in general that of the States, not that of the Nation. The States in the main conferred the corporate power, and it was for the States by their legislation to provide for the protection of the individual interests which were brought into existence by their permission. The National Government had to do with the commerce which these artificial entities of state creation might be concerned in. Nevertheless, the manifest misuse of corporate powers strengthened the demand for national legislation, and this very naturally, because the private gains resulting from corporate abuse were supposed to spring, to some extent at least, from excessive burdens imposed upon the commerce which the Nation ought to regulate and protect.

For the purpose of correcting the evils above alluded to, so far as it was constitutionally competent for national legislation to do so, the Act to Regulate Commerce lays down certain rules to be observed by the carriers to which

its provisions apply, which are intended to be and emphatically are rules of equity and equality, and which, if properly observed, ought to and in time no doubt will restore the management of the transportation business of the country to public confidence.

THE ACT TO REGULATE COMMERCE.

The leading features of the Act are the following:

All charges made for services by carriers subject to the Act must be reasonable and just.

Every unjust and unreasonable charge is prohibited and declared to be unlawful.

The direct or indirect charging, demanding, collecting, or receiving, for any service rendered, a greater or less compensation from any one or more persons than from any other for a like and contemporaneous service, is declared to be unjust discrimination and is prohibited.

The giving of any undue or unreasonable preference, as between persons or localities, or kinds of traffic, or the subjecting any one of them to undue or unreasonable prejudice or disadvantage, is declared to be unlawful.

Reasonable, proper, and equal facilities for the interchange of traffic between lines, and for the receiving, forwarding, and delivering of passengers and property between connecting lines is required; and discrimination in rates and charges as between connecting lines is forbidden.

It is made unlawful to charge or receive any greater compensation in the aggregate for the transportation of passengers or the like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance.

Contracts, agreements, or combinations for the pooling of freights of different and competing railroads, or for dividing between them the aggregate or net earnings of such railroads or any portion thereof, are declared to be unlawful.

All carriers subject to the Law are required to print their tariffs for the transportation of persons and property, and to keep them for public inspection at every depot or station on their roads. An advance in rates is not to be made until after ten days' public notice, but a reduction in rates may be made to take effect at once, the notice of the same being immediately and publicly given. The rates publicly notified are to be the maximum as well as the minimum charges which can be collected or received for the services respectively for which they purport to be established.

Copies of all tariffs are required to be filed with this Commission, which is also to be promptly notified of all changes that shall be made in the same. The joint tariffs of connecting roads are also required to be filed, and also copies of all contracts, agreements, or arrangements between carriers in relation to traffic affected by the Act.

It is made unlawful for any carrier to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedules, carriage in different cars, or by other means or devices, the carriage of

freights from being continuous from the place of shipment to the place of destination.

These, shortly stated, are the important provisions of the Act which undertakes to prescribe the duties and obligations of the carriers which by its passage are brought under federal control. Some important exceptions are made by the twenty-second section, which provides:

That nothing in this Act shall apply to the carriage, storage, or handling of property free or at reduced rates for the United States, state, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereof, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute; but the provisions of this Act are in addition to such remedies.

These provisions, it will be seen, are not intended to qualify to any injurious extent the general rules of fairness and equality which the Act has been so careful to prescribe, and the exceptions may all be said to be authorized on public considerations.

In the performance of its duties the Commission has had occasion to decide that the transportation of Indian supplies may be free or at reduced rates under this section (1 Interstate Commerce Commission Reports, p. 16). [*ante*, 22] as also may be that of the agents and material of the United States Fish Commission (*Id.* p. 21) [*ante*, 606]. The question of what may be included under the exception made for charitable purposes has never come before the Commission in such form as to call for an expression of opinion. It will be noted that in terms it applies to property only, not to persons.

By the eleventh section of the Act this Commission is created and established, and other sections prescribe its duties and powers. Those sections it will be necessary to consider somewhat at length further on.

The Commission was organized March 31, 1887, and entered at once upon the discharge of its duties. The other provisions of the Act took effect April 5, 1887. The demands upon its attention were immediate, and some of them of a very perplexing nature. It will be more convenient to take notice of these under specific heads in connection with the provisions of the Act under which they were severally presented for its action.

I. THE CARRIERS SUBJECT TO ITS JURISDICTION.

These are indicated by general designation in the first section of the Act, and the provision on that subject has already been recited. By reference thereto it will be seen that it embraces the carriers "engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment," in interstate or international commerce. It does not embrace the carriers wholly by water, although they

in the nature of blackmail, and was yielded to unwillingly and through fear of damaging consequences from a refusal. But the evils were present as much when it was extorted as when it was freely given.

These were some of the evils that made interference by national legislation imperative. But there were others that were of no small importance. Rates when there was no competition were sometimes so high as to be oppressive; and when competition existed by lines upon which the public confidently relied to protect them against such a wrong, a consolidation was effected and the high rates perpetuated by that means. In some cases the roads, created as conveniences in transportation, were so managed in respect to business passing or destined to pass over other roads that they constituted hinderances instead of help, to the great annoyance of travel and to the serious loss of those who intrusted their property to them. Then their rates were changed at pleasure and without public notification; their dealings to a large extent were kept from the public eye, the obligation of publicity not being recognized; and the public were therefore without the means of judging whether their charges for railroad service were reasonable and just or the contrary.

But the publications actually made only increased the difficulties. Railroad rates, difficult enough to be understood by the uninitiated when printed plainly in one general tariff with classification annexed, became mysterious enigmas when several different tariffs were printed, as was the case in some sections; some relating to competitive points and others to what were called local points, and each referring to voluminous and perhaps different classifications, which were printed but not posted, and which were observed or disregarded at will in the rates as published. Such unsystematic and misleading publications naturally led to many overcharges and controversies, and naturally invited and favored special rates and injurious preferences.

These were serious evils; and they not only to some extent blunted the sense of right and wrong among the people and tended to fix an impression upon the public mind that unfair advantages in the competition of business were perfectly admissible when not criminal, but they built up or strengthened a class feeling and imbibed the relations between those who for every reason of interest ought to be in harmony. It was high time that adequate power should be put forth to bring them to an end. Railroads are a public agency. The authority to construct them with extraordinary privileges in management and operation is an expression of sovereign power, only given from a consideration of great public benefits which might be expected to result therefrom. From every grant of such a privilege resulted a duty of protection and regulation, that the grant might not be abused and the public defrauded of the anticipated benefits.

The abuses of corporate authority to the injury of the public were not the only reasons operating upon the public mind to bring about the legislation now under consideration; some other things which in their direct effects were wrongs to stockholders only had their influence

also, and this by no means a light one. The manner in which corporate stocks were manipulated for the benefit of managers and to the destruction of the interest of the owners was often a great scandal, resulting sometimes in the bankruptcy and practical destruction of roads which, if properly managed, would have been not only profitable but widely useful. This in its direct results might be a wrong to individuals only, but in its direct influence it was a great public wrong also.

The most striking and obvious fact in such a case commonly is that persons having control of railroads have in a very short time by means of the control amassed great fortunes. The natural conclusion which one draws who must judge from surface appearances is, that these fortunes are unfairly acquired at the expense of the public; that they represent excessive charges on railroad business, or unfair employment of inside privileges, and furnish in themselves conclusive evidence that current rates are wrong and probably extortionate. An impression of this sort, when it happens to be wide of the fact is for many reasons unfortunate. It creates or strengthens a prejudice against all railroad management—the honest as well as the dishonest—which affects the public view of all railroad questions; it renders it more difficult to deal with such questions calmly and dispassionately; it makes the public restive under the charges they are subjected to, even though they be moderate and necessary; it tends to strengthen a feeling among the unthinking that capital represents extortion. However careful, considerate, fair, and just the management of any particular road may be, and however closely it may confine itself to its legitimate business, it is impossible that it should wholly escape the ill effects of this prejudice, which are visited upon all roads because some conspicuous railroad managers have by their misconduct given in the public mind a character to all.

Evils of the class last mentioned were difficult of legislative correction, because they sprang from the over-confidence of stockholders in the officers chosen to manage their interests, and whose acts at the time they perhaps assented to. But if capable of correction by any legislative authority, it was in general that of the States, not that of the Nation. The States in the main conferred the corporate power, and it was for the States by their legislation to provide for the protection of the individual interests which were brought into existence by their permission. The National Government had to do with the commerce which these artificial entities of state creation might be concerned in. Nevertheless, the manifest misuse of corporate powers strengthened the demand for national legislation, and this very naturally, because the private gains resulting from corporate abuse were supposed to spring, to some extent at least, from excessive burdens imposed upon the commerce which the Nation ought to regulate and protect.

For the purpose of correcting the evils above alluded to, so far as it was constitutionally competent for national legislation to do so, the Act to Regulate Commerce lays down certain rules to be observed by the carriers to which

ble. The Act was examined in detail, and it was contended that on a fair construction of the terms made use of, the express companies could not be embraced. The history of the legislation was also discussed, and it was urged that the public demand for legislative regulation of railroad traffic had been made upon grounds which did not apply to the express traffic; the express companies had not practiced secret rebates; they had not so frequently made the greater charges for the shorter hauls; they had not made unjust discriminations between persons or places. The argument *ad inconvenienti* was also pressed with great earnestness; it was said to be practically impossible for the express companies to print and publish their tariffs, so numerous are the points to which their business extends; and it was even said that so voluminous would they be that no public building at the national capital could contain them.

The Commission has felt the force of the considerations urged so far as they are drawn from the phraseology of the Law, but the other arguments have not appeared to be so weighty. The Commission cannot agree that any serious difficulty would be found in the making and filing of the express tariffs. The companies have no difficulty now in putting into the hands of their agents a tariff which the agents can understand and work by, and which at the same time is neither great in bulk nor cumbersome in use. What the express agent can understand it is fair to assume other people can understand also, and it would impose no hardship upon the express company to require that it be kept where the public can inspect it at pleasure. The objection made to this publication is precisely the same that was made by some railroad companies to the publication of their tariffs, and the language employed is no more extravagant; and yet the railroad companies, when compliance has been undertaken, have found the difficulties dwindling into insignificance. And the several express companies which actually filed their tariffs did not, when forwarding them to the Commission, even suggest that any difficulty had been encountered in preparing them.

The arguments from the history of the Act have plausibility. It may be conceded that the evils at which the Act was aimed have not existed to any great extent in the express business. One reason—perhaps the principal reason—for this is that, as each of the several express companies has had a practical monopoly on the lines on which it operates, the inducement to secret rebates and to the unjust discrimination which springs from severe competition has been wanting. It has been easier, also, to make and maintain rates which are proportioned to distance. Water competition, which so seriously affects the ordinary freight traffic of railroads, would scarcely affect at all the traffic for which shippers are willing to pay high rates in order to have great speed. But the complaint of excessive charges upon express traffic has been common, and that of greater charges on shorter hauls is sometimes heard; and if it shall be held that express companies are not controlled by the rules of fairness and equality which the Act prescribes, it is easy to see that the mischief against which

the Act is aimed may reappear and be enacted with impunity.

It has already been said that no clear line of distinction exists between the express business and some branches of what is exclusively railroad service; and the express business may easily be enlarged at the expense of the other. Those roads which now do their express business through a nominal corporation might hand over to this shadow of their corporate existence the dressed meat or live stock business, or the fruit transportation, or any other business in respect to which speed was specially important; and they might continue this process of paring off their proper functions as carriers until they should be little more than the owners of lines of road over which other organizations should be carriers of freight, and on terms by themselves arbitrarily determined.

The Commission, after a hearing of all the arguments advanced by those who appeared for the express companies, is of opinion that the express business, so far as it is done by the railroad companies themselves, whether directly, and by their managing officers, or indirectly, and through nominal corporations created for the purpose, is within the Act, and that such companies are under obligation to see that the tariffs are filed, and that the rules of fairness and equality which the Act prescribes are observed. Whether the express companies which are independent of the railroads are within the contemplation of the Act is more doubtful.

The Commission is of opinion that the question is one which Congress ought to put beyond question by either expressly and by designation including the express companies or by excluding them. The railroad companies that see fit to do their own express business ought not, either as respects principles or methods, to be subjected in the management of such business to any different control or regulation from that which the independent express companies of the country are required to obey. If the latter are not within the contemplation of the Act to Regulate Commerce, all express business, by whomsoever carried on, should be excluded. Justice to the public, as well as to that business, demands that it be governed throughout the country by rules of general application, and which shall not be dependent on mere forms, or on the will of those who happen to be in the control of the railroads and therefore have the power to determine by what agencies this important portion of the business of the roads shall be conducted.

What is said of the express business is applicable also to the business of furnishing extra accommodations to passengers in sleeping and parlor cars. These accommodations are furnished in some cases by the railroad companies, and in others by outside corporations, who are not supposed to be embraced by the terms of the Law. Outside companies are also to some extent engaged in the transportation of live stock in cars owned by themselves, but transported over the railroads under special agreements with the railroad companies which supply the motive power. As these last named companies furnish better accommodations for live stock, and transport them with less lia-

also may be engaged in the like commerce, and as such be rivals of the carriers which it undertakes to control. For the omission to include them many reasons may be suggested, but perhaps the most influential were that the evils of corporate management had not been so obvious in the case of carriers by water as in that of carriers by land; and moreover the rates of transportation by water were so extremely low that they were seldom complained of as a grievance, even when they were unequal and unjustly discriminating. In their competition with the carriers by land the carriers by water were sometimes at a disadvantage and compelled to accept lower rates, and this also had some influence in propitiating public favor, inasmuch as they appeared to operate as obstacles to monopoly and as checks upon extortion.

But some of the railroad practices which the Act undertakes to bring to an end have been common among carriers by water also, and if wrong in themselves might justly be forbidden in their case as well. The carriers by water discriminate between their customers on grounds not sanctioned by equity when interest seems to require it; they make rates at pleasure, they put up and put down rates suddenly without public notification; they make secret rebates to secure the business of large dealers, they charge less in some cases for a longer than for a shorter transportation over the same line in the same direction, the shorter being included in the longer distance.

It is not intended, however, by this enumeration to intimate an opinion that these things are common. The fact that there has been no general public complaint of them may be regarded as strong and perhaps conclusive evidence to the contrary. But, as the statutory law now is, they may be practiced at pleasure; and the fact that they may be is very likely to lead rivals in business to suspect that they are so practiced much oftener than is actually the case. The existence of such a suspicion, with plausible ground for it, naturally tempts to retaliatory measures of a similar nature where escape from detection is thought likely, and the enforcement of the Law as against those who are subject to it is made more troublesome and less certain by the fact that one class of competitors for business is restrained while the other is left at full liberty.

It may be worthy the careful attention of Congress whether the same rules of fairness and equality ought not to be applied to all carriers whose operations subject them to the federal power; whether those by water as well as those by land ought not in particular to be required to publish their rates, to maintain them steadily, and to apply them impartially, and ought not to be forbidden to give secret rebates. Such rules, prescribed and enforced, would take away much of the present temptation on the part of carriers by land to violate or evade the Law, and would, besides, be intrinsically just and right.

The question whether another class of carriers is within the contemplation of the Act is not so clear. We refer now to those who are engaged in the express business of the country. This business has an origin more recent than that of railroad transportation; it began in a very small way, but it has grown to immense

proportions, and now constitutes a large and increasing share of the business done by rail. Of the carriers engaged in this business there are several classes.

Some are partnerships of individual members, or joint associations constituting a species of statutory partnership, but resembling corporations in having the interests of the members represented by shares in a capital stock, and also in provisions made for perpetuity.

Some are corporations organized under state charters or general incorporation Acts.

These have their several names as express companies, and as such they make bargains with the railroad companies for the transportation of their freight and their agents at a compensation agreed upon. This compensation is likely to be a definite share in the gross receipts from the freight traffic, and each of the several express companies has a territory of its own, so that each road carries the freight and the agents of one only.

Some of the railroad companies, however, have undertaken to do the express business on their own lines through their own agencies. The Baltimore & Ohio Railroad Company did this for a time, and then sold the business to one of the existing express companies. Some of the western railroads combined for the purpose, and for convenience create a nominal corporation to do the business over their several lines and divide the net proceeds. In organization and general methods this corporation resembles some of the fast freight lines of the country, the railroad companies being the nominal corporators and the business done being in every sense railroad business, though for convenience carried on by the several companies through a common agency.

There is no recognized distinction between what shall be considered express freight and what not, except that which concerns the method of transportation. Express freight is commonly but not always taken in cars attached to passenger trains; and, however taken, it is expedited beyond what is possible with freight in general; and any freight taken is express for which the owner consents to pay the charges. These charges are much greater than are made upon ordinary freight of like or similar kind.

Immediately after the organization of the Commission the question was presented whether the express companies of the country were under obligation to file their tariffs in its office. If they came within the enumeration of carriers in the first section of the Act, the obligation was upon them; but not if that enumeration failed to include them. The Commission deemed it prudent to rule, until satisfied to the contrary, that they were included, inasmuch as that ruling could harm no one and was in the direction of safety. The Canadian, the Northern Pacific, and the Dominion Express Companies acquiesced in this ruling and filed tariffs; but the companies for the most part objected, and it was deemed advisable to offer them an opportunity to present their views. This was accordingly done; able counsel appeared to argue the question, and it was very fully and carefully considered.

Many arguments were urged on the part of the companies which are admitted to be forcible

the whole length of a road to a terminus on a water highway would not exceed those for the transportation for half the distance only, to a way station not similarly favored with competition. The seeming injustice was excused on the plea of necessity. The rates to the terminus, it was said, were fixed by the competition and could not be advanced without abandoning the business to the boats. The greater rates to the local points were no more than was reasonable, and they were not by reason of the low rates to the competitive point made greater than they otherwise would have been. On the contrary, if the rates on the railroad were established on a mileage basis throughout, with no regard to special competitive forces at particular points, the effect in diminishing the volume of business would be so serious that local rates at non-competitive points would necessarily be advanced beyond what they are made when the competitive business can be taken also, even though the competitive business be taken at rates which leave little margin above the actual cost of movement. Such is the common argument advanced in support of the short haul rates.

But the lower rates on the longer hauls have not been due altogether to water competition; railroad competition has been allowed to have a similar effect in reducing them. But as the railroad tariffs are commonly agreed upon between the parties making them, the necessity which controlled the water competition was not so apparent here, and to some extent the lower rates have been conceded to important towns in order to equalize advantages as between them and other towns which were their rivals, and to which low rates had been given under a pressure of necessity. But they were given also in many cases as a means of building up a long haul traffic that could not possibly bear the local rates, and which consequently would not exist at all if rates were established on a mileage basis, or on any basis which, as between the long and short haul traffic, undertook to preserve anything like relative equality.

It would be foreign to the purposes of this report to discuss at this time the question whether in this system of rate-making the evils or the advantages were most numerous and important. Some of the evils are obvious; not the least of which is the impossibility of making it apparent to those who have not considered the subject in all its bearings, that the greater charge for the shorter haul can in any case be just. The first impression necessarily is that it must be extortionate; and until that is removed it stands as an impeachment of the fairness and relative equity of railroad rates. But, on the other hand, it must be conceded that this method of making rates represents the best judgment of experts who have spent many years in solving the problems of railroad transportation; and its sudden termination without allowing opportunity for business to adapt itself to the change would, to some extent, check the prosperity of many important places, render unprofitable many thriving enterprises, and probably put an end to some long-haul traffic now usefully carried on between distant parts of the country. It is also quite clear that the more powerful corporations of the country, controlling the largest

traffic and operating on the chief lines of trade through the most thickly settled districts, can conform to the statutory rule with much more ease and much less apparent danger of loss of income than can the weaker lines, whose business is comparatively light and perhaps admits of no dividends, and the pressure of whose fixed charges imposes a constant struggle to avoid bankruptcy.

If Congress intended this immediate change of system, it was not for the Commission to inquire whether the evils of making it at once would or would not exceed the benefits. The Law must stand as the conclusive evidence of its own wisdom, and the authorities charged with enforcing it were not to question but to obey it. With the Commission, therefore, the first question was one of interpretation; and when it was clearly perceived what Congress intended, the line of duty was plain. The intent should be given effect, not only because it was enacted, but because in the enactment it was determined by the proper authority that the public good required it.

In coming to a consideration of the fourth section of the Act it was immediately perceived that many different views were taken of it, some of which were settled convictions which were the result of thought and reflection, while others were mere off-hand impressions and deserving of little attention. By some persons it was assumed that the Commission had by the Act been given a general authority to suspend altogether the operation of the fourth section, and upon this utterly baseless and unreasonable assumption the Commission was plied with arguments in support of a general suspension. Other views went to the opposite extreme, and while holding that the general rule must be enforced in all cases until the Commission had sanctioned exceptions, would restrict the power to make exceptions to individual shipments made under circumstances and conditions which were special and peculiar. Such a restriction would obviously render the authority to make exceptions of no practical utility.

But among those who had given the subject thought and attention, and whose views for that reason were deserving of consideration, a most important difference of opinion was found to exist regarding the stage at which the intervention of the Commission under the fourth section was to be invoked. By some persons it was believed that a rule was laid down by that section which could not lawfully be departed from until the Commission on investigation had determined that the circumstances and conditions of the longer and of the shorter transportation were so dissimilar as to justify making the greater charge for that which was the shorter, and had prescribed the extent of the permissible exception.

By others the fact was emphasized that the charging or receiving "any greater compensation in the aggregate for the transportation of passengers or of the like kind of property" "for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance," was only declared by the section to be unlawful when both were "under substantially similar circumstances and conditions;" and they com-

from such place to a port of transshipment or shipped from a foreign country to any place in the United States, and carried to such place from a port of entry either in the United States or an adjacent foreign country; *Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid:*

It is further provided that—

The term "railroad," as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

The railroad mileage of the United States, computed to the close of the fiscal year 1886, of the companies respectively, was 133,606. The number of corporations represented in this mileage was 1,425, but by the consolidation or leasing of roads, the number of corporations controlling and operating roads as carriers was reduced to 700. It is estimated that 4,390 miles of road have been constructed since the foregoing statistics were obtained, making a total mileage at this time of 137,996. It is impossible to say with entire accuracy what is the number of railroad companies subject to the provisions of the Act; but it is believed that not less than 1,200, operated by about 500 corporations as carriers, engage either regularly or at times in interstate commerce, so as to make the Act applicable. The Commission has as yet no statistics of its own collection to lay before the public; but in a manual generally accepted as reliable, the cost of construction and equipment of the 133,606 miles of road is estimated at \$7,254,995,223, and the funded debt of the companies at \$3,882,966,830. Interest according to the same authority was paid by these companies for the last fiscal year to the amount of \$187,356,540; and the aggregate payment to stockholders in dividends was \$30,094,188.

Some idea of the magnitude of the interest which the Act undertakes to regulate may be obtained from these figures, but they fall far short of measuring, or even of indicating its importance. The regulation of no other business would concern so many or such diversified interests, or would affect in so many ways the results of enterprise, the prosperity of commercial and manufacturing ventures, the intellectual and social intercourse of the people, or the general comfort and convenience of the citizen in his every day life. The railroads provide for the people facilities and conveniences of a business and social nature which have become altogether indispensable; and the importance of so regulating these that the best results may be had, not by the general public alone, but by the owners of railroad property also, is quite beyond computation.

The Act to regulate commerce was passed under the authority conferred upon Congress by the Federal Constitution "to regulate commerce with foreign Nations, among the several States, and with the Indian Tribes," and in recognition of a duty which, though long delayed, had at length, in the opinion of Congress, become imperative. The reasons for the delay are well understood. When the grant

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of this power of regulation was made by the Constitution the commerce between the States which might be controlled under it was quite insignificant both in volume and value. It was for the most part carried on by means of coast wise vessels and by water craft of various kinds which were sailed or otherwise propelled on the lakes, rivers, and smaller streams of the interior. On the land there was very little that could be said to rise to the dignity of interstate commerce; and the regulation of that little, as also of that which was exclusive State traffic, was for the most part left to the rules of the common law. The exceptional regulations, if any seemed to be called for, were made by the state laws. In a few cases where persons had associated themselves together as regular carriers of persons on definite routes, exclusive rights were granted to them by the States, as such carriers, the motive to such grants being a belief on the part of the state authorities that without the exclusive privilege the regular transportation would not be adequately and reliably provided for.

For the the regulation of commerce on the ocean and other navigable waters Congress very promptly passed the necessary laws; but its jurisdiction within the limits of the States was not very clearly understood, and it was not until the great case of *Ogden v. Gibbons* decided in 1824, that it was authoritatively and finally determined that the waters of a State, when they constituted a highway for foreign and interstate commerce, are, so far as concerns such commerce, as much within the reach of federal legislation as are the high seas, and consequently that exclusive rights for their navigation cannot be granted by States whose limits embrace them.

But while providing from time to time for the regulation of commerce by water, Congress still abstained from undertaking the regulation of commerce by land. The reasons for this continued to be the same as at the first. The land commerce was insignificant in amount, and the rules of the common law were in general found adequate to the settlement of the questions arising out of it. The commerce of trappers and hunters, of traders with the Indians, or that of the early settlers in the wilderness, needed only the most primitive modes of conveyance; the emigrant wagon in one direction and the pack-horse and canoe in the other, performed in respect to it the functions now performed by the railroad train and the steamboat. The use of such primitive instrumentalities required little regulation by either state or national law. When Congress provided for the construction of the Cumberland road as a great national highway, it was thought quite undesirable to regulate its use by national law or to take national supervision of the commerce upon it; and, with the commerce on the ordinary highways, it was left to the supervision and care of the States respectively through or into which the road should be built.

With the application of steam as a motive power for propelling vessels the conditions were immediately, to a considerable extent, changed. An impetus was given to the internal commerce of the country which promised immense results, and which made immediate

mission called the attention of the several carriers which had obtained orders to the desirability of revising their tariffs and bringing them more nearly into conformity with the general rule of the fourth section. The opinion was expressed that this revision was practicable without serious injury to the interests involved. This suggestion was acted upon by several of the petitioning carriers, and by a still greater number who had not petitioned for relief; and the Commission takes pleasure now in being able to report that in large sections of the country obedience to the general rule of the fourth section is without important exception. While before the passage of the Act few lines operated as competitors for long haul traffic could be found upon which the practice of the lesser charge for the longer haul did not exist, on a very large proportion of them all it has now come to an end. This has in some instances been accomplished by raising the rates on through traffic, but in many cases where this was done the practical experiment resulted finally in a general reduction throughout the line. In other instances the lower rates on long haul traffic were retained and the local rates reduced to the limit thus established. In still other instances a compromise course was pursued, the previous low rates at certain so-called competitive points being raised somewhat, and the local rates at intermediate points reduced sufficiently to be brought within the statutory rule. This last course was pursued upon some of the leading roads in the Southern States as to points to which it was in their power to control the rates made.

The process has been continually going on, and is still in progress. Tariffs are from time to time filed with the Commission showing a reconstruction of the rates in the direction of the rule laid down in the fourth section. The carriers making them sometimes protest that the rates are not voluntarily made, but only because the Law so requires, and that they will involve large loss of revenue. The apprehension of loss in cases when the local and non-competitive rates are adjusted to the through rates is in some cases supported by strong probabilities.

The transcontinental roads have not conformed to the general rule of the fourth section. By the managers of those roads it is contended that in view of the competition which they must meet, not only of ocean vessels but of the Canadian railways, it will be absolutely impossible for them to comply with the strict rule of the fourth section without surrendering a very large portion of their through business, and that such surrender will be equally ruinous to their own interest and to many other large interests on the Pacific coast. How far this contention is just the Commission has as yet neither had the occasion nor found the opportunity for judging; but cases now pending in which the rates to interior points are complained of will soon receive attention, and the general question will probably to some extent be found involved.

Neither is it the case that the roads in the States south of the Ohio have come into general conformity with the rule of the fourth section. Some of them have greatly modified

their tariffs in that direction; some profess compliance, while some insist that compliance is not possible without ruin. Of these the case of the Louisville & Nashville Railroad Company may be taken as representative. In pending proceedings against that company for a violation of the fourth section it is frankly avowed by the company that its method of making rates has not been changed since the Act was passed, and at the same time it is insisted that any considerable change is impossible. The local rates cannot be reduced, it is said, because they are as low now as can be afforded unless the competitive rates are raised, and to raise the competitive rates would be to abandon the business, which would then go to other carriers. It is further insisted for the company that while it gives, as it is compelled to do, very low rates to competing points, the intermediate stations participate in the benefits, because their rates never exceed the rates to the competitive points with the local rates thence to the intermediate stations added; and therefore every reduction to the competitive point causes a like reduction to the intermediate point also. This, as has been said, is the contention which the company makes in pending cases, and in support of which much evidence has been put in.

Some of the cases in which the strict rule of the fourth section is not applied are cases in which the longer hauls are made by circuitous routes, and the charges are necessarily made very low in order to meet the competition of more direct lines. The competition by these circuitous routes is in some cases hardly legitimate, and while it continues it constitutes a disturbing element in the general railroad business of the section. It is nevertheless thought by the local communities to be important, and there are probably some weak lines that would find it difficult to maintain a useful existence if not permitted to engage in competition for a business that would naturally fall to other lines. It happens in some of these cases that the lower charges on the longer hauls are only made lower because the points to which they are made are nearer by direct routes to the common market than the points to which the higher charges are made; and in such cases to compel the circuitous route to conform to the rule of the fourth section strictly would be to compel an abandonment of some portion of its business. If the direct lines to the common market give to the nearer point the lower rate, the circuitous line has no alternative but to do the same or to give up any attempt at competition.

The Commission has not as yet had occasion to decide a case which involved the construction of the fourth section in its application to traffic by these circuitous routes; the only case in which the question was made having been found, when the facts were examined, not to present it. 1 Interstate Commerce Commission Reports, p. 199 [*ante*, 631].

In some cases the lower rate on the longer line is a combination of rates over several lines; and it has been contended in some quarters that the fourth section only applies to cases in which the carrier who makes the greater charge for the shorter haul controls the line of longer haul, and makes the charge upon

abuse of corporate powers were little more than nominal. For a long time the promoter of a railway was looked upon as a public benefactor, and laws were passed under which municipal bodies were allowed to give public money or loan public credit in aid of his schemes, on an assumption that almost any road would prove reasonably remunerative, but that in any event the indirect advantages which the public would reap must more than compensate for the expenditures.

In time it came to be perceived that these sanguine expectations were delusive. A very large proportion of all the public money invested in railroads was wholly sunk and lost. Many roads were undertaken by parties who were without capital, and who relied upon obtaining it by a sale of bonds to a credulous public. The corporation thus without capital was bankrupt from its inception, and the corporators were very likely to be mere adventurers who would employ their chartered powers in such manner as would most conduce to their personal ends.

It is striking proof of the recklessness of corporate management that 108 roads, representing a mileage of 11,066, are now in the hands of receivers, managing them under the direction of courts, whose attention is thus necessarily withdrawn from the ordinary and more appropriate duties of judicial bodies. So serious has been the evil of bringing worthless schemes into existence and making them the basis for an appropriation of public moneys or for the issue of worthless evidences of debt, that a number of the States have so amended their constitutions as to take from the Legislature the power either to lend the credit of the State in aid of corporations proposing to construct railroads, or to authorize municipal bodies to render aid, either money or credit. State legislation has at the same time been in the direction of making compulsory the actual payment of a *bona fide* capital before a corporation shall be at liberty to test the credulity of the public by an issue of negotiable securities.

When roads were built for which the business was inadequate, the managers were likely to seek support by entering upon competition for business which more legitimately belonged to the other roads, and which could only be obtained by offering rates so low that if long continued they must prove destructive. A competitive warfare was thus opened up in which each party endeavored to underbid the other, with little regard to prudential considerations, and freights were in a great many cases carried at a loss, in the hope that in time the power of the rival to continue the strife would be crippled and the field practically left to a victor who could then make its own terms with customers. When the competition was less extreme than this, there was still a great deal of earnest strife for business, some of which was open and with equal offerings of rates and accommodations to all, but very much of which was carried on secretly, and then the very large dealers practically made their own terms, being not only accommodated with side tracks and other special conveniences, but also given what were sometimes spoken of as wholesale rates,

or perhaps secret rebates, which reduced the cost to them of transportation very greatly below what smaller dealers in the same line of business were compelled to pay. Such allowances were sufficient of themselves in very many cases to render successful competition, as against those who had them, practically impossible.

The system of making special arrangements with shippers was in many parts of the country not confined to large manufacturers and dealers, but was extended from person to person under the pressure of alleged business necessity, or because of personal importunity or favoritism, and even in some cases from a desire to relieve individuals from the consequences of previous unfair concessions to rivals in business. The result was that shipments of importance were commonly made under special bargains entered into for the occasion, or to stand until revoked, of which the shipper and the representative of the road were the only parties having knowledge. These arrangements took the form of special rates, rebates, and drawbacks, underbidding, reduced classification, or whatever might be best adapted to keep the transaction from the public; but the public very well understood that private arrangements were to be had if the proper motives were presented. The memorandum book carried in the pocket of the general freight agent often contained the only record of the rates made to the different patrons of the road; and it was in his power to place a man or a community under an immense obligation by conceding a special rate on one day, and to nullify the effect of it on the next by doing even better by a competitor.

The system, if it can be called such, involved a great measure of secrecy, and its necessary conditions were such as to prevent effective efforts to break it down, though the willingness to make the effort was not wanting among intelligent shippers. It was of the last importance to the shipper that he be on good terms with those who made the rates he must pay; to contend against them was sometimes regarded as a species of presumption which was best dealt with by increasing existing burdens; and the shipper was cautious about incurring the risk. Nevertheless it was a common observation, even among those who might hope for special favors, that a system of rates, open to all and fair as between localities, would be far preferable to a system of special contracts into which so large a personal element entered or was commonly supposed to enter. Permanence of rates was also seen to be of very high importance to every man engaging in business enterprises, since without it business contracts were lottery ventures. It was also perceived that the absolute sum of the money charges exacted for transportation, if not clearly beyond the bounds of reason, was of inferior importance in comparison with the obtaining of rates that should be open, equal, relatively just as between places, and as steady as in the nature of things was practicable.

Special favors or rebates to large dealers were not always given because of any profit which was anticipated from the business obtained by allowing them; there were other

than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates, or fares, or charges for such continuous lines or routes, copies of the same are in like manner required to be filed; and the Commission is empowered to require their publication in so far as it shall be found practicable, and to determine the measure of publicity to be given to such rates, fares, and charges. With these provisions there has been general but not in all cases satisfactory, compliance on the part of the carriers; and the Commission, acting under the discretionary authority conferred upon it to require the publication of joint tariffs, has made order for their publication in all cases where the joint tariff is competitive to that which is taken by a single line between the same points; the publication under such circumstances being important to the interests of fair and open competition.

But though the carriers make and file their tariffs as required by the Act, there is no general uniformity to the tariffs or to the classifications, either in form or in general method of preparation. This is unfortunate for several reasons, but especially because the public, who have to deal with many carriers, are likely to be confused between the different methods of giving information, and possibly to be misled in some cases. The difficulty of making use of them for the purposes of the Commission is also greatly enhanced by the want of uniformity, and the Commission would be very glad to correct it if that were possible. The force of assistants which the appropriation made by the Act enabled the Commission to engage is so small that any steps in this direction have up to this time been quite out of the question. Some idea of the labor devolved upon this clerical force may be formed when it is known that as near as can be estimated one hundred and ten thousand books, papers, and documents, showing rates, fares, and charges for transportation, and contracts, agreements, or arrangements between carriers in relation to interstate traffic, have been filed in the office of the Commission, all of which required appropriate classification and systematic arrangement. It has been quite impossible to do more with these than to acknowledge the receipt, classify, and index them, and put them in order for reference. The organization of a general system upon which they might most usefully be made has not been attempted; nor even any systematic investigation of their contents for the purpose of observing to what extent the provisions of the Act to Regulate Commerce is complied with in their preparation.

This latter duty seems to be clearly contemplated by the Act. The Commission has felt it to be its duty not to exceed in its expenditures the appropriation made, unless compelled by a necessity that should be plainly imperative; and steps, however desirable, that required, to give them effect, more clerical force than the appropriation would enable it to secure have therefore been postponed. Should it be within the power of the Commission at any time hereafter to deal with the subject effectively, it will endeavor to do so.

It is within the knowledge of the Commis-

sion that some carriers have been advised by their counsel that the prohibition in the Act against an increase of rates except on ten days' notification does not apply to joint rates. The Commission does not admit this advice to be sound; but in case the Act should be amended, it is believed the prohibition should in clear terms be made to extend to joint rates.

IV. GENERAL SUPERVISION OF THE CARRIERS SUBJECT TO THE ACT.

It is provided in the twelfth section of the Act—

That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this Act the Commission shall have power to require the attendance and testimony of witnesses, and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

This is a very important provision, and the Commission will no doubt have frequent occasion to take action under it. It will not hesitate to do so in any case in which a mischief of public importance is thought to exist, and which is not likely to be brought to its attention on complaint of a private prosecutor. There is every reason to believe, however, that some of the most serious evils which were notorious in the railway service before the passage of the Act, and were in the legislative mind as reasons for its enactment, have now almost ceased to exist. One of these was the giving of special and secret rebates. These were exceedingly common before the Act, and constituted one of the readiest means of making unjust discrimination. No provision in the Act to Regulate Commerce is more important than that which forbids them. But among all the complaints made to the Commission not one has charged a specific Act in violation of this provision; and where a disregard of it has been suggested it has been by way of formal charge and as an expression of suspicion only.

In the litigated cases which have come before the Commission involving an examination into railroad practices at important centers, there has been entire agreement in the proofs that special rates to individuals and secret rebates were no longer made; a single exceptional instance only has come out in the proofs. Their condemnation by the law and the provision made for their detection and punishment have brought about this result. Further evidence in the same direction is furnished by the complaints of those who formerly had them that the Law injuriously affects their business; but these complaints, which are aimed at the justice and equity of the Law, the public may bear with equanimity, satisfied that in this particular at least substantial benefit has come from its enactment.

Complaints of unjust discrimination and the giving of undue and unreasonable preferences

in the nature of blackmail, and was yielded to unwillingly and through fear of damaging consequences from a refusal. But the evils were present as much when it was extorted as when it was freely given.

These were some of the evils that made interference by national legislation imperative. But there were others that were of no small importance. Rates when there was no competition were sometimes so high as to be oppressive; and when competition existed bylines upon which the public confidently relied to protect them against such a wrong, a consolidation was effected and the high rates perpetuated by that means. In some cases the roads, created as conveniences in transportation, were so managed in respect to business passing or destined to pass over other roads that they constituted hinderances instead of help, to the great annoyance of travel and to the serious loss of those who intrusted their property to them. Then their rates were changed at pleasure and without public notification; their dealings to a large extent were kept from the public eye, the obligation of publicity not being recognized; and the public were therefore without the means of judging whether their charges for railroad service were reasonable and just or the contrary.

But the publications actually made only increased the difficulties. Railroad rates, difficult enough to be understood by the uninitiated when printed plainly in one general tariff with classification annexed, became mysterious enigmas when several different tariffs were printed, as was the case in some sections; some relating to competitive points and others to what were called local points, and each referring to voluminous and perhaps different classifications, which were printed but not posted, and which were observed or disregarded at will in the rates as published. Such unsystematic and misleading publications naturally led to many overcharges and controversies, and naturally invited and favored special rates and injurious preferences.

These were serious evils; and they not only to some extent blunted the sense of right and wrong among the people and tended to fix an impression upon the public mind that unfair advantages in the competition of business were perfectly admissible when not criminal, but they built up or strengthened a class feeling and embittered the relations between those who for every reason of interest ought to be in harmony. It was high time that adequate power should be put forth to bring them to an end. Railroads are a public agency. The authority to construct them with extraordinary privileges in management and operation is an expression of sovereign power, only given from a consideration of great public benefits which might be expected to result therefrom. From every grant of such a privilege resulted a duty of protection and regulation, that the grant might not be abused and the public defrauded of the anticipated benefits.

The abuses of corporate authority to the injury of the public were not the only reasons operating upon the public mind to bring about the legislation now under consideration; some other things which in their direct effects were wrongs to stockholders only had their influence also, and this by no means a light one.

The manner in which corporate stocks were manipulated for the benefit of managers and to the destruction of the interest of the owners was often a great scandal, resulting sometimes in the bankruptcy and practical destruction of roads which, if properly managed, would have been not only profitable but widely useful. This in its direct results might be a wrong to individuals only, but in its direct influence it was a great public wrong also.

The most striking and obvious fact in such a case commonly is that persons having control of railroads have in a very short time by means of the control amassed great fortunes. The natural conclusion which one draws who must judge from surface appearances is, that these fortunes are unfairly acquired at the expense of the public; that they represent excessive charges on railroad business, or unfair employment of inside privileges, and furnish in themselves conclusive evidence that current rates are wrong and probably extortionate. An impression of this sort, when it happens to be wide of the fact is for many reasons unfortunate. It creates or strengthens a prejudice against all railroad management—the honest as well as the dishonest—which affects the public view of all railroad questions; it renders it more difficult to deal with such questions calmly and dispassionately; it makes the public restive under the charges they are subjected to, even though they be moderate and necessary; it tends to strengthen a feeling among the unthinking that capital represents extortion. However careful, considerate, fair, and just the management of any particular road may be, and however closely it may confine itself to its legitimate business, it is impossible that it should wholly escape the ill effects of this prejudice, which are visited upon all roads because some conspicuous railroad managers have by their misconduct given in the public mind a character to all.

Evils of the class last mentioned were difficult of legislative correction, because they sprang from the over-confidence of stockholders in the officers chosen to manage their interests, and whose acts at the time they perhaps assented to. But if capable of correction by any legislative authority, it was in general that of the States, not that of the Nation. The States in the main conferred the corporate power, and it was for the States by their legislation to provide for the protection of the individual interests which were brought into existence by their permission. The National Government had to do with the commerce which these artificial entities of state creation might be concerned in. Nevertheless, the manifest misuse of corporate powers strengthened the demand for national legislation, and this very naturally, because the private gains resulting from corporate abuse were supposed to spring, to some extent at least, from excessive burdens imposed upon the commerce which the Nation ought to regulate and protect.

For the purpose of correcting the evils above alluded to, so far as it was constitutionally competent for national legislation to do so, the Act to Regulate Commerce lays down certain rules to be observed by the carriers to which

reparation to be made for past injury. Most of the cases were such as to present no case for reparation—they looked only to the establishment of a rule for the future. Some complaints, however, were evidently made in the expectation that the Commission might proceed to give damages upon a grievance that would support an action on the common-law side of the federal court. The Commission, when such complaints have been brought to a hearing, has not discovered in the statute a purpose to confer upon it the general power to award damages in the cases of which it may take cognizance. The failure to provide in terms for a judgment and execution is strong negative testimony against such a purpose; but what is perhaps more conclusive is that the Act must be so construed as to harmonize with the seventh amendment to the Federal Constitution, which preserves the right of trial by jury in common-law suits.

It is believed to be unquestionable that parties can not be deprived of this right through conferring authority to award reparation upon a tribunal that sits without a jury as assistant; and that therefore any determination that reparation should be made, in a case in which a suit at law might have been maintained, can not be made absolutely binding and enforceable against the defendant in the form of a judgment; but that under the statute it will put the defendant to election, either to satisfy the complainant, in which case he will be relieved from further liability or penalty, or, on the other hand, to take the risks of proceedings in a federal court to recover damages or penalty, or both, in which case the finding of the Commission would be *prima facie* evidence of the facts recited in it.

Abstracts of the decisions made by the Commission in the cases litigated before it, and which up to this time it has been enabled to decide, are given in an appendix hereto, marked B. A brief statement is also made of the proceedings in all the cases begun by formal complaint, whether already disposed of or still pending.

In every case in which the Commission made an order against the carrier complained of, the carrier has filed notice of its compliance.

In the course of the hearings before the Commission a great body of evidence has been taken, which will remain on file in the office for reference or for any future use for which there may be occasion.

VI. PROCEEDINGS BEFORE THE COMMISSION.

It has been deemed exceedingly desirable that proceedings before the Commission on complaints against carriers should be made as informal as should be consistent with order and regularity, and that dilatory action of every nature should be discouraged. The rules of procedure, therefore, which were early adopted and put in force made no other requirement for a complaint than that it should be in the form of a verified petition and set forth the facts which constitute the grievance complained of. When such a statement has appeared, however informally made, the petition has been accepted and an answer called for. Demurrers or motions to dismiss have

not been favored, unless the case was such that the whole merits would thereby be presented; but the defendant has been expected to discontinue its defense by answer, so that one hearing may be sufficient for the final disposition of the case.

By this method of procedure technicalities are discarded, the complaints and the answers to them are treated as presenting business controversies which the parties, if they elect so to do, can manage for themselves. This they may do without being placed at disadvantage by the want of legal learning, unless the case is such as to depend rather upon the law than upon disputed questions of fact, which many of them do not. When parties have managed their own cases the taking of testimony has been somewhat informal also; and the Commission has given its aid in the examination of the witnesses produced, in order that the whole truth bearing on the matter in controversy might as far as possible be brought out and made plain. It is a pleasure to note that in this informal mode of procedure the parties have in general most heartily co-operated, and that they have been very liberal in agreeing upon the facts when it was practicable to do so, thereby materially shortening the hearings and making them assume more the form of amicable contentions.

A copy of the rules of procedure adopted by the commission under the seventeenth section of the Act is hereto appended, marked D.*

VII. EXPENSE OF HEARINGS.

The Act provides for compulsory process to bring witnesses before the Commission, and that when summoned they shall be paid for their attendance. It requires the principal office of the Commission to be at the national capital, and apparently contemplates that its sittings shall in general be there held. It provides, however, in the nineteenth section that—

Whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this Act.

The Commission understands that witnesses produced by parties to controversies are to be paid by the parties producing them. This, in some cases, where they must come long distances, is a great burden, especially in view of the fact that the Commission is not given authority to tax costs or even to impose the costs of the hearing upon the defeated party; and the Commission has endeavored to obviate it, first by inducing the parties, as far as possible, to stipulate the facts, and next by providing for the taking of the testimony by deposition, after the manner in which it is taken in the federal courts. Where, however, a great number of witnesses are to be examined, it has been deemed advisable to hold the sessions near where the transactions which are to be inquired into have taken place, not only because this course is least expensive to the parties, but because in that way the facts are more likely to be completely brought out.

*See 1 Interstate Commerce Reports, Appendix I.

also may be engaged in the like commerce, and as such be rivals of the carriers which it undertakes to control. For the omission to include them many reasons may be suggested, but perhaps the most influential were that the evils of corporate management had not been so obvious in the case of carriers by water as in that of carriers by land; and moreover the rates of transportation by water were so extremely low that they were seldom complained of as a grievance, even when they were unequal and unjustly discriminating. In their competition with the carriers by land the carriers by water were sometimes at a disadvantage and compelled to accept lower rates, and this also had some influence in propitiating public favor, inasmuch as they appeared to operate as obstacles to monopoly and as checks upon extortion.

But some of the railroad practices which the Act undertakes to bring to an end have been common among carriers by water also, and if wrong in themselves might justly be forbidden in their case as well. The carriers by water discriminate between their customers on grounds not sanctioned by equity when interest seems to require it; they make rates at pleasure, they put up and put down rates suddenly without public notification; they make secret rebates to secure the business of large dealers, they charge less in some cases for a longer than for a shorter transportation over the same line in the same direction, the shorter being included in the longer distance.

It is not intended, however, by this enumeration to intimate an opinion that these things are common. The fact that there has been no general public complaint of them may be regarded as strong and perhaps conclusive evidence to the contrary. But, as the statutory law now is, they may be practiced at pleasure; and the fact that they may be is very likely to lead rivals in business to suspect that they are so practiced much oftener than is actually the case. The existence of such a suspicion, with plausible ground for it, naturally tempts to retaliatory measures of a similar nature where escape from detection is thought likely, and the enforcement of the Law as against those who are subject to it is made more troublesome and less certain by the fact that one class of competitors for business is restrained while the other is left at full liberty.

It may be worthy the careful attention of Congress whether the same rules of fairness and equality ought not to be applied to all carriers whose operations subject them to the federal power; whether those by water as well as those by land ought not in particular to be required to publish their rates, to maintain them steadily, and to apply them impartially, and ought not to be forbidden to give secret rebates. Such rules, prescribed and enforced, would take away much of the present temptation on the part of carriers by land to violate or evade the Law, and would, besides, be intrinsically just and right.

The question whether another class of carriers is within the contemplation of the Act is not so clear. We refer now to those who are engaged in the express business of the country. This business has an origin more recent than that of railroad transportation; it began in a very small way, but it has grown to immense

proportions, and now constitutes a large and increasing share of the business done by rail. Of the carriers engaged in this business there are several classes.

Some are partnerships of individual members, or joint associations constituting a species of statutory partnership, but resembling corporations in having the interests of the members represented by shares in a capital stock, and also in provisions made for perpetuity.

Some are corporations organized under state charters or general incorporation Acts.

These have their several names as express companies, and as such they make bargains with the railroad companies for the transportation of their freight and their agents at a compensation agreed upon. This compensation is likely to be a definite share in the gross receipts from the freight traffic, and each of the several express companies has a territory of its own, so that each road carries the freight and the agents of one only.

Some of the railroad companies, however, have undertaken to do the express business on their own lines through their own agencies. The Baltimore & Ohio Railroad Company did this for a time, and then sold the business to one of the existing express companies. Some of the western railroads combined for the purpose, and for convenience create a nominal corporation to do the business over their several lines and divide the net proceeds. In organization and general methods this corporation resembles some of the fast freight lines of the country, the railroad companies being the nominal corporators and the business done being in every sense railroad business, though for convenience carried on by the several companies through a common agency.

There is no recognized distinction between what shall be considered express freight and what not, except that which concerns the method of transportation. Express freight is commonly but not always taken in cars attached to passenger trains; and, however taken, it is expedited beyond what is possible with freight in general; and any freight taken is express for which the owner consents to pay the charges. These charges are much greater than are made upon ordinary freight of like or similar kind.

Immediately after the organization of the Commission the question was presented whether the express companies of the country were under obligation to file their tariffs in its office. If they came within the enumeration of carriers in the first section of the Act, the obligation was upon them; but not if that enumeration failed to include them. The Commission deemed it prudent to rule, until satisfied to the contrary, that they were included, inasmuch as that ruling could harm no one and was in the direction of safety. The Canadian, the Northern Pacific, and the Dominion Express Companies acquiesced in this ruling and filed tariffs; but the companies for the most part objected, and it was deemed advisable to offer them an opportunity to present their views. This was accordingly done; able counsel appeared to argue the question, and it was very fully and carefully considered.

Many arguments were urged on the part of the companies which are admitted to be forced

bulk or weight was large as compared with their value.

On the system of apportioning the charges strictly to the cost, some kinds of commerce which have been very useful to the country, and have tended greatly to bring its different sections into more intimate business and social relations, could never have grown to any considerable magnitude, and in some cases could not have existed at all, for the simple reason that the value at the place of delivery would not equal the purchase price with the transportation added. The traffic would thus be precluded, because the charge for carriage would be greater than it could bear. On the other hand, the rates for the carriage of articles which within small bulk or weight concentrate great value would on that system of making them be absurdly low; low when compared to the value of the articles, and perhaps not less so when the comparison was with the value of the service in transporting them.

It was, therefore, seen not to be unjust to apportion the whole cost of service among all the articles transported, upon a basis that should consider the relative value of the service more than the relative cost of carriage. Such method of apportionment would be best for the country, because it would enlarge commerce and extend communication; it would be best for the railroads, because it would build up a large business, and it would not be unjust to property owners, who would thus be made to pay in some proportion to benefit received. Such a system of rate-making would in principle approximate taxation; the value of the article carried being the most important element in determining what shall be paid upon it.

Accordingly, and for convenience and certainty in imposing charges, freight is classified; that which comes in one class being charged a higher proportional rate than that which is placed in another. But other considerations besides value must also come in when classification is to be made. Some articles are perishable, some are easily broken, some involve other special risks in carriage, some are bulky, some specially difficult to handle, and so on. All these are considerations which may justly affect rates, and therefore may be taken into account in classification. But still others have been found potent. Every section of the country has its peculiar products which it desires to market as widely as possible, and is not unwilling that classification should be made use of by the railroads which serve it as a means of favoring and thus extending the trade in local productions; favoring them by giving them low classification and thus low rates, and discriminating against those of other sections through a classification which rated them more highly.

It has been in the power of every railroad to have a classification of its own; but the necessities of an interchange of business have brought about agreements, and the railroad associations have been given the authority to make classifications for all their members. Their labors in this direction have been extremely important and useful; they have been

steadily reducing the number of different classifications in the country, and steadily approaching a condition of things in which there will be one only. But in these associations, when in session for the making of rates, each railroad official has, to some extent, had the district which was served by his road behind him; he has felt the pressure of the interests there, and contended for them as against the the interests in classification represented by others, not only because it was desirable that the road should favor the policy its patrons favored, but also because the same policy was likely to be beneficial to both.

The result necessarily is that a classification made by a railroad association represents a series of compromises, to which not only the railroad are parties, but in a certain sense business interests and sections of country also; these in many cases being admitted by their representatives to the consultations upon a subject so vitally concerning their interests, and allowed to present their views. This contention of interests still continues to go on in the meetings and conferences, but with a steady tendency in the direction of one uniform classification, and there is reason to hope that without much further delay all classifications will be brought into harmony. If any other tribunal were to be given the authority to make classification, it must, if it would exercise its power wisely, proceed in much the same way; it must act deliberately, give all interests an opportunity to be heard, take into account all the considerations which ought to bear upon it; cost of service, interest of sections, equity as between industries and between classes of persons, and so on indefinitely.

Whether, therefore, the steady tendency in the direction of one uniform classification would be hastened by conferring the power to make one on a national commission is not entirely certain. The work if taken up anew would be one requiring much time for its proper performance; it would involve a careful consideration of the interests peculiar to different sections of the country, and a close study of the conditions of railroad service as they bear upon such interests. But these conditions change from month to month; the classification cannot be permanently the same, but must be subject to modification on the same grounds on which it was originally made; the appeals for modification would be as numerous as they would be perplexing, because of the diversity of reasons on which they would be grounded. Under the Law as it now is the Commission has appellate powers to correct any unjust classification, and it will keep in view the desirability of general uniformity and do what it properly can to bring about that result.

The classification of passengers has to some extent been a subject of complaint to the Commission. Some carriers as a rule have but one rate of passenger transportation, and but one class of passengers, except as they may be carriers of emigrants in considerable bodies, and they then have emigrant rates which are lower than those given to other persons, and the emigrants are either given less desirable cars attached to the regular trains, or are sent on trains by themselves. Other carriers make

bility to injury and with less shrinkage than is done in the ordinary stock car, it is not improbable that they, like the companies which furnish special accommodations for passengers, may in time build up a large business in respect to which they will not be controlled by any existing legislation.

It is well known also that the transportation of mineral oil is already to a very large extent in tank cars owned by parties who are not carriers subject to regulation under the Act to Regulate Commerce. A willingness to disregard the rules of equality and justice as between shippers, when it can be made for the interest of the carriers to do so is as likely to make its appearance in the action of the managers of any one of these outside organizations as in that of the managers of the railroads, for the temptations will be the same, and the same class of persons will be bidding for special privileges and advantages which before the Act was passed prospered so unfairly upon railroad favors. The Act has not changed the nature of the grasping disposition of individuals; it has only interposed certain restraints which it is reasonable to assume will be evaded if the opportunity shall be presented.

These facts are noted for the purpose of placing the whole subject distinctly before the National Legislature. If it is the will of Congress that all transportation of persons and property by rail should come under the same rules of general right and equity, some further designation of the agencies in transportation which shall be controlled by such rules would seem to be indispensable.

II. THE LONG AND SHORT HAUL CLAUSE OF THE ACT.

Another question presenting itself immediately on the organization of the Commission was that respecting the proper construction of the fourth section of the Act, which, after providing

That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance,

proceeds to say—

That, upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act.

The provision against charging more for the shorter than for the longer haul under the like circumstances and conditions over the same line and in the same direction, the shorter being included within the longer distance, is one of obvious justice and propriety. Indeed, unless one is familiar with the conditions of railroad traffic in sections of the country where the enactment of this provision is found to have its principal importance, he might not readily understand how it could be

claimed that circumstances and conditions could be such as to justify the making of any exceptions to the general rule.

It is a part of the history of the Act that one House of Congress was disposed to make the rule of the fourth section imperative and absolute, and it is likely that in some sections of the country many railroad managers would very willingly have conformed to it, because for the most part they could have done so without loss, and with very little disturbance to general business. But in some other parts of the country the immediate enforcement of an iron-clad rule would have worked changes so radical that many localities in their general interests, many great industries, as well as many railroads, would have found it impossible to conform without suffering very serious injury. In some cases probably the injury would have been overbalanced by a greater good; in others it would have been irreparable. To enforce it strictly would have been, in some of its consequences in particular cases, almost like establishing, as to vested interests, a new rule of property.

A study of the conditions under which railroad traffic in certain sections of the country has sprung up is necessary to an understanding of the difficulties which surround the subject. The territory bounded by the Ohio and the Potomac on the north and by the Mississippi on the west presented to the Commission an opportunity, and also an occasion, for such a study. The railroad business of that section has grown to be what it is in sharp competition with water carriers, who not only have had the ocean at their service, but by means of navigable streams were able to penetrate the interior in all directions. The carriers by water were first in the field, and were having a very thriving business while railroads were coming into existence; but when the roads were built the competition between them and the water-craft soon became sharp and close, and at the chief competing points the question speedily came to be, not what the service in transportation was worth, or even what it would cost to the party performing it, but at what charge for its service the one carrier or the other might obtain the business. In this competition the boat owners had great advantages: the capital invested in their business was much smaller; they were not restricted closely to one line, but could change from one to another as the exigencies of business might require; the cost of operation was less. But the railroads had an advantage in greater speed, which at some times, and in respect to some freight, was controlling.

In this competition of boat and railroad the rates of transportation which were directly controlled by it soon reached a point to which the railroads could not possibly have reduced all their tariffs and still maintain a profitable existence. They did not attempt such a reduction, but on the contrary, while reducing their rates at the points of water competition to any figures that should be necessary to enable them to obtain the freights, they kept them up at all other points to such figures as they deemed the service to be worth, or as they could obtain. It often happened, therefore, that the rates for transporting property over

in devising these means the chief difficulty was encountered. Agreements upon rates were voluntary arrangements which could be departed from at pleasure, and if they had behind them no sanction, they were not likely to stand in the way of a war of rates when the provocation to one seemed sufficient. Accordingly, the scheme of pooling freights or the earnings from traffic was devised and put in force through the agency of these associations, as a means whereby steadiness in rates might be maintained. The scheme was one which was made use of in other countries and had been found of service to the roads.

The pooling system was looked upon with distrust by the public, mainly because it seemed to be a scheme whereby competition between the roads could be obviated, and rates for railroad service put up or kept up to unreasonable figures. But if railroad managers supposed that by this scheme they were to stop competition among themselves, the result has not answered their expectations. The competition has still gone on; each road striving to obtain as large a share of the business as possible, and no agreement among them could altogether prevent a yielding to the pressure of shippers for lower rates.

In 1877, when the pooling system was put in force by the Trunk Line Association, the rates charged on the first, second, third, and fourth classes of freights from New York to Chicago were, respectively, 100, 75, 60, and 45 cents a hundred pounds. They are now 75, 65, 50, and 35 cents, but the classification as to many articles has in the meantime been reduced, so that the actual reduction is greater than these figures would indicate. Rates from Chicago to New York are also proportionately less. A similar result has been apparent elsewhere. The pooling system has done much to maintain steadiness in rates, but the managers have not been able by means of it to keep rates up to former standards. It has done something, however, to check a prevailing tendency to consolidation. The motives to consolidation are diminished by any contrivance which removes obstacles to the interchange of business and increases the facilities and conveniences for uninterrupted commercial intercourse.

The Act to Regulate Commerce, expressing in that particular the desire of Congress to preserve to the people the benefits of competition, contains the following provision:

That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earning of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

But while thus prohibiting pooling the Act undertakes to give by other provisions some of the securities which railway managers had hoped might be realized from that device. The seventh section provides—

That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any combination, contract or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continu-

ous from the place of shipment to the place of destination; [and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination] unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

And in the third it is declared that—

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

The fourth section of the Act has also important possibilities as a restraint upon reckless rate wars. The reductions when such wars are in progress have generally been made chiefly at competitive points a considerable distance apart; and when a reduction of rates at such points involves also a reduction to or from a great number of intermediate points, a resort to a cutting of rates that goes beyond the warrant of legitimate competition becomes unlikely in proportion as it would be injurious to the party inaugurating it.

The pooling of freights and of railroad earnings, so far as the Commission has knowledge or information on the subject, came to an end when the Act took effect. But as pooling was only one of several purposes had in view in forming railroad associations, the leading associations have not been dissolved, but have been continued in existence for other objects. Among these objects are the making of regulations for uninterrupted and harmonious railroad communication and exchange of traffic within the territory embraced by their workings. Some regulations in addition to those made by the law are almost if not altogether indispensable. Thus, while the seventh section of the Act forbids the carriers preventing shipments from being continuous by the device of changing time schedules, carriage in different cars, etc., it has not undertaken to provide for the making of such time schedules as would facilitate the continuous shipment, or to prescribe rules for the loading and movement of cars for that purpose. However desirable this might have been if it were practicable to make rules which, while general in their nature, should be sufficiently definite for enforcement as laws, it was doubtless perceived by Congress that these and many other matters of detail, though they might be of high importance, could not be wisely and effectively dealt with by general legislation, but that such legislation must chiefly be restricted to provisions for regulation and to prevent abuse.

Moreover, these matters of detail, to a considerable extent involve the element of contract, and also of credit, when one company becomes the agent for another in the sale of tickets and the collection of freight moneys; and they then require the assenting minds of

parties; and the number of parties whose minds are to be brought into accord being commonly very considerable, an association of officers or agents is made the means of bringing about the desired unity of action, and is also made a common arbiter, to prevent frequent and serious disturbances.

Classification, also, as has been said, is not by the Act taken out of the hands of the carriers, though a certain power of supervision is vested in the Commission; and classification is not only best made by joint action, but if it were not so made and the methods of the roads thereby brought into harmony, it would probably become indispensable, however undesirable it might otherwise be, for the Law to undertake to provide for it. Moreover, when classification is made and put into effect it becomes necessary to make provision for inspection or some sort of supervision of its application, in order to prevent its being employed as a device for giving preferences as between shippers. A fraudulent classification, through connivance of the agent in making out deceptive shipping bills, has often been resorted to for this purpose; and as the fraud affects the competing carriers as well as the shippers who are discriminated against by means of the cheat, the carriers and the public alike are interested in such a supervision of the work of all the roads as will be likely to detect the fraud. Self interest on the part of the carriers will impel to this supervision, and it is most generally done through some common agency. If it shall be fairly done as between the carriers themselves, it will tend to the protection of the public; and the benefits will be on the same line with those the Act undertakes to establish or provide for.

XI. REASONABLE CHARGES.

Of the duties devolved upon the Commission by the Act to Regulate Commerce, none is more perplexing and difficult than that of passing upon complaints made of rates as being unreasonable. The question of the reasonableness of rates involves so many considerations and is affected by so many circumstances and conditions which may at first blush seem foreign, that it is quite impossible to deal with it on purely mathematical principles, or on any principles whatever, without a consciousness that no conclusion which may be reached can by demonstration be shown to be absolutely correct. Some of the difficulties in the way have been indicated in what has been said on classification; and it has been shown that to take each class of freight by itself and measure the reasonableness of charges by reference to the cost of transporting that particular class, though it might seem abstractly just, would neither be practicable for the carriers nor consistent with the public interest.

The public interest is best served when the rates are so apportioned as to encourage the largest practicable exchange of products between different sections of our country and with foreign countries; and this can only be done by making value an important consideration, and by placing upon the higher classes of freight some share of the burden that on a relatively equal apportionment, if service alone were considered, would fall upon those

of less value. With this method of tariffs little fault is found, and pe at all by persons who consider t from the standpoint of public int deed, in the complaints thus far m Commission little fault has been f the principles on which tariffs for portation of freight are professedly while applications of those princip ticular cases have been complain quently and very earnestly.

Among the reasons most frequen ing to cause complaints of rates m tioned:

The want of steadiness in rates;

The disproportion between the c long and those for short distances;

The great disparity between th made for transportation by roads circumstanced as to advantages;

The extremely low rates which pelled by competition in some which may make rates which as reasonable seem, on comparison, high.

Some others will be mentioned f The want of steadiness in rates is the fault of railroad managers, and from want of care in arranging their or from want of business foresi more often perhaps it grows out o ments between competing compa when they become serious may res of rates between them. Wars of mutual injury is the chief purpose is sometimes the case, are not only in their immediate effects upon the them, and upon the business commu calculations and plans must for a t turbed, but they have a permanent influence upon the railroad service their effect upon the public m railroad companies determine for what their rates shall be, it is not un the public to infer that the lowest rat at any time are not below what can at all times, and that when these are the company is reaching out for e profits.

Now, there are few important li country that have not at some tin history been carrying freight at pr long continued would cause bankru to a large proportion of the publi that the rates were accepted was they were reasonable; and when rates are complained of, the compl demonstrate their unreasonableness to the war prices, and cite them as proof of what the companies ther them can afford to accept. Man complaints have their origin in tl garding rates which these wars h dered or fed, and the evils of the co do not end when the controversies but may continue to disturb the r railroad companies with their patron years afterwards.

It may be truly said, also, that road competition is to be protecte railroad rates unrestrained by compe ciples are disturbers in every direc community reaps a temporary adva

in the nature of blackmail, and was yielded to unwillingly and through fear of damaging consequences from a refusal. But the evils were present as much when it was extorted as when it was freely given.

These were some of the evils that made interference by national legislation imperative. But there were others that were of no small importance. Rates when there was no competition were sometimes so high as to be oppressive; and when competition existed bylines upon which the public confidently relied to protect them against such a wrong, a consolidation was effected and the high rates perpetuated by that means. In some cases the roads, created as conveniences in transportation, were so managed in respect to business passing or destined to pass over other roads that they constituted hinderances instead of help, to the great annoyance of travel and to the serious loss of those who intrusted their property to them. Then their rates were changed at pleasure and without public notification; their dealings to a large extent were kept from the public eye, the obligation of publicity not being recognized; and the public were therefore without the means of judging whether their charges for railroad service were reasonable and just or the contrary.

But the publications actually made only increased the difficulties. Railroad rates, difficult enough to be understood by the uninitiated when printed plainly in one general tariff with classification annexed, became mysterious enigmas when several different tariffs were printed, as was the case in some sections; some relating to competitive points and others to what were called local points, and each referring to voluminous and perhaps different classifications, which were printed but not posted, and which were observed or disregarded at will in the rates as published. Such unsystematic and misleading publications naturally led to many overcharges and controversies, and naturally invited and favored special rates and injurious preferences.

These were serious evils; and they not only to some extent blunted the sense of right and wrong among the people and tended to fix an impression upon the public mind that unfair advantages in the competition of business were perfectly admissible when not criminal, but they built up or strengthened a class feeling and embittered the relations between those who for every reason of interest ought to be in harmony. It was high time that adequate power should be put forth to bring them to an end. Railroads are a public agency. The authority to construct them with extraordinary privileges in management and operation is an expression of sovereign power, only given from a consideration of great public benefits which might be expected to result therefrom. From every grant of such a privilege resulted a duty of protection and regulation, that the grant might not be abused and the public defrauded of the anticipated benefits.

The abuses of corporate authority to the injury of the public were not the only reasons operating upon the public mind to bring about the legislation now under consideration; some other things which in their direct effects were wrongs to stockholders only had their influ-

ence also, and this by no means a light one. The manner in which corporate stocks were manipulated for the benefit of managers and to the destruction of the interest of the owners was often a great scandal, resulting sometimes in the bankruptcy and practical destruction of roads which, if properly managed, would have been not only profitable but widely useful. This in its direct results might be a wrong to individuals only, but in its direct influence it was a great public wrong also.

The most striking and obvious fact in such a case commonly is that persons having control of railroads have in a very short time by means of the control amassed great fortunes. The natural conclusion which one draws who must judge from surface appearances is, that these fortunes are unfairly acquired at the expense of the public; that they represent excessive charges on railroad business, or unfair employment of inside privileges, and furnish in themselves conclusive evidence that current rates are wrong and probably extortionate. An impression of this sort, when it happens to be wide of the fact is for many reasons unfortunate. It creates or strengthens a prejudice against all railroad management—the honest as well as the dishonest—which affects the public view of all railroad questions; it renders it more difficult to deal with such questions calmly and dispassionately; it makes the public restive under the charges they are subjected to, even though they be moderate and necessary; it tends to strengthen a feeling among the unthinking that capital represents extortion. However careful, considerate, fair, and just the management of any particular road may be, and however closely it may confine itself to its legitimate business, it is impossible that it should wholly escape the ill effects of this prejudice, which are visited upon all roads because some conspicuous railroad managers have by their misconduct given in the public mind a character to all.

Evils of the class last mentioned were difficult of legislative correction, because they sprang from the over-confidence of stockholders in the officers chosen to manage their interests, and whose acts at the time they perhaps assented to. But if capable of correction by any legislative authority, it was in general that of the States, not that of the Nation. The States in the main conferred the corporate power, and it was for the States by their legislation to provide for the protection of the individual interests which were brought into existence by their permission. The National Government had to do with the commerce which these artificial entities of state creation might be concerned in. Nevertheless, the manifest misuse of corporate powers strengthened the demand for national legislation, and this very naturally, because the private gains resulting from corporate abuse were supposed to spring, to some extent at least, from excessive burdens imposed upon the commerce which the Nation ought to regulate and protect.

For the purpose of correcting the evils above alluded to, so far as it was constitutionally competent for national legislation to do so, the Act to Regulate Commerce lays down certain rules to be observed by the carriers to which

moving traffic upon it is so very greatly below the cost of rail transportation that the railroads would scarcely be able to compete at all if rapidity of transit were not in most cases a matter of such importance that it enables the railroads to demand and obtain higher rates than are made by boat. But even when compensated for the extra speed, the rates which the roads can obtain in competition with the natural water ways must be extremely low and in some cases leave little if any margin for profit. The experience of the country has demonstrated that the artificial water ways cannot be successful competitors with the railroads on equal terms. If the effort is to make the business upon them pay the cost of their maintenance and a fair return upon the capital invested in them, its futility must soon appear. The railroads long since deprived the great canals of Ohio, Indiana and Illinois of nearly all their importance, and the Erie Canal is only maintained as a great channel of trade by the liberality of the State of New York in making its use free; in this way taking upon itself a large share of the cost of transportation which would be assessed upon the property carried if the canal were owned and held for the profit of operation as the railroads are.

In their competitive struggles with each other towns can not ignore the effect which the existence of natural water ways must have upon railroad tariffs; the railroad companies cannot ignore it, nor can the Commission ignore it if competition is still to exist and be allowed its force according to natural laws. Neither can the great free Erie Canal be ignored; it influences the rates to New York more than any other one cause, and indirectly, through its influence upon the rates to New York, it influences those to all other seaboard cities, and indeed to all that section of the country.

Other considerations bearing upon the reasonableness of rates might be mentioned, but enough has been said to show the difficulty of the task which the Law has cast upon the Commission, and the impossibility that that task shall be so performed as to give satisfaction to all complaints. The question of rates, as has already been shown, is often quite as much a question between rival interests and localities as between the railroads and any one or more of such localities or interests; but while each strives to secure such rates as will most benefit itself, the Commission must look beyond the parties complaining and complained of, and make its decisions on a survey of the whole field that, either directly or indirectly, will be affected by them.

XII. GENERAL OBSERVATIONS.

The Act to Regulate Commerce has now been in operation nearly eight months. One immediate effect was to cause inconvenience in many quarters, and even yet the business of some parts of the country is not fully adjusted to it. Some carriers also are not as yet in their operations conforming in all respects to its spirit and purpose. Nevertheless the Commission feels justified in saying that the operation of the Act has in general been beneficial. In some particulars, as we understand has also been the case with similar statutes in some of

the States, it has operated directly to increase railroad earnings, especially in the cutting off of free passes on interstate passenger traffic, and in putting an end to rebates, drawbacks, and special rates upon freight business. The results of the Law in these respects are also eminently satisfactory to the general public, certainly to all who had not been wont to profit by special or personal advantages. In connection with the abolition of the pass system, there has been some reduction in passenger fares, especially in the charge made for mileage tickets in the Northwest, the section of the country where they are perhaps most employed.

Freight traffic for the year has been exceptionally large in volume, and is believed to have been in no small degree stimulated by a growing confidence that the days of rebates and special rates were ended, and that open rates on an equal basis were now offered to all comers. The reflex action of this development of confidence among business men has been highly favorable to the roads.

In some localities the passage of the Act was made the occasion on the part of dissatisfied and short sighted railroad managers for new exactions, through a direct raising of rates, by change in classification and otherwise. The manifestation of the spirit which induced such action is now but seldom observed, and the wrongs resulting from it have in general been corrected. The effect of the operation of the fourth section has been specially described above, and the Commission repeats in this place its opinion that, however serious may have been the results in some cases, the general effect has been beneficial. The changes in classification made since the Act took effect have been in the direction of greater uniformity, and have also in general, it is believed, been concessions to business interests.

The tendency of rates has been downward, and they have seldom been permanently advanced except when excessive competition had reduced them to points at which they could not well be maintained. No destructive rate wars have occurred, but increased stability in rates has tended in the direction of stability in general business. There is still, however, great mischief resulting from frequent changes in freight rates on the part of some companies; changes that in some cases it is difficult to suggest excuse for.

The general results of the Law have been in important ways favorable to both the roads and the public; while the comparatively few complaints that have been heard of its results are either made with imperfect knowledge of the facts, or spring from the remembrance of practices which the Law was deliberately framed to put an end to.

XIII. AMENDMENTS OF THE LAW.

The Commission has not seen occasion for recommending any very considerable changes in the Act under which its work is performed. It has seemed to its members that the Law for the regulation of interstate commerce should be permitted to have a growth, and that it would most surely as well as most safely attain a high degree of efficiency and usefulness in that way. The general features of the Act

are grounded in principles that will stand the test of time and experience, and only time and experience can determine whether all the provisions made for their enforcement are safe, sound, and workable. When they prove not to be, experience will be a safe guide in legislation to protect them.

Incidentally in this report some need of amendment has been pointed out. Especially ought the Law, as we think, to indicate in plain terms whether the express business and all other transportation by the carriers named in the Act shall be governed by its provisions. The provision against the sudden raising of rates ought to be clearly made applicable to joint rates as well as to others. The Commission ought also to have the authority and the means to bring about something like uniformity in the method of publishing rates, which is now in great confusion, and to carefully examine, collect, and supervise the schedules, contracts, etc., required by the Law to be filed, as well as properly to handle the mass of statistical information called for by the twentieth section. For all these purposes, as well as for others imperfectly provided for, a considerable addition to the force employed with the Commission will be indispensable.

Other matters, and particularly whether transportation by water shall be made subject to the Act, are submitted to the wisdom of Congress without recommendation.

All which is respectfully submitted.

Dated December 1, 1887.

THOMAS M. COOLEY,
WILLIAM R. MORRISON,
AUGUSTUS SCHOONMAKER,
ALDACE F. WALKER,
WALTER L. BRAGG,

Interstate Commerce Commissioners.

INTER S.

J. W. SLAPPEY and G. R. Slappey
ing firm of "Cider & Vinegar"
shallville, Ga.,

v.

CENTRAL R. R. CO. OF GEORGIA
wick & Western R. R. of Ge
vannah, Florida & Western R. R.
South Florida R. R. Co.

(No. 104.)

ABSTRACT of complaint filed
19, 1887, charging unjust discrimination
Petitioners ship from Marshallville
to Tampa, Florida, 527 miles, and a
\$1 per 100 pounds by the Central R.
Georgia, which connects with the ot
Rates are made with the first name
ant. The rate of defendants from
Georgia, to Tampa, a distance of 56
only fifty-two cents. This constitu
discrimination against complainants

R. T. KNOWLES

v.

OHIO & MISSISSIPPI R. R.

(No. 105.)

ABSTRACT of complaint filed
19, 1887, alleging unjust charges

Complainant is a manufacturer
age at Dillsboro, Indiana, and shi
fendant's line to Cincinnati, thirty-t

Prior to the passage of the Law
charged \$10 per car. After May 26
fendant charged complainant \$16.8
Afterwards defendant charged \$11
which they now charge.

These charges are unjust and one
contrary to the Interstate Commerce
Prays for investigation and repairs



bility to injury and with less shrinkage than is done in the ordinary stock car, it is not improbable that they, like the companies which furnish special accommodations for passengers, may in time build up a large business in respect to which they will not be controlled by any existing legislation.

It is well known also that the transportation of mineral oil is already to a very large extent in tank cars owned by parties who are not carriers subject to regulation under the Act to Regulate Commerce. A willingness to disregard the rules of equality and justice as between shippers, when it can be made for the interest of the carriers to do so is as likely to make its appearance in the action of the managers of any one of these outside organizations as in that of the managers of the railroads, for the temptations will be the same, and the same class of persons will be bidding for special privileges and advantages which before the Act was passed prospered so unfairly upon railroad favors. The Act has not changed the nature of the grasping disposition of individuals; it has only interposed certain restraints which it is reasonable to assume will be evaded if the opportunity shall be presented.

These facts are noted for the purpose of placing the whole subject distinctly before the National Legislature. If it is the will of Congress that all transportation of persons and property by rail should come under the same rules of general right and equity, some further designation of the agencies in transportation which shall be controlled by such rules would seem to be indispensable.

II. THE LONG AND SHORT HAUL CLAUSE OF THE ACT.

Another question presenting itself immediately on the organization of the Commission was that respecting the proper construction of the fourth section of the Act, which, after providing

That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance,

proceeds to say—

That, upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act.

The provision against charging more for the shorter than for the longer haul under the like circumstances and conditions over the same line and in the same direction, the shorter being included within the longer distance, is one of obvious justice and propriety. Indeed, unless one is familiar with the conditions of railroad traffic in sections of the country where the enactment of this provision is found to have its principal importance, he might not readily understand how it could be

claimed that circumstances and conditions could be such as to justify the making of any exceptions to the general rule.

It is a part of the history of the Act that one House of Congress was disposed to make the rule of the fourth section imperative and absolute, and it is likely that in some sections of the country many railroad managers would very willingly have conformed to it, because for the most part they could have done so without loss, and with very little disturbance to general business. But in some other parts of the country the immediate enforcement of an iron-clad rule would have worked changes so radical that many localities in their general interests, many great industries, as well as many railroads, would have found it impossible to conform without suffering very serious injury. In some cases probably the injury would have been overbalanced by a greater good; in others it would have been irreparable. To enforce it strictly would have been, in some of its consequences in particular cases, almost like establishing, as to vested interests, a new rule of property.

A study of the conditions under which railroad traffic in certain sections of the country has sprung up is necessary to an understanding of the difficulties which surround the subject. The territory bounded by the Ohio and the Potomac on the north and by the Mississippi on the west presented to the Commission an opportunity, and also an occasion, for such a study. The railroad business of that section has grown to be what it is in sharp competition with water carriers, who not only have had the ocean at their service, but by means of navigable streams were able to penetrate the interior in all directions. The carriers by water were first in the field, and were having a very thriving business while railroads were coming into existence; but when the roads were built the competition between them and the water-craft soon became sharp and close, and at the chief competing points the question speedily came to be, not what the service in transportation was worth, or even what it would cost to the party performing it, but at what charge for its service the one carrier or the other might obtain the business. In this competition the boat owners had great advantages: the capital invested in their business was much smaller; they were not restricted closely to one line, but could change from one to another as the exigencies of business might require; the cost of operation was less. But the railroads had an advantage in greater speed, which at some times, and in respect to some freight, was controlling.

In this competition of boat and railroad the rates of transportation which were directly controlled by it soon reached a point to which the railroads could not possibly have reduced all their tariffs and still maintain a profitable existence. They did not attempt such a reduction, but on the contrary, while reducing their rates at the points of water competition to any figures that should be necessary to enable them to obtain the freights, they kept them up at all other points to such figures as they deemed the service to be worth, or as they could obtain. It often happened, therefore, that the rates for transporting property over

& Boston Dispatch Express Company, Pacific Express Company, Southern Express Company, United States Express Company, Wells, Fargo & Company.

Each of these companies operates a certain territory as its own, the entire country having been definitely subdivided among them by agreement or by chance. The right of railroad companies to make an exclusive contract with a selected express company for the handling of all the express business upon its line has recently been established by the Supreme Court of the United States. The language used is as follows:

"The reason is obvious why special contracts in reference to this business are necessary. The transportation required is of a kind which must, if possible, be had for the most part on passenger trains. It requires not only speed, but reasonable certainty as to the quantity that will be carried at any one time. As the things carried are to be kept in the personal custody of the messenger or other employee of the express company, it is important that a certain amount of car space should be specially set apart for the business, and that this should, as far as practicable, be put in the exclusive possession of the expressman in charge. As the business to be done is 'express,' it implies access to the train for loading at the latest and for unloading at the earliest convenient moment. All this is entirely inconsistent with the idea of an express business on passenger trains free to all express carriers. Railroad companies are by law carriers of both persons and property. Passenger trains have from the beginning been provided for the transportation primarily of passengers and their baggage. This must be done with reasonable promptness and with reasonable comfort to the passenger. The express business on passenger trains is in a degree subordinate to the passenger business, and it is consequently the duty of a railroad company in arranging for the express to see that there is as little interference as possible with the wants of passengers. This implies a special understanding and agreement as to the amount of car space that will be afforded, and the conditions on which it is to be occupied, the particular trains that can be used, the places at which they shall stop, the price to be paid, and all the varying details of a business which is to be adjusted between two public servants, so that each can perform in the best manner its own particular duties. All this must necessarily be a matter of bargain, and it by no means follows that because a railroad company can serve one express company in one way it can as well serve another company in the same way and still perform its other obligations to the public in a satisfactory manner. The car space that can be given to the express business on a passenger train is, to a certain extent, limited, and, as has been seen, that which is allotted to a particular carrier must be, in a measure, under his exclusive control. No express company can do a successful business unless it is at all times reasonably sure of the means it requires for transportation. On important lines one company will at times fill all the space the railroad company can well allow for the business. If this space had to

be divided among several companies there might be occasions when the public would be put to inconvenience by delays which would otherwise be avoided. So long as the public are served to their reasonable satisfaction, it is a matter of no importance who serves them. The railroad company performs its whole duty to the public at large and to each individual when it affords the public all reasonable express accommodations. If this is done the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security." [*Express Cases*, 117 U. S. 23 (29 L. ed. 801).]

The express business is, therefore, very largely noncompetitive. Cases exist where two or more railroad or steamboat lines, over which different express companies have contracts, reach the same terminal or junction points; but, so far as the public are aware, there has been little difficulty in establishing and maintaining agreed rates in such instances. Rate wars or even the existence of any active competition among express companies have seldom, if ever, been heard of. Interchange of traffic between the different companies at points of junction is carried on without friction, usually upon the simple theory that the public in such cases must pay the charges of two companies instead of one.

Their methods of organization are very diverse. Some, like the Southern Express Company and Wells, Fargo & Company, are corporations, holding charters from State Legislatures which authorize them to carry on the express business by name; others, like the American Express Company and the National Express Company, are not corporations, but quasi partnerships, with additional powers recognized by legislation in the State of New York, where more than seven persons are united; being called joint stock companies, having transferable shares of stock, with such perpetuity of organization as the articles of the association provide, and the right of suing and being sued in the name of the president or treasurer; but the shareholders being, nevertheless, liable, as partners, among themselves and to the public. There is nothing in the nature of the express business which prevents its being carried on by an ordinary partnership or even by an individual, provided the necessary contracts can be obtained with transportation lines. Others are practically branches or bureaus of the railroad companies themselves, acting under a distinct head and through separate organizations, but the profits of the business accruing to the railroad treasury. Others still are combinations of roads, organized in an aggregate form, for the purpose of transacting the express business of their several lines.

Soon after the organization of this Commission a letter was received from the Canadian Express Company as follows:

"Canadian Express Company,
General Superintendent's Office,
Montreal, April 1, 1887.
To the Hon. the Chairman of the
Interstate Commerce Committee,

adently affirmed that the carrier could require no order of relief from the Commission when the circumstances and conditions were in fact dissimilar, since the greater charge was not then unlawful and not forbidden. This view would leave the carrier at liberty to act on its own judgment of the conditions and circumstances in any case, subject to responsibility to the Law if the greater charge were made for the shorter transportation when the circumstances and conditions were not in fact dissimilar, unless authorized to make such greater charge by the relieving order of the Commission.

When the Commission was called upon in the performance of its duty to give an interpretation to this section it was found on comparison of views that the interpretation last above mentioned seemed to all its members to be the one best warranted by the phraseology of the statute. Moreover, when it was considered how vast was the railroad mileage of the country, how numerous were the cases in different sections in which, for divers reasons, the general rule prescribed by the fourth section was then departed from, this interpretation seemed the only one which, in administering the Law, would be found practical or workable. Possibly the Commission might therefore have been justified in making immediate announcement of this opinion.

It was not, however, believed to be wise to make such announcement at that time. The construction of a new statute having great remedial purposes in view ought not to be hastily made by the tribunal called upon to act under it. When a question of construction comes before the courts parties interested in taking different views are heard by counsel, and if the case is important the court is likely to have all the considerations which support the several views presented, and will thus be fully informed when it comes to make decision.

The Commission had not had the benefit of discussion by counsel of this most important provision. To delay, before taking any action whatever, until in the ordinary course of affairs a case should arise where the proper construction of the section should be the point in controversy, might be exceedingly injurious to many interests. Under these circumstances it seemed to the Commission that the prudent course, and the course most consistent with the general purposes the Act was intended to accomplish, was to take such action as for the time being would disturb as little as possible the general business of the country, and at the same time give ample opportunity for full discussion and consideration of this most important question.

The Act to Regulate Commerce was not passed to injure any interests, but to conserve and protect. It had for its object to regulate a vast business according to the requirements of justice. Its intervention was supposed to be called for by the existence of numerous evils, and the Commission was created to aid in bringing about great and salutary measures of improvement. The business is one that concerns the citizen intimately in all the relations of life; and sudden changes in it, though in the direction of improvement might in their immediate consequences be more harmful

than beneficial. It was much more important to move safely and steadily in the direction of reform than to move hastily, regardless of consequences, and perhaps be compelled to retrace important steps after great and possibly irremediable mischief had been done. The Act was not passed for a day or for a year; it had permanent benefits in view, and to accomplish these with the least possible disturbance to the immense interests involved seemed an obvious dictate of duty.

Acting upon these views, and in order to give opportunity for full discussion, the Commission, after having made sufficient investigation into the facts of each case to satisfy itself that a *prima facie* case for its intervention existed, made orders for relief under the fourth section, where such relief was believed to be most imperative. These orders were temporary in their terms, and in making them it was announced that sessions would be held in the section of the country to which a majority of these orders related, at which all parties interested in the questions they presented were at liberty to appear and present their views. Whatever view should ultimately be taken of the proper interpretation of the fourth section, this course could result in no serious injury. If the first impression of the Commission should be held to be correct, the orders would only sanction what might have been done without them; but if the opposite view should be taken they would only postpone for a time the strict enforcement of the fourth section, and give opportunity during that period for the business of the country to adapt itself as far as possible to the new requirement.

The considerations which were influential in determining when these temporary orders should be granted were not more the relief of the carriers from danger of loss than the prevention of threatened disturbance of business interests in certain localities, which by its reflex action seemed liable to embarrass seriously the entire country. When no great or special urgency was shown, connecting threatened injury to important interests with the literal enforcement of the section, or when the only showing made was the loss of a certain line of traffic to one carrier which nevertheless was adequately served by being given another direction, temporary orders were not made. Fifty-eight petitions were filed for relief from the operation of the fourth section, some of which were joint; ninety-five railroad companies were petitioners; temporary orders were made in twenty cases, by the terms of which forty-three carriers were for a limited period and pending full investigation relieved from the operation of the section as to certain points enumerated in each order, where the charging of less for the longer distance was permitted to be continued for the time being.

The opinion of the Commission upon the applications for relief is herewith given in Appendix A*. In the same appendix is given a list of the carriers petitioning and a statement of the action of the Commission on each case.

In finally announcing its conclusion, as it did, on the petition of the Louisville & Nashville Railroad Company for relief, the Com-

*See ante, 15.

& Boston Dispatch Express Company, Pacific Express Company, Southern Express Company, United States Express Company, Wells, Fargo & Company.

Each of these companies operates a certain territory as its own, the entire country having been definitely subdivided among them by agreement or by chance. The right of railroad companies to make an exclusive contract with a selected express company for the handling of all the express business upon its line has recently been established by the Supreme Court of the United States. The language used is as follows:

"The reason is obvious why special contracts in reference to this business are necessary. The transportation required is of a kind which must, if possible, be had for the most part on passenger trains. It requires not only speed, but reasonable certainty as to the quantity that will be carried at any one time. As the things carried are to be kept in the personal custody of the messenger or other employee of the express company, it is important that a certain amount of car space should be specially set apart for the business, and that this should, as far as practicable, be put in the exclusive possession of the expressman in charge. As the business to be done is 'express,' it implies access to the train for loading at the latest and for unloading at the earliest convenient moment. All this is entirely inconsistent with the idea of an express business on passenger trains free to all express carriers. Railroad companies are by law carriers of both persons and property. Passenger trains have from the beginning been provided for the transportation primarily of passengers and their baggage. This must be done with reasonable promptness and with reasonable comfort to the passenger. The express business on passenger trains is in a degree subordinate to the passenger business, and it is consequently the duty of a railroad company in arranging for the express to see that there is as little interference as possible with the wants of passengers. This implies a special understanding and agreement as to the amount of car space that will be afforded, and the conditions on which it is to be occupied, the particular trains that can be used, the places at which they shall stop, the price to be paid, and all the varying details of a business which is to be adjusted between two public servants, so that each can perform in the best manner its own particular duties. All this must necessarily be a matter of bargain, and it by no means follows that because a railroad company can serve one express company in one way it can as well serve another company in the same way and still perform its other obligations to the public in a satisfactory manner. The car space that can be given to the express business on a passenger train is, to a certain extent, limited, and, as has been seen, that which is allotted to a particular carrier must be, in a measure, under his exclusive control. No express company can do a successful business unless it is at all times reasonably sure of the means it requires for transportation. On important lines one company will at times fill all the space the railroad company can well allow for the business. If this space had to

be divided among several companies there might be occasions when the public would be put to inconvenience by delays which would otherwise be avoided. So long as the public are served to their reasonable satisfaction, it is a matter of no importance who serves them. The railroad company performs its whole duty to the public at large and to each individual when it affords the public all reasonable express accommodations. If this is done the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security." [*Express Cases*, 117 U. S. 23 (29 L. ed. 801).]

The express business is, therefore, very largely noncompetitive. Cases exist where two or more railroad or steamboat lines, over which different express companies have contracts, reach the same terminal or junction points; but, so far as the public are aware, there has been little difficulty in establishing and maintaining agreed rates in such instances. Rate wars or even the existence of any active competition among express companies have seldom, if ever, been heard of. Interchange of traffic between the different companies at points of junction is carried on without friction, usually upon the simple theory that the public in such cases must pay the charges of two companies instead of one.

Their methods of organization are very diverse. Some, like the Southern Express Company and Wells, Fargo & Company, are corporations, holding charters from State Legislatures which authorize them to carry on the express business by name; others, like the American Express Company and the National Express Company, are not corporations, but quasi partnerships, with additional powers recognized by legislation in the State of New York, where more than seven persons are united; being called joint stock companies, having transferable shares of stock, with such perpetuity of organization as the articles of the association provide, and the right of suing and being sued in the name of the president or treasurer; but the shareholders being, nevertheless, liable, as partners, among themselves and to the public. There is nothing in the nature of the express business which prevents its being carried on by an ordinary partnership or even by an individual, provided the necessary contracts can be obtained with transportation lines. Others are practically branches or bureaus of the railroad companies themselves, acting under a distinct head and through separate organizations, but the profits of the business accruing to the railroad treasury. Others still are combinations of roads, organized in an aggregate form, for the purpose of transacting the express business of their several lines.

Soon after the organization of this Commission a letter was received from the Canadian Express Company as follows:

"Canadian Express Company,
General Superintendent's Office,
Montreal, April 1, 1887.
To the Hon. the Chairman of the
Interstate Commerce Committee,

that also. The Commission does not take this view, but has decided in the case of the Vermont State Grange against the Boston & Lowell Railroad Co. and others (1 Interstate Commerce Commission Reports, page 158) [*ante*, 571], that where a carrier unites with one or more others in making a rate for long haul traffic, the rate so made constitutes a measure for the rates on short haul traffic upon its own lines as much as it would if the long haul transportation was on its line exclusively.

Where the practice of making the greater charge upon the shorter haul has long prevailed, the effect of its abrogation upon some portion of the business of the smaller cities of the country should perhaps be noted. Those cities have generally been in position to handle goods of all kinds, purchasing them at importing, manufacturing, and producing points, and reselling to retail dealers in the more immediate vicinity. The rates of freight have favored these distributing points, and have been so low that goods could be taken to them and sent forward after handling, or even returned for a certain distance over the same line, at a less aggregate rate of freight than the smaller places could obtain on the same goods from the same initial point. The ability to do this has developed very important business houses, and has largely controlled business methods in some sections of the country; but it no longer exists where the fourth section has been literally applied. The rate from the initial point to the given city—as, for example, from Baltimore or Philadelphia to Danville, Va.—added to the rate from that point to smaller points beyond, will then be more than the through rates from the initial point to the latter places, and at the same time the rate to the given city will be as great or greater than the rates to the intermediate points on the same line; and the natural effect is to depress the wholesale business at all such points and to throw the trade into the hands of metropolitan dealers. This fact is clearly seen in some of the cases now pending before the Commission. There are compensations for all such incidental injuries; and the question involved being one of legislative policy, the Commission deems it sufficient to state the facts as they exist, without comment upon them.

The Commission, on October 20, caused a circular letter* to be sent to the various carriers subject to the provisions of the Act throughout the United States, inquiring concerning the practical application of the fourth section in making the tariffs in use upon the lines of each respectively. This circular has been very generally answered, and the replies give full information in respect to the manner in which the provisions of the "long and short haul" clause are now being observed by the carriers. A very large number of railroad companies, lines and systems answer unequivocally that there are no points upon their respective lines to or from which interstate rates for passengers or freight are greater than to or from more distant points in the same direction over the same line. Others, slightly misapprehending the inquiry made, state that no such instances exist upon their own roads;

but that joint tariffs are made by them to points upon other roads where variations from the rule exist. Still others state the points upon their lines which are exceptionally treated, and give the reasons which are claimed to justify them in the rates made.

The statements and explanations of the different companies so far as they are other than a simple negative reply, present the situation so clearly and directly, from the standpoint of the carriers, and show so distinctly the various circumstances and conditions found in different parts of the country which are claimed by them to affect their traffic to an extent warranting a departure from the letter of the statutory rule that the Commission has determined to lay the entire series before Congress as an appendix to this report. This appendix, which is marked E, contains the following documents:

I. Circular letter to carriers of October 20, 1887;

II. List of carriers which reply that they do not make interstate rates where a greater sum is charged for a shorter than for a longer distance in the same direction over the same line, to or from any point on their respective roads;

III. Letters and documents from carriers which accepted the invitation of the Commission to make a statement concerning the circumstances and conditions of traffic which they claimed made their case exceptional.

Reviewing railway operations during the period which has elapsed since the Act took effect, the Commission feels warranted in saying that while less has been done in the direction of bringing the freight tariffs into conformity with the general rule prescribed by the fourth section than some persons perhaps expected, there has nevertheless been a gratifying advance in that direction, and there is every reason to believe that this will continue. That substantial benefits will flow from making the rule as general as shall be found practicable cannot be doubted; and even when the circumstances and conditions of long and short haul traffic are dissimilar, the desirability of avoiding any considerable disparity in the charges is great and obvious. So far, therefore, and so fast as business prudence and a proper regard to the interests of the communities which would be disturbed and injured by precipitate changes will admit of its being done, such railroad companies as do not now conform to the statutory rule should make their rates on these two classes of traffic more obviously just and more proportional than they have hitherto been or now are.

III. THE FILING AND PUBLICATION OF TARIFFS.

In addition to the publication of the freight and passenger tariffs, each carrier is also required to file with the Commission copies of its schedules of rates, fares, and charges, and promptly to notify the Commission of all changes made in the same; also to file with the Commission copies of all contracts, agreements, or arrangements with other carriers in relation to any traffic affected by the provisions of the Act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more

*See *ante*, 601.

to the public is practically an impossibility. This can hardly be assumed to be the case, however, especially in view of the fact that the lines of many railroad systems which have complied with the Law are also excessively long and intricately involved, and the schedules of rates on file not only cover stations upon the line of these roads themselves, but very largely upon connecting lines as well. It is known, moreover, that in the express business there is very little classification of freight, the tariff being usually upon a uniform basis per 100 pounds, with proportionate charges for less and for greater weights, the stations being very widely grouped, and the charges for other services being governed by fixed rules. In fact, it seems necessary that agents of express companies should be instructed explicitly as to charges to be made by them; and if they can be intelligently notified by instructions from the general offices it would seem quite possible to inform the public also. Moreover, the routes covered by the three express companies which have already filed their schedules with the Commission are quite extensive, and, although the tariffs so filed are made up upon different plans, yet they are each intelligible and are sufficient to negative the idea that the thing proposed by Congress is not possible of accomplishment by this class of carriers.

It would seem, therefore, that the bringing of express companies within the salutary provisions of the Act to Regulate Commerce is practicable and on some accounts desirable. The question remains whether or not this has been accomplished by the statute as it stands.

In respect to some of the express companies there can be little, if any, doubt that they are fully subject to the provisions of the Law. When a railroad company itself conducts the parcel traffic on its line by its ordinary transportation staff, or through an independent bureau organized for the purpose, or by a means of a combination with other railroad companies in a joint arrangement for the transaction of this so-called express business, it will not be seriously questioned but that this branch of the traffic is subject to the Act to Regulate Commerce as fully as the ordinary freight traffic.

But the case of the independently organized express companies must be more carefully considered.

The frame of the Act in question is this: The first section provides "that the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water," when the traffic is interstate. The other sections uniformly refer to "any common carrier subject to the provisions of this Act." Therefore the definition in the first section controls the application of the Law by stating what carriers are within its terms; and the implication at once arises that common carriers exist which are not subject to the provisions of the Act, which is obviously true of stage coaches, independent steamboat lines, etc.

It is said that the words of the Act above quoted, namely: "wholly by railroad or partly by railroad and partly by water," do not describe the transportation business conducted

by express companies, for the reason that their business is largely upon water routes disconnected from railroad lines and upon stage coach routes, as well as by teams used for the collection and delivery of goods and for their transportation between the termini of connecting lines. A very large proportion of their traffic is by rail. Their exclusion from the operation of the statute upon the ground that in cities and large towns it is customary for express companies to collect and deliver the freight would seem to be too refined a construction to place upon the Law. Some railroads do the same thing, and it is much more common in England than here. Wherever it is done in respect to interstate commerce it is obviously merely incidental to the main business, which is the carriage from place to place by railroad. No separate charge for this service is made, the charge being usually the same whether the goods be received and delivered at the general business office of the carrier or by team at the office or residence of the customer. If additional charge for collection or delivery is made, it can easily be stated.

The word "wholly" in the first section of the Act may have been used in contradistinction to the word "partly" in the next clause—"wholly by railroad or partly by railroad and partly by water"—and not as a limitation upon the method of carriage with the meaning by railroad solely, or by railroad and not otherwise, as claimed by the express companies; nevertheless, the literal application of the word "wholly" would exclude a great part of the business transacted by express companies, for it can be truthfully said as to the larger percentage of their shipments that they are not "wholly by railroad" or "partly by railroad and partly by water." A great amount of team and messenger service is involved, as well as the use of other vehicles of transportation which are not within the language of the Act. The use of that word in a section which was evidently framed with the greatest care affords a fair foundation for the claim that the Act does not describe the modes of transportation employed by express companies with sufficient precision to bring them within its terms.

It is moreover, true, as claimed, that the express business, so-called, has been of such long standing and presents such a well known and complete organization in every portion of the country that it must be considered to be a subject which was perfectly understood by Congress at the time of the enactment of the Law in question. More than this, it is a business which has heretofore and frequently been the occasion of distinct legislation by Congress, both in connection with railroad business and as contradistinguished therefrom. We have been referred to a series of congressional enactments running back twenty years, in which the express business, by name, has been the subject of statutory provisions; and the same is true in the legislation of the various States. In view of this the question is asked, If it was the intention of Congress to make the express companies subject to the provisions of the Interstate Commerce Act, why did not the Law explicitly so state? It is said that the addition of a few words would have amply expressed

by the open rates are still frequent; and it is not to be denied that in the existing tariffs there are many rates which, as compared with others made by the same carriers, seem to be unfair and oppressive. But even as regards this species of injustice the good effects of the Law are manifest. For whereas formerly the carriers made discriminations at pleasure, and gave preferences for which their own interest or convenience was deemed sufficient reason, the discriminations or preferences which are now complained of are such as the carriers understand they may be called upon to defend; and they are aware that the defense, to be successful, must be based on grounds of substantial justice, or at least on grounds not palpably untenable. This necessity for defending the discriminations made may be expected to reduce very considerably their number, and has already done much toward bringing about more just proportions in the classification and rating of property transported.

In the performance of its duty of supervision, the Commission has found it necessary to conduct a very extended and voluminous correspondence, which could not be presented in this place even in abstracts. A few letters from the Commission which laid down rules, or were of more than individual importance, are, however, given in an appendix hereto marked C. In connection with these letters, attention is called to the decision made by the Commission in the case of *The Vermont State Grange v. The Boston and Lowell Railroad Company et al.*, [ante, 571,] that the railroads who unite in fast freight lines are responsible for their rates, and bound to see that the tariffs are properly filed.

V. COMPLAINTS TO AND ADJUDICATIONS BY THE COMMISSION.

The ninth section of the Act provides that "any person or persons claiming to be damaged by any common carrier, subject to the provisions of this Act, may either make complaint to the Commission or may bring suit in his or her own behalf for the recovery of the damages" in a federal court. The thirteenth section is:

That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon, a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

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No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

The complaints made to the Commission have been very numerous, and in many cases the complainants have appeared to suppose that the Commission could interpose and correct at once an alleged evil on an *ex parte* statement of its existence. In other cases the statement of facts has been so defective that no opinion could be formed whether or not a real grievance existed. In no case has the Commission declined to give attention to a complaint because of its being informal or imperfectly presented; but when not in shape for its action, if the facts indicated a probable grievance, it has opened correspondence with the carrier with a view to redress. In the majority of cases the correspondence has resulted in satisfactory arrangement. Either the complainant has been found to be mistaken in his facts, or if wronged it has been through the carelessness or mistake of an agent which the carrier readily corrected, or if the facts presented a case of difference of opinion, the parties, when brought into communication, succeeded in finding some basis for settlement without further intervention. This method of disposing of complaints is believed by the Commission to be more useful than any other, because its tendency is towards the establishment of desirable relations between the carriers and those who must be their customers; but when such a disposition of a case proves to be impracticable, the complainant, if he desires it, is given the necessary directions for putting his complaint in form for an adjudication.

It is provided by the fourteenth section of the Act—

That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.

And by the fifteenth—

That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this Act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission; and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

In none of the cases so far decided by the Commission has it felt called upon to order

F. B. THURBER *et al.*, Committee, etc.,
v.

NEW YORK CENTRAL & HUDSON
RIVER R. R. CO. *et al.*
(No. 65.)

Thomas L. GREENE
v.

NEW YORK CENTRAL & HUDSON
RIVER R. R. CO. *et al.*
(No. 66.)

Francis H. LEGGETT & CO.
v.

BALTIMORE & OHIO R. R. CO. *et al.*
(No. 67.)

ANSWER in cases known as the "Car Load Lot Cases," against the "Trunk Lines."

(The substance of the complaints in these cases is stated on pages 355, 396 and 397, *ante*. The answers are substantially the same in all the cases, and therefore one only is now given, that in *Thurber v. N. Y. Central & Hudson River R. R. Co. et al.*)

The joint answer of the New York Central & Hudson River Railroad Company, the New York, Lake Erie & Western Railroad, the Delaware, Lackawanna & Western Railroad Company, the Pennsylvania Railroad Company, and the Baltimore & Ohio Railroad Company to the petition of F. B. Thurber, M. N. Day, E. A. Doty, H. K. Miller, W. B. Timms, and B. F. Shores, claiming to be a

tent the same has been watered, and how often corners have been made on such watered stock; length of lines in miles; whether the business is conducted by rail, vessel, or otherwise; total amount paid to railroads or vessels for use of line or lines; number of officers; number of persons engaged in general administration; number of agents and messengers; total receipts; total expenditures, exhibiting separately amount paid for salaries, for repairs, and for general expenses. * * *

"He may require such other information as to the subjects of this section as, in his judgment, may be necessary to secure such returns as will exhibit the transactions of said several companies."

In compliance with this requirement, a schedule was prepared at the census office containing the interrogatories appropriate to the collection of the information desired. A letter was addressed from that office to the proper officer of each company or association known to be doing what is usually called an express business, inclosing a copy of this schedule, and demanding a return thereupon. As the result of this effort it was ascertained that the companies and associations in question were in general not incorporated companies within the ordinary significance of that term, the express business of the country being, as it would appear, transacted under a highly anomalous system. Of all the companies addressed, but two, and those not the most important, admitted that they came within the purview of the law. The others represented themselves either as mere business partnerships or else as associations of railroads, apportioning their expenses, pooling their earnings in the carrying of parcels, under agreements often informal, and even subject at times to oral modification or enlargement.

The Adams Express Company, the United States Express Company, and the New York & Boston Despatch Company, for instance, state that they are, severally, but joint partnerships, and pay taxes neither on their capital stock nor on their business; that their officers are perpetual, and not affected by any election through stockholders, it not even being the custom to hold stockholders' meetings. The American Foreign and European Express Company, again, claims that it does not operate in the United States, but considers itself simply as a forwarding agency.

The Pacific Express Company took the place of

committee and to represent the New York Board of Trade & Transportation, so called:

1. The respondents are not advised that the petitioners represent the New York Board of Trade and Transportation, or that said board comprises in its membership upwards of 1000 firms and individuals, and therefore ask that the petitioners be held to due proof thereof.

2. The respondents deny the other allegations of the petition, and each and every of them, except as hereinafter stated. They say and allege that in March, 1887, the Joint Committee, so called, being a committee composed of representatives of the Trunk Line Association, so called, the Central Traffic Association, so called, and certain other railroad companies, after careful consideration, adopted, to take effect April 1, 1887, the New Official Classification, superseding the Official Classification of east bound Freight, the Official Classification of west bound Freight, the Middle and Western States Classification of Freight, and the Joint Merchandise Freight Classification, in force prior to April 1, 1887, in different parts of the country, and upon various traffic, which classification was accepted by the respondent companies and other railroad companies, and was used by all the railroad companies in the territory east of the Mississippi River and north of the Ohio River, embracing one half of the railroad mileage and 80 per cent of the railroad tonnage of the United States; that subsequently the said Joint Committee, after careful consideration, the

the express departments of the Kansas Pacific and the Union Pacific Railways, and is virtually an association of the Union Pacific, the Missouri Pacific, and the Wabash, Saint Louis, and Pacific Railways, which carry on the express business upon their own lines under the name of the Pacific Express Company, the stock being subscribed for (but not issued) on the assumed proportion of the aggregate net proceeds which each system would earn. The net earnings, as nearly as they can be ascertained, are paid to the railways monthly. The company is, in fact, a part of these railways, which include their respective receipts from the express or parcels business in their proper railway accounts.

Under the conditions recited, the census office was advised that it was doubtful whether it would be held that companies and associations like the foregoing came within the requirements of the census law, while it was certain that such returns could not be exacted from the companies or associations under the penalties of the statute, penal provisions being always construed strictly.

At the same time that the inadequacy of the provisions of the existing law respecting the companies doing an express business was discovered it was ascertained that much of that business throughout the country was done in such a way as to render it of the highest difficulty, if not virtually impossible, to disentangle it from the general web of railway transactions, even were the parties conducting that business unmistakably subject to the requirements of the law in this respect. Especially was this found to be the case with the officers and employees engaged who were in a great majority of cases the officers or employees of railroads, already so reported, and giving to the express business only a varying fraction of their time, of which no record was kept. Such a condition of things did not seem to justify the census office in a recommendation to Congress of new legislation to enlarge the scope of the provision already recited and to confer upon the agents of the census greater powers. Indeed, only a commission constituted with judicial authority, having the power of subpoena and of summary punishment for contempt, could, with any degree of success, pursue, against unwilling companies, the inquiry into the express business which was in contemplation of Congress in the enactment of the provision recited. * * *

In some cases this course is almost a necessity. The nature of the questions involved is such that they concern large sections of the country quite as much as they do the parties complainant and defendant, and the case ought to be so conducted that any citizen whose interests may be affected can make his views known. A complainant is often only a representative of many interests or of a considerable district of country, but he may be a self chosen representative, and those for whom a decision of his case will constitute a precedent ought not to be concluded without a hearing.

On the other hand, a railroad company may be rather a nominal than a real defendant; the rate, the classification, or the practice complained of may concern some class of its customers who approve of and defend it more than it does the railroad company itself, and the company might be entirely willing to make the change demanded but for the fact that its doing so would bring forward a new class of complainants. Where thus the real controversy is between different interests or different classes of the carriers' customers, the propriety of giving to both the real parties a hearing is obvious; but to make this the most useful and satisfactory it may be necessary to go for the purpose to the part of the country that is specially concerned in the controversy.

There are some questions also which from their nature are such that they can be best investigated where the business they concern is, or where the transactions have taken place out of which they arise. Impressed with this belief the Commission has held sittings in several Southern States, and also in Vermont, Minnesota, and Illinois; and some of the cases now pending might no doubt best be heard at still more distant points, but the appropriation at the service of the Commission has not warranted incurring the necessary expenditures. It seems very certain, however, that the best results can not be attained through sessions held altogether at the national capital.

VIII. ANNUAL REPORTS FROM CARRIERS.

The twentieth section of the Act provides—

That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises and equipment; the number of employees and the salaries paid each class; the amounts expended for improvement each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balance of profit and loss, and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares, or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, pre-

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scribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

In deciding upon the form and requisites of this report, so far as it was in the discretion of the Commission to do so, three points have been had especially in view: first, to make it as concise as possible consistent with the information to be furnished; second, to bring it as nearly as possible into conformity with the best forms now required in the reports called for by state laws or state commissions; third, to have the report made as late in the year as possible, and still leave time for tabulating and condensing the information furnished in the annual report to be made by the Commission. The date finally fixed upon as that to which the reports of carriers should relate is June 30, which is now the date prescribed for like reports in a number of the States; and it is hoped that without much delay uniformity may be brought about in the reports required under both federal and state laws, so that all may relate to the same time and involve no different methods of book-keeping for their preparation.

In deciding upon a form the Commission has invited and been aided by suggestions from state railroad commissions, and also from auditors of railroad companies.

IX. CLASSIFICATION OF PASSENGERS AND FREIGHT.

A number of the complaints made against railway companies have related to the classification of freight. Some of these have sprung from the fact that classifications are not alike in different sections of the country; and parties who have shipped freight under one classification into a section where a different classification prevails have found the charges against them not the same as they had reason to expect. The ground of others has been that the classification in its effect upon rates worked an unjust discrimination between shippers or between different classes of freights.

It is greatly to be regretted that the same classification is not adopted by the carriers by rail in all sections of the country. The desirability of uniformity is so great, that the suggestion is frequently heard that national legislation should provide for and compel it. If such legislation should be adopted it would be necessary to empower some tribunal to make the classification, and the difficulties which would attend the making would be very great. Relative rates would be involved in it, for classification is the foundation of all rate-making. It was very early in the history of railroads perceived that if these agencies of commerce were to accomplish the greatest practicable good, the charges for the transportation of different articles of freight could not be apportioned among such articles by reference to the cost of transporting them severally, for this, if the apportionment of cost were possible, would restrict within very narrow limits the commerce in articles whose

8. *Held further*, that it was not just or reasonable that the defendant railroad company should give a low **special rate** upon coarse **lumber** in other forms, to the exclusion of **ties**.

4. **Rates** established by a common carrier under the influence of a desire to keep upon its line a material for which the road itself has use, or to keep the price thereof low for its own advantage, can **not be justified**.

(Decided January 13, 1888.)

COMPLAINT alleging the imposition of unreasonable and discriminating rates for the transportation of railroad ties. (See abstract of complaint, *ante*, 600.)

The case came on for hearing December 7, 1887.

The complaint as filed on October 17, 1887, was against the Western New York & Pennsylvania R. Co., the successor, by reorganization, of the Buffalo, New York & Philadelphia Railroad Company. The complaint stated that the property of the railroad company had been in the hands of G. Clinton Gardner as receiver, until the reorganization, and that on such reorganization Mr. Gardner became president of the new company. It appeared that this was a mistake, the receivership having been continued until January 1, 1888.

The complaint was served by mail addressed to G. Clinton Gardner, as president of the Western New York & Pennsylvania Railway Company. Mr. Gardner acknowledged by letter the receipt of the complaint. The answer was prepared in the name of the Western New York & Pennsylvania Railway Company and verified by its president, Mr. Probst, and stated that the reorganized company had not yet come into possession of the road.

When the case came on for hearing, counsel for defendant raised the question whether the case was properly brought. The Commission, without deciding whether it is proper to proceed against a corporation itself when the road is in charge of a receiver, allowed (under the circumstance) the complainant to amend the complaint so as to show the existence of the receivership, and the hearing proceeded.

Mr. E. A. Nash, for complainant.

Mr. George Zabriskie, for defendant.

REPORT AND OPINION OF THE COMMISSION.

Walker, Commissioner:

Complaint of alleged unreasonable and unjust charges for the transportation of railroad ties. The answer asserts that the charges complained of are reasonable and just.

The following facts are found from the proofs: the railroad in question extends from Rochester, N. Y., southwesterly through Olean and Salamanca into the State of Pennsylvania. It connects at Rochester with the New York Central and the West Shore Railroads, at Olean with the Delaware, Lackawanna & Western, and at Salamanca with the New York, Lake Erie & Western. It was formerly owned and operated by the Buffalo, New York & Philadelphia Railroad Company. In actions brought in the United States Courts of New York and Pennsylvania to foreclose a mortgage upon the property of that company,

G. Clinton Gardner was appointed receiver May 20, 1885, and has since operated the property of said company as such receiver. A new company has recently been organized under the foreclosure, entitled the Western New York & Pennsylvania Railway Company. It is expected that said receiver will surrender possession to the latter Company about January 1, 1888. The last named Company and said receiver are the parties defendant in this proceeding.

Complainant is a manufacturer of lumber in the State of Pennsylvania, having an office at Rochester, N. Y. He owns several thousand acres of timber land near the line of said railroad in the vicinity of Corydon, Pa.

Corydon is distant twenty miles from Salamanca, thirty-nine miles from Olean, and 147 miles from Rochester.

For several years complainant has been engaged in manufacturing lumber in Northern Pennsylvania upon the line of said railroad and of the Buffalo, Rochester & Pittsburgh Railroad, most of which has found a market in the State of New York. Much of his timber is oak, of which the trunks are sawn into squared lumber and boards, and the smaller trees, pieces, and large branches manufactured into railroad ties, both sawn and hewn. He also manufactures ties to some extent from chestnut and hemlock. The purchasers of his ties have been the railroad companies above named and other roads reached over said intersecting lines through Salamanca, Olean and Rochester.

Prior to June 15, 1887, the classification in use upon this road, as well as upon other roads in the vicinity, nominally placed lumber in the sixth class, in which railroad ties were included, although not specially named. Lumber, however, being an article of merchandise of considerable bulk in proportion to its value and in respect to which keen competition is met among producers, has for a long time been specially treated, forming practically a class by itself, and receiving very low and special rates; and this practice continues to the present time.

Upon this road lumber and ties were formerly shipped for complainant at identical rates. About February, 1886, the price charged for transportation of ties was greatly increased, so that complainant ceased their shipment for a time. Upon the taking effect of the Act to Regulate Commerce the charges upon ties and the method of collecting the same were so adjusted that his manufacture and shipment thereof were resumed. On July 15, 1887, what is known as the "Official Classification No. 2" became operative and was adopted by the defendant, in common with the other roads north of the Ohio and east of the Mississippi. In this classification lumber in car load lots is in class six; in less than car load lots, class four. Railroad ties in car load lots are in class five; in less than car load lots, class four. It is the only form of rough lumber which was raised to class five in car loads.

Defendant has continuously maintained its low special rate upon lumber, without regard to its being classified in the sixth class, but insists upon the regular fifth class tariff rate for

first and second class rates by the same train, the difference in charge having some regard to difference in the carriages which are allotted to the classes respectively. In some sections colored persons are required to take separate cars, though charged the same rates as others. The carriers making this requirement assume to give to colored persons accommodations equal to those given to white people, and are required by law in some States to do so; but complaint is made that this is not always done.

Then, on all roads of any considerable length parlor and sleeping cars are run, which in most cases are owned by outside corporations, and a special charge made by the owners for seats or berths in them. The palace and sleeping car corporations, like the express companies, as has already been said, do not understand that they come within the contemplation of the Act, so as to be subject to its provisions; but the persons accommodated by them must also have tickets for passage from the railroad companies, and as to those it is not doubted that the same rules of uniformity and impartiality apply as in other cases.

Previous to the passage of the Act it was customary on many of the roads of the country to give reduced rates to the class of persons known as "commercial travelers"; but this was made illegal by the provisions in the Act against unjust discrimination. 1 Interstate Commerce Reports, p. 8 [*ante*, 18]. It was also common in some quarters to give special rates to land lookers, explorers or settlers, who were supposed to be looking for or establishing new homes in a section where their purchase, settlement, or improvement would benefit the carrier giving them, but this also is held to be now forbidden. 1 Interstate Commerce Reports, p. 208 [*ante*, 611]. The opinion of the Commission as declared in these cases is that, under the Law, it is no longer competent for the carrier to discriminate among passengers enjoying the same accommodations, by means of any special classification dependant upon occupation or other condition or circumstance of a personal nature, except as the Law itself, by the twenty-second section, has in terms authorized it.

X. VOLUNTARY ASSOCIATION OF RAILROAD MANAGERS.

Nearly every railroad in its origin has been independent of all others, and in the early history of such roads they were commonly provided for as local conveniences, with no provision of the great highways of trade and communication which they have since become. It was in many cases thought to be important that a road should be kept as distinct in its business from all others as possible, and at their termini in some instances they were not allowed to have the same freight or passenger stations with other roads, lest the local draymen and hackmen should be deprived of a profitable employment.

When the great possibilities of railroad service came to be better understood these primitive notions of local benefits gave way before a more enlightened public sentiment, and the fact was recognized that the public interest would be best subserved by making the connection between the roads as close as possible,

in order that the commerce between different sections and localities might go on steadily and uninterruptedly. The railroad companies perceived also that their interest lay in the same direction; and they not only entered into close business relations with each other, but in many cases formed consolidations. The tendency to consolidation excited public distrust, being looked upon as a device to avoid competition and to deprive the public of the benefits of having more than one line of transportation for the same traffic, which, in some cases, had been the chief inducement to the building of particular lines. Laws were therefore passed forbidding consolidation; but these were avoided by taking leases of roads, or by acquiring a controlling interest in the stock, and then entering into permanent running arrangements.

But it sometimes happened that the managers of a road deemed it for its interest to work in complete independence, and while making profit out of the local conveniences it supplied it found means to add to these a further profit from the inconvenience it could cause to the business of other roads. It therefore discriminated between other roads; it hindered the business of one while it furnished all possible facilities to the business of another; and this it was enabled to do because it was not compellable by law to make joint running arrangements or joint tariffs for business with other roads. Such action was likely to incommode the public quite as much as it did the road which was discriminated against, but it seemed impossible to deal with it adequately by law. To make railroads of the greatest possible service to the country contract relations would be essential, because there would need to be joint tariffs, joint running arrangements, an interchange of cars, and a giving of credit to a large extent, some of which were obviously beyond the reach of compulsory legislation, and even if they were not, could be best settled and all the incidents and qualifications fixed by the voluntary action of the parties in control of the roads respectively.

Agreement upon these and kindred matters became therefore a settled policy, and short independent lines of road seemed to lose their identity and to become parts of great trunk lines, and associations were formed which embraced all the managers of roads in a State or section of the country. To these associations were remitted many questions of common interest, including such as are above referred to. Classification was also confided to such associations, it being evident that differences in classification were serious obstacles to a harmonious and satisfactory interchange of traffic. But what perhaps more than anything else influenced the formation of such associations and the conferring upon them of large authority, was the liability, which was constantly imminent, that destructive wars of rates would spring up between competing roads to the serious injury of the parties and the general disturbance of business.

Accordingly, one of the chief functions of such associations has been the fixing of rates and the devising of means whereby their several members can be compelled or induced to observe the rates when fixed. And

so found is sufficient of itself to suggest that it was placed there for some purpose not readily apparent, and different from the reasons which ordinarily influence classification. No valid excuse for the discrimination being shown, the Commission are of the opinion that the classification of railroad ties in car loads should be reduced to that of lumber.

The question whether or not railroad ties should receive the special lumber rate involves other considerations. Defendant's position respecting the low rate placed upon lumber is that the lumber rates are too low to afford a reasonable compensation to the carrier, and that they are made to meet the competition of lumber brought from other directions over their roads, and are necessary in order to enable defendant to do any lumber business at all, the rates to Rochester in particular having been reduced on September 1, 1887, from \$1.25 to \$1.10 per ton for that very reason; and it is claimed that no such fact exists in regard to ties, which do not meet the same competition, and can properly be charged a higher rate of transportation.

The special lumber rate from Corydon to Salamanca, twenty miles, is \$12 per car of twenty tons, which is said to be about the usual car load weight, or three cents per ton per mile; to Olean, thirty-nine miles, \$12 per car, or 1½ cents per ton per mile, and to Rochester, 147 miles, \$22 per car, or 7½ mills per ton per mile.

No proof has been made of any competition which meets Pennsylvania lumber at either Salamanca or Olean, nor is it apparent that the rates to those points are inordinately low. At Salamanca the rate of sixty cents per ton cannot with justice be claimed to be exceptionally low upon a product of the character of lumber. To charge double that rate upon ties, or \$24 per twenty ton car plus \$1.18 switching charge, making \$25.18 for a haul of twenty miles, is not relatively reasonable and just, especially in view of the fact that the value of the lumber at Salamanca would be about \$176 and of the ties about \$110.

The car load rate to Olean on lumber remains at \$12 and on the ties is increased to \$40.

The present lumber rates to Salamanca and Olean are of long standing, having been originally given to complainant as a special rate, and announced as the public rate upon the passage of the Act to Regulate Commerce.

As complainant in his testimony distinctly states that Rochester is not now a tie market, no order will be made at present in respect to that point.

The circumstance cannot escape observation that the only possible purchasers of railroad ties are railroad companies. It is also obvious that the value of ties at Corydon is their selling price at Salamanca and Olean less the freight. Therefore the higher the freight, the less the value of the ties at Corydon. The defendant itself is a purchaser of ties; it bought a lot of complainant in 1886. The ordinary conflict of interest between the railway and the shipper is here intensified by the fact that the direct interest of the carrier requires the cheapening of the shipper's product. It was candidly admitted by its general superintendent

that this consideration influenced the conduct of defendant in fixing its rates upon ties at a time when its interstate rates were not subject to control under a law of Congress. But if this was legal then, it is so no longer. It involves and implies extortion. It is not only repugnant to every man's sense of propriety and justice, but it is directly forbidden and made illegal by the third section of the Act to Regulate Commerce, in that it subjects this particular description of traffic to undue and unreasonable prejudice and disadvantage for the pecuniary benefit of the carrier itself. It is a course of dealing if possible even more obnoxious to the just provisions of the Act than would be a tariff arranged in the same manner for the purpose of giving a preference to another shipper competing from another direction in the same market.

Rates established by a common carrier under the influence of a desire to keep upon its line a material for which the road itself has use, or to keep the price thereof low for its own advantage, cannot be justified either in morals or in law. Every party who produces such a material is entitled to sell it when he wishes, in the best available market, and the common carrier has no right to prevent his doing so by disproportionate or unreasonable rates. This the defendants in the present case have been attempting to do.

The order of the Commission will be that the defendants cease and desist from charging a greater price for the transportation of railroad ties from points in Pennsylvania to Salamanca and to Olean, in the State of New York, than is charged for the transportation of lumber at the same time between the same points.

RIDDLE, DEAN & CO.

PITTSBURGH & LAKE ERIE R. R. CO.

(No. 88.)

*1. During the summer and early fall of 1887, owing to high freight rates on the vessels on the lakes, and the refusal of shippers to ship upon those rates, there was an immense accumulation of coal and coke and other freights along the line of the Pittsburgh & Lake Erie Railroad Company, a short local and interior railroad extending from New Haven, Pa., to Youngstown, O., from which last named point it has traffic arrangements with the Lake Shore & Michigan Southern Railway, to Ashtabula, and with the New York, Pennsylvania & Ohio Railroad Company to Cleveland. About the middle of September there was a sudden and general rush on the part of these shippers for the coal and coke cars from the Pittsburgh & Lake Erie Railroad Company to ship their coal and coke over its line at once towards Youngstown for Ashtabula and Cleveland, the two nearest and most direct lake ports; and at the same time there was an unprece-

*Head notes by BRAGG, Commissioner.

dedicated quantity of ore from the Lake Superior mines for shipment over this road from Youngstown, in the direction of Pittsburgh, Bessemer and other points along its line south; while the general freights were exceedingly large and brisk. The freight car equipment of the company, according to previous experience in the course of its business, was sufficient to promptly move all the freight as tendered to it for movement over its line; but it turned out to be insufficient to furnish enough cars to remove coal and coke as fast as demanded by shippers, and this, although the company kept this freight equipment well in hand on its own line and refused to send any part of it to other and distant points off its own line in the transportation of freight; and from the 28th of September, 1887, to the 12th of October following, the company was obliged to furnish cars to the coal and coke miners ratably in proportion to their needs and not to the full extent that they demanded. The company had no connection whatever with the vessels on the lakes, and no interest in or control over their rates. In this condition of affairs the complainants demanded of the Pittsburgh & Lake Erie Railroad Company cars for the shipment of coal to Buffalo, N. Y., a point not situated on the line of the Pittsburgh & Lake Erie Railroad. The company was not then permitting any of its coal cars to go to Buffalo because it was using all of these cars and needed even more to move its freight over its own line.

On this state of facts, held:

1. The company was guilty of no violation of the law in refusing to furnish its cars to complainants to carry their coal to Buffalo; but, under the circumstances, it was the duty of the company to do as it did in using this freight equipment in moving its freight over its own line.
2. The inability of the company to furnish cars as fast as demanded by shippers in an extraordinary conjunction like this, for which it was in no wise responsible or to blame, was no violation of the Act to Regulate Commerce.
3. That, being unable for a brief period from the causes stated, to furnish as promptly all coal cars as demanded for the movement of freight over its own line, it was the duty of this company, as it did, to furnish cars ratably and fairly to all the mines along its line in proportion to their freights until the emergency had passed, when it could move all their freights as fast as tendered.
4. The proof does not sustain the complaint that the Company violated the Act to Regulate Commerce by giving a preference in cars to the coke over the coal trade.

INTER 3.

5. The proof does not sustain the charge in the complaint that the Company violated the Act to Regulate Commerce and gave a preference to shippers in not requiring them to load or unload its cars promptly.

6. The petition is dismissed.

(Hear'd Dec. 8-9, 1887. Decided Jan. 14, 1888.)

COMPLAINT alleging violation of section 3 of the Act to Regulate Commerce.

Mr. James L. Black, for complainants.
Messrs. Knox & Bond, for defendant.

REPORT AND OPINION OF THE COMMISSIONER.

Bragg, Commissioner:

The complaint and answer in this proceeding present the following questions for our determination:

1. Whether, during the period commencing September 28, 1887, and ending October 12 of the same year, the Pittsburgh & Lake Erie Railroad Company, in violation of section 3, of the Act to Regulate Commerce, approved February 4, 1887, was guilty of giving an unlawful preference to other coal mines situated along that portion of its line known as the Pittsburgh, McKeesport & Youghiogheny Railroad, by refusing to furnish their proportion of cars daily to the Rainbow Coal Company and the Lake Shore Gas Coal Company for shipments of coal to Buffalo, New York.

2. Whether, during the same period, the Pittsburgh & Lake Erie Railroad Company violated section 3 of the Act to Regulate Commerce by giving an unlawful preference to the coke trade in the region of country along its line by refusing to furnish box cars to the Rainbow Coal Company and the Lake Shore Gas Coal Company and other coal mines represented by complainants for coal shipments, and furnishing the bulk of its box cars for transportation of coke.

3. Whether, during the same period, the Pittsburgh & Lake Erie Railroad Company unlawfully discriminated against the Rainbow Coal Company and the Lake Shore Gas Coal Company, and other coal mines represented by complainants, by siding up coal cars, or gondolas, and converting them into cars suitable for the coke trade, in consequence of which the coal trade was made to suffer and languish.

4. Whether the Pittsburgh & Lake Erie Railroad Company failed to compel the various mills and furnaces located along its line to unload ore, limestone and iron promptly from its cars, but allowed them to stand loaded for days at a time on their sidings, and thereby gave an unlawful preference in this matter to the undue and unreasonable prejudice and disadvantage of the Rainbow Coal and the Lake Shore Gas Coal Company, and other coal mines represented by complainants.

The evidence taken in this proceeding is very voluminous, and so much of it is circumstantial in its nature that it would be difficult, if not impossible, to undertake to group the facts separately as they appear upon each of the above questions.

From this evidence we find the material facts to be that the Pittsburgh & Lake Erie Railroad

Company operates a line of railroad from New Haven, in the State of Pennsylvania, to Youngstown, in the State of Ohio, a distance of 135.72 miles. That part of this line between Pittsburgh and New Haven is known as the Pittsburgh, McKeesport & Youghiogheny Railroad, and its length is 56.95 miles, with branches, and it is operated under a lease for ninety-nine years, made January 1, 1884, to the Pittsburgh & Lake Erie Railroad Company, that company and the Lake Shore & Michigan Southern Railway Company guaranteeing 6 per cent interest on the bonds and 6 per cent dividends on the stock of the Pittsburgh, McKeesport & Youghiogheny Railroad. The balance of this line operated by the Pittsburgh & Lake Erie Railroad Company is between Pittsburgh & Youngstown, Ohio. At Youngstown, Ohio, the Pittsburgh & Lake Erie Railroad Company connects with the Lake Shore & Michigan Southern Railway Company, which extends to Ashtabula, on Lake Erie. At Youngstown the Pittsburgh & Lake Erie Railroad Company connects also with the New York, Pennsylvania & Ohio Railroad Company, which extends from Youngstown to Cleveland, Ohio.

On the 20th day of October, 1877, several contracts referring to and dependent upon each other were made by and between the Atlantic & Great Western Railroad Company (now known as the New York, Pennsylvania & Ohio Railroad Company) the Pittsburgh & Lake Erie Railroad Company, the Youngstown & Pittsburgh Railroad Company, the Cleveland & Mahoning Valley Railroad Company, and the Lake Shore & Michigan Southern Railway Company. The first of these was a trust deed and stock subscription for the construction and completion of the Pittsburgh & Lake Erie Railroad through from Pittsburgh to Youngstown, and was signed by the several railroads named, and also by a large number of private individual subscribers to the stock. It is recited as part of this trust deed and contract of subscription that among other objects had in view by the contracting railroads and the subscribers to the stock, in addition to the construction and completion of the railroad from Pittsburgh to Youngstown, was that said railroad when constructed "should never be consolidated with any of the leading railroad lines of the country nor leased to any of them, and that the same shall be forever conducted as an independent railway, and that the same should be so conducted and so managed that all railroads connecting with it at Youngstown and elsewhere shall have the same facilities for conducting business over the same into and out of Pittsburgh, and that no special favors, charges or privileges shall ever be given to any railway or railways, and the said railway shall never be allowed to pass into the hands of any other railroad company or companies, nor in any way be subjected to the control, direction, or management of any other railway or officers thereof in such manner as to deprive the people of Pittsburgh and the stockholders of the said railroad company from the benefit which they would derive by way of competition and otherwise from said railroad being kept and maintained as a free and independent line and operated in the interest of and under

the control of the stockholders." It also provides for the "making of a continuous independent line of railroad from Pittsburgh to Cleveland, and also to Ashtabula by way of Youngstown," to accomplish which it is recited that "contracts have been entered into for close running arrangements and the exchange of business between the Atlantic & Great Western Railroad Company and the Lake Shore & Michigan Southern Railway Company and the said Pittsburgh & Lake Erie Railroad Company, and the Youngstown & Pittsburgh Railroad Company, copies of which contracts are attached hereto and made a part hereof and marked A, B, and C." These contracts, providing for these close running arrangements and the exchange of business, are before us and we have carefully examined them. Neither of them contain any provision that is in conflict with the right of the Lake Shore & Michigan Southern Railway Company and the Atlantic & Great Western Railroad Company to give directions as to the traffic in the hauling of which their cars shall be used, when furnished by either of them to the Pittsburgh & Lake Erie Railroad Company *to be loaded and returned to points on their respective lines.*

Subsequently the Pittsburgh & Lake Erie Railroad Company by a lease, which is in evidence before us, and some of the terms of which have already been stated, acquired the right to operate the Pittsburgh, McKeesport & Youghiogheny Railroad from the first day of January, 1884, for ninety-nine years. In this lease it is, among other things, provided that the Lake Shore Company shall at all times have the right to make such rates to and from competitive points reached by the road of the Pittsburgh & Lake Erie Company and the road of the said Pittsburgh, McKeesport & Youghiogheny Railroad Company as will enable it to compete with other roads for the same or similar traffic, but that such rates shall be so made and adjusted between the several lines on all business to or from the Youghiogheny Company's road on the same basis, three fourths of 1 per cent minimum ton per mile to the Pittsburgh Company, and so as to no wise, with reference to any traffic, to interfere with the rates and divisions of rates and the other provisions of a certain contract between the Pittsburgh Company and the Youngstown & Pittsburgh Railroad Company, of the first part, and the Lake Shore Company, of the second part, dated October 20, 1877.

Under these traffic arrangements the chief shipments of coal and coke over the Pittsburgh & Lake Erie Railroad Company is north and west from Pittsburgh, and are to Cleveland by way of the New York, Pennsylvania & Ohio Railroad from Youngstown, and to Ashtabula, on Lake Erie, by way of the Lake Shore & Michigan Southern Railway. There is also at certain seasons of the year a considerable shipment of coal to Buffalo, N. Y., over the Lake Shore & Michigan Southern Railway, although greatly less in amount than to Cleveland or Ashtabula; but this has not usually been done during the season when the navigation of the lakes is open, in the months of September and October, and up to the 20th of November. There are a great many furnaces

and rolling mills along the line of the Pittsburgh & Lake Erie Railroad. From the time of the opening of the Great Lakes for navigation, which usually occurs about the first of May, until navigation is closed upon them, which usually occurs about the 20th of November in each year, there is an immense shipment of coal and coke over the Pittsburgh & Lake Erie Railroad to Youngstown for Ashtabula and Cleveland, and from these ports this coal and coke are transported to other points. A great deal of this coke is used in smelting ore at the furnaces and mills along the line of the Pittsburgh & Lake Erie Railroad and its connections, the Lake Shore & Michigan Southern Railway and the New York, Pennsylvania & Ohio Railroad. The cars which transport this coal and coke to the Ports of Ashtabula and Cleveland in great part are promptly loaded with return loads of ore from the Lake Superior mines to Pittsburgh, Bessemer, and other points where there are mills and furnaces along the lines of the Pittsburgh & Lake Erie Railroad. A car load or train load of coal or coke, as the case may be, leaves points on the Pittsburgh & Lake Erie Railroad one day, and the next day thereafter it is in Ashtabula or Cleveland, as the case may be, and unloaded, and the following day it is back again at Pittsburgh or Bessemer with a return load of ore from Ashtabula or Cleveland. If the same cars should carry loads of coal from points on the Pittsburgh & Lake Erie Railroad to Buffalo, they would, under the best connections usually made, be gone from their line for a period of at least a week—more frequently ten days and often two weeks. From this it has resulted that an average of ten cars with coal go over the Pittsburgh & Lake Erie Railroad to Ashtabula and fifteen to Cleveland, as the case may be, where one of such cars goes to Buffa-

coal or coke long distances. Generally the coal business is a little larger on the Pittsburgh & Lake Erie Railroad than the coke business. The bulk of the coke trade is done in foreign cars—that is, cars of the Lake Shore & Michigan Southern Railway and the New York, Pennsylvania & Ohio Railroad, and the Cleveland, Columbus, Cincinnati & Indianapolis Railway. The bulk of the equipment of the Pittsburgh & Lake Erie Railroad is used for its local business between New Haven and Youngstown.

Prior to the first of September, in the year 1887, and, indeed, up to the middle of that month, it is not shown that complaint had been made of an insufficiency of cars for the coal and coke trade along the line of the Pittsburgh & Lake Erie Railroad. There had been a strike among the laborers at the coke mines along its line, which commenced in May, 1887, and lasted until July of that year, and during that period the coke mines had done but little work; but the laborers of the coke mines very generally resumed work in August, and from that time on there was a large output from these mines. From the upper lakes there were exceedingly high rates and an unusually large business for the boats during the summer and fall of 1887. These vessels demanded high rates on coal and coke, which the coal and coke men refused to pay, and in this way there was a standoff between them for a period of two or three months, during which time the vessels returned empty from Ashtabula and Cleveland to the upper lakes. These vessels were not owned or controlled by these railroad companies. At last, and during the latter part of September, the coal and coke men yielded to the rates of the vessels, and then there was a general rush for cars for coal and coke, crowding a volume of shipments of these articles over the Pittsburgh & Lake Erie Railroad, which should naturally

as it had theretofore done during the months of September and October, 1887. The daily capacity of the Pittsburgh & Lake Erie Road from Pittsburgh to Youngstown is about 600 freight cars, and the evidence shows that from the middle of September to the middle of October, 1887, it was worked to its utmost in the transportation of freight over that portion of its line, and that with all the cars it received from its connecting lines added to its own there was, what is called in railroad transportation, "a car famine," and it could give to the mines along the line of its road not more than about half what they required for the transportation of coal and coke. This condition of affairs lasted until the close of navigation in the lakes, about the 20th of November, after which time there were plenty of cars for all purposes, except, perhaps, coke.

While this condition of affairs was existing in Pennsylvania and Ohio along the line of the Pittsburgh & Lake Erie Railroad and the Lake Shore & Michigan Southern Railway, extending to Ashtabula, and the New York, Pennsylvania & Ohio, extending to Cleveland from Youngstown, there was what is known as a coal blockade at Buffalo, N. Y., and cars of the Pittsburgh & Lake Erie Railroad and the Michigan Southern Railway, carrying coal to Buffalo, were detained on the sidings there from two to three weeks before they were returned to the line of the Pittsburgh & Lake Erie Railroad; and in consequence of this stringent orders were issued by the chief officers of the Pittsburgh & Lake Erie and the Michigan Southern, against having any of their cars loaded for Buffalo from points along the Pittsburgh & Lake Erie Railroad, the object of this being to keep their cars at home along their own line for the great and unprecedented work that was before them in transporting the coal and coke to Ashtabula and Cleveland, and to the mines and rolling mills along their lines, and in bringing the ore back from Cleveland and Ashtabula to these points, as well as in keeping their general merchandise freight moving. It was during this period that complainants had contracts for the delivery of coal from the mines they represented, namely: the Rainbow Coal Company and the Lake Shore Gas Coal Company, for delivery at Buffalo, N. Y., where the price of coal was slightly higher than at Ashtabula or at Cleveland, and it is in regard to this that their complaint is made; that they were not furnished with their proportion of cars upon application made by them to the Pittsburgh & Lake Erie Railroad Company for this purpose. The evidence does not show that any other persons applied to the company for coal cars to Buffalo during this period, although it does show that it refused to allow its coal cars to go there for any shipper during this period on account of the facts herein stated. The distance from Youngstown to Buffalo, by the Lake Shore & Michigan Southern railway, is 191 miles, and from Youngstown to Ashtabula, by the same line, is 62 miles; the distance from Youngstown to Cleveland, by the New York, Pennsylvania & Ohio Railroad, is 67 miles.

The manner in which cars are furnished for coal shipments to the mines is upon requisition made by the mines for so many cars per day. These requisitions frequently call for

more cars than the mines actually need, and it would appear that this was done out of abundant caution on the part of the mines, that they might have a sufficiency of cars for their purposes; but it would have resulted in some mines obtaining more than they needed and others less than they were entitled to if it had not been controlled, as far as could be done, by the railroad company using a vigilant discretion in supplying the mines according to their actual output daily, instead of according to their requisitions. It is but proper to state that the Rainbow Coal Company and the Lake Shore Gas Coal Company and the other mines represented by complainants are not shown by evidence to have been guilty of having made any such exaggerated requisitions, but others did; and the Company was put upon the exercise of a vigilant discretion in all its dealings of this character from the causes named. The custom is for the furnace to furnish its own siding. If the furnaces do not unload the ore and coal promptly it is done by the railroad company, and demurrage is charged without preference. The rule of the Company is to allow twenty-four hours of daylight for the unloading of a car by the furnaces. In some instances, where the consignees of freight to be delivered were not at fault, the Company did not charge demurrage, but these were exceptional.

Wherever cars were furnished by the Lake Shore & Michigan Southern to the Pittsburgh & Lake Erie Railroad or by the New York, Pennsylvania & Ohio Railroad or by the Cleveland Columbus, Cincinnati & Indianapolis Railway the rule was that they were furnished under instructions or directions as to the freight with which they were to be loaded for return to those lines although not as to the shippers by name personally who were to be served, and the Pittsburgh & Lake Erie loaded these cars thus furnished and returned them in the manner indicated by these instructions or directions. Various causes frequently caused delay in loading cars at the mines, even when coal was on hand for that purpose. If a miner died, the miners all went out and the mine stopped for the time being. If there was a break in the machinery in shifting the engines, putting the cars into the mines or in unloading them, this caused delay. The mines were not arranged for loading box cars, because their chutes were not made for that purpose. The Lake Shore Gas Coal Mine could load box cars by shoveling, but the Rainbow Coal Mine could not do so in September and October, 1887. Among other methods resorted to by the railroad companies to compel the furnace men, mill men, and mine men to load or to unload cars promptly was that of "shutting them off," as it was called—that is, refusing to give them more cars until they had loaded or unloaded, as the case may be, the cars they had—and this seems to have been resorted to very frequently during last summer and fall by the Pittsburgh & Lake Erie Railroad Company and its connecting lines, the Lake Shore & Michigan Southern and the New York, Pennsylvania & Ohio Railroad Companies. During the pressure for the shipment of coke it appears that the Pittsburgh & Lake Erie Railroad Company found it necessary to side up coal cars or gondolas, as they are called,

way Company and the New York, Pennsylvania & Ohio Railroad Company are not parties to this proceeding. The complainants in developing their case were permitted to show in evidence the traffic arrangements existing between these two companies, and the Pittsburgh & Lake Erie Railroad Company, for the purpose of throwing all the light that this would do, if any, upon the matters involved in their complaint. It appears from this evidence that during the period to which this complaint refers, as well as prior to that time, the Lake Shore & Michigan Southern Railway Company, the New York, Pennsylvania & Ohio Railroad Company, and the Cleveland, Columbus, Cincinnati & Indianapolis Railway Company occasionally sent their cars from their lines to points on the Pittsburgh & Lake Erie Railroad, with instructions or directions to be loaded with certain kinds of freight designated and returned to points on their lines, respectively. The right of these companies to do this was not questioned on the hearing by the counsel for complainants, except only as it was made the means of unjust discrimination, if any, by the Pittsburgh & Lake Erie Railroad Company against the complainants in the shipment of their freight. The evidence does not show that it was productive of any such unjust discrimination against plaintiffs or any other shippers. Such cars were sent for designated traffic and not to designated persons, and the effect of it was to inure to the benefit of all shippers along the line of the Pittsburgh & Lake Erie Railroad Company by enabling that company the better and more promptly to move its freight.

The inability of this Company to furnish complainants instantly upon demand all the cars it needed for the shipment of coal from the mines it represented, resulting from the causes and in the manner shown in the evidence, was not subjecting it "to any undue or unreasonable prejudice or disadvantage in any respect whatever" within the meaning of section 8 of the Act to Regulate Commerce. The vast fluctuations and unforeseen developments of commerce, or the fault or misfortune of some one or more connecting lines, may occasionally bring about a condition of affairs in which the best managed railroad, and with the most ample freight equipment, is unable to move at once as promptly as tendered all the freight upon its line, and this without any fault of its own. There is no evidence that the freight equipment of the Pittsburgh & Lake Erie Railroad Company had been unequal to the business of the previous season; and yet in the season the latter part of which is complained of, it appears, in the exercise of good faith and prudent preparation in the line of its duty, to have increased its freight equipment over what it had been in the previous season, and to have kept it well in hand upon its own line for the movement of the freight of that line; and, in addition to this, it had a right to rely and did rely upon its arrangements with the Lake Shore & Michigan Southern Railway Company and the New York, Pennsylvania & Ohio Railroad Company for cars. It certainly is the duty of every railroad company to provide itself with

a sufficient freight equipment and to keep this well in hand for the prompt movement of freight over its line, based upon known and probable estimates of the business of a season. This the Pittsburgh & Lake Erie Railroad Company seems, from the evidence, to have done; but when an immense volume of local freight was held back by shippers for several months and then precipitated by them upon this Carrier, all at once, it could not furnish all the cars thus demanded for the instant movement of this mass of accumulated freight. It did, however, do all in its power to move this freight as quickly as possible. This was no violation of the third section of the Act to Regulate Commerce.

II. The second ground of complaint is that from the 28th day of September, 1887, to the 12th day of October next following the Pittsburgh & Lake Erie Railroad Company violated section 8 of the Act to Regulate Commerce by giving an unlawful preference to the coke trade in the region of coke along its line, by refusing to furnish box cars to the Rainbow Coal Company and the Lake Shore Gas Coal Company and the other coal mines represented by complainants, and by furnishing the bulk of its box cars for the transportation of coke.

It appears from the evidence that there was a strike among the coke miners about the first of May, 1887, which lasted until July of that year, and that they resumed work, generally and actively, in the month of August. At that time there was a great demand for coke in smelting ore from the Lake Superior mines and in the rolling mills and furnaces along the line of the Pittsburgh & Lake Erie Railroad Company. These rolling mills and furnaces were running day and night, and it required all that the coke beds and the Pittsburgh & Lake Erie Railroad Company could do to furnish them with coke. The only refusal to furnish box cars to the Rainbow and the Lake Shore Gas Coal Companies appears to have been, as we have already seen, to transport coal to Buffalo. In other respects they appear to have received their proportion of cars for shipments of coal from the mines. Box cars are used exclusively for hauling coal only in cases of long hauls, and are far better adapted to the transportation of coke than coal. The hauls of coal or coke from the line of the Pittsburgh & Lake Erie Railroad during this season were short hauls. The coal mines along this road had no chutes to load box cars with coal; and this, the evidence shows, was true of the mines of the Rainbow Coal Company and the Lake Shore Gas Coal Company during the time to which this complaint relates. There is a strong preponderance of evidence to the effect that the bulk of the box cars of the Pittsburgh & Lake Erie Railroad Company, during the time complained of, were not used in transporting coke, but were used chiefly in transporting general merchandise over its line. This ground of complaint, therefore, is not sustained by the evidence.

III. The third ground of complaint is that the Pittsburgh & Lake Erie Railroad Company, in violation of section 8 of the Act to Regulate Commerce, unlawfully discriminated against the Rainbow Coal Company and the Lake Shore Gas Coal Company and other

mines represented by complainants, by siding up coal cars or gondolas and converting them into cars suitable for the coke trade, in consequence of which the coal trade was made to suffer and languish.

The evidence shows that the coal and coke trades are nearly equal in amount, there being slightly more of coal, and that the number of cars required for each is not largely different; and, further, that what are known as gondolas or open flat cars sided up are equally as serviceable in the transportation of coal as coke. We find from the evidence that the company had been siding up or converting into gondolas a considerable number of its open flats, and that these could be used as well for the coal trade as for the coke trade. The evidence is that ever since navigation closed on the lakes, about the 20th of November, and while there are plenty of cars for all else, there is still a shortage in the supply of cars for the coke trade. This itself is a sufficient reason, if there were no other, why the Company should prepare additional cars for the coke trade. The evidence does not sustain the charge that from the cause complained of the coal trade is languishing.

IV. The fourth or last ground of complaint is that the Pittsburgh & Lake Erie Railroad Company has failed to compel the various furnaces and mills located along its lines to unload ore, limestone, and iron promptly from its cars, but allows these cars to stand loaded for days at a time on its sidings, thereby giving

by given to such shipper a party complaining would have to introduce evidence which would show that no demurrage was charged or that no proper efforts were made by the railroad company to have the freight loaded or unloaded more quickly. In this proceeding the evidence shows that the railroad company did all in its power to have its cars loaded and unloaded promptly upon sidings and by consignees. It frequently went to the extent of shutting of mines and mills because they did not load and unload its cars promptly. This ground of complaint is, therefore, not sustained by the evidence.

According to our conclusions above stated the complaint in this proceeding is not sustained by the evidence. It is, therefore, dismissed.

James C. SAVERY & Co., Doing Business
under Name of American Emigrant Co.

NEW YORK CENTRAL & HUDSON
RIVER R. R. Co. et al.

(No. 77.)

COMPLAINT filed September 5, 1887, alleging unreasonable charges for the transportation of emigrants from Castle Garden, New York, to Chicago, etc., and a combination to exclude plaintiffs from interviewing emigrants at Castle Garden.

The case has been set down for hearing at the United States Court House in New York City on February 7 1888

Second. That, being such carriers, and subject to the provisions of said Act, each and every of said railroad companies has been guilty of violating the provisions of the last clause of the first section of said Act in that each of them has, continuously since the first day of April, 1887, exacted unjust and unreasonable charges for the carriage of emigrants and their baggage from the said City of New York to the said City of Chicago, and to other points and places in the States and Territories west, northwest and southwest of the State of New York.

And for the particular grounds and specifications of this charge your petitioners show:

First specification. That continuously, since the said first day of April, 1887, said several railroad companies have exacted the sum of \$18 for the carriage of each adult emigrant carried by it from New York to Chicago, and a proportionate sum for each adult emigrant carried a less distance, while for each adult emigrant carried beyond Chicago the charge has been increased according to the local second class rate of the railroads running beyond that point; such exaction being made in pursuance of an agreement or compact existing between all of said railroad companies establishing rates for the carriage of emigrants and their baggage, which rates are unjust and unreasonable because of the character of the accommodations furnished for the transportation of emigrant passengers, said passengers being usually carried by said railroad companies in an inferior kind of cars called "emigrant cars," or in cars fitted with uncomfortable wooden seats, such cars being run sometimes in connection with passenger trains and sometimes in connection with freight trains, according to the convenience of the carrier, and not on any schedule time, and sixty hours being sometimes occupied in making the trip from New York to Chicago; and which rates are unjust and unreasonable because the number of emigrants carried by said railroad companies from New York to Chicago and to other points west of the State of New York is so great (amounting to between two and three hundred thousand annually) as to warrant their being profitably carried at much lower rates; and which rates are unjust and unreasonable because they are largely in excess of the rates at which the said railroad companies have heretofore carried emigrants and their baggage from New York to Chicago and to other points west of the State of New York; which former rates were as follows: from July 22, 1881, to July 28, 1881, the fare for each adult emigrant from New York to Chicago, as fixed and agreed upon and exacted by said railroad companies, was but \$9; from July 28, 1881, to February 15, 1882, the fare for each adult emigrant for the above distance, as fixed and agreed upon and exacted by them, was \$7; from February 15, 1882, to January 22, 1885, the fare for each adult emigrant fixed, agreed upon and exacted by them for the same distance, was \$18; from January 22, 1885, to January 15, 1886, one of the said railroad companies, to wit: the Pennsylvania Railroad Company, carried nearly all the emigrants landed at the Port of New York, from New York to Chicago, or to Cincinnati, or to St.

Louis, as the case might be at the rate of \$1 for each adult emigrant, and to all other points east of Chicago at the same rate, and to all points west of Chicago at proportionate rates; from January 15, 1886, to June 1, 1886, by a compact to which all the railroad companies hereinbefore mentioned, except the New York, Ontario & Western Railway Company and the Baltimore & Ohio Railroad Company, were parties, and to which the Grand Trunk Railway Company of Canada, the Boston & Lowell Railroad Company, of Massachusetts, the Vermont Central Railway Company of Vermont, the Fitchburg Railroad Company of Massachusetts, the Boston & Albany Railroad Company of Massachusetts, and the New York & New England Railroad Company of Massachusetts, were also parties, the fare for each adult emigrant from New York to Chicago was fixed at \$7; and it was agreed that all the parties to said compact should be jointly interested in all earnings from the carriage of emigrants from New York to Chicago or to other points in the West, and that each should receive a certain stipulated percentage of such earnings, the accounts to be kept and the division to be made in the City of New York by one Albert Fink, who was Trunk Line Pool Commissioner for all of said companies under said compact. On or about June 1, 1886, said several railroad companies entered into a new pool compact by which the fare for each adult emigrant passenger from New York to Chicago was again increased to \$18, at which figure it has since been maintained by the concerted action of said railroad companies, notwithstanding the said pool agreement was rendered invalid by the provisions of the said Act of Congress hereinbefore mentioned.

Second specification. That continuously, since the first day of April, 1887, said several railroad companies have exacted from each emigrant carried from New York to Chicago whose baggage weighed more than one hundred pounds, compensation for extra baggage at the rate of two dollars and sixty cents (\$2.60) per one hundred pounds for the excess over one hundred pounds; which charge for extra baggage is unreasonable and unjust because it is greater than the charge made by the same carriers for the carriage, between the same points, of extra baggage for first class passengers, which is carried on express passenger trains, such last mentioned charge being at the rate of only \$2.40 per one hundred pounds.

Third. And your petitioners further show that each of the said several railroad companies mentioned in the first paragraph of this petition is guilty of unjust discrimination, in violation of the second section of the said Act of Congress, in this, to wit:

First specification. That each of said railroad companies, in pursuance of said compact between them, sells, at the price of \$18, to recently arrived emigrants who are landed at Castle Garden, New York, tickets entitling the holders to transportation by rail from New York to Chicago but refuses to sell the same grade of tickets for the same trains to any other person or persons, at the same price, or at any price; and also refuses to sell the said grade or kind of tickets at any other place or office

than at Castle Garden, New York; and all persons other than recently arrived emigrants who are carried in the same cars with emigrants from New York to Chicago are compelled by each of said carriers to pay for such carriage, the sum of \$17, the price of a second class ticket between said points.

Second specification. That each of said railroad companies, in pursuance of the said compact between them, has continuously, since April 1, 1887, discriminated against emigrants carried by it from New York to Chicago by exacting from them \$2.60 for each one hundred pounds of extra baggage carried for them, while it has charged first class passengers, for extra baggage carried for them, upon express trains, only \$2.40 per one hundred pounds.

Fourth. And your petitioners further show that the said railroad companies mentioned in the first paragraph of this petition have been, and are, guilty of violating section 8 of said Act of Congress, in this: that since April 1, 1887, they have been, and they still are, dividing between them a portion of the aggregate earnings of said railroads, to wit: that portion derived from the carriage of emigrants and their baggage.

Specification. A compact or agreement exists among said railroad companies which was made since the first day of April, 1887, and which has been in full force and operation since June 1, 1887, by which the said railroad companies have agreed that all emigrants carried by any of them whose destination is west or northwest of Chicago, shall be carried by way of Chicago, and have agreed to divide among themselves, instead of the moneys received for the carriage of emigrants and their baggage, the business of carrying the same; and in pursuance of said compact and agreement all such emigrants have been, since June 1, 1887, carried by way of Chicago, and, since said date, the said business of carrying emigrants has been, and still is, divided between the said companies, as follows: the New

York and Ontario & Western Railway is but \$7.85; and the emigrant fare from Brockville, Canada, to Winnipeg, via the Canadian Pacific Railway, is but \$12, making the total all rail

tion by one route and some by another. Such division is rendered possible, by the circumstances that all emigrants arriving at the Port of New York are required by law to be landed at Castle Garden, an enclosed structure occupied by the Commissioner of Emigration of the State of New York, who, by virtue of a contract between them and the Secretary of the Treasury, made pursuant to law, have control of the landing and supervision of all emigrants arriving at said port; that said Commissioners have given to the common agent or agents of said railroad companies the exclusive right to sell railroad tickets to emigrants at Castle Garden, and have excluded and still exclude all persons, except such common agent or agents of said companies, from seeing or conversing with any emigrants arriving at said Garden, until they have been divided and allotted as aforesaid, and have exchanged their money, and have purchased from said common agent or agents, and paid for, their tickets to their destination, and have had their baggage weighed and have paid the extra charges thereon; and that the said railroad companies have severally refused, since June 1, 1887, and still refuse, to sell emigrant tickets at any other place than at said Castle Garden. One of the crying evils resulting from the said action of said railroad companies is that many of the emigrants carried by them are carried out of their way, and made to pay much more for their transportation than the same would cost if they were free to choose their own routes and to buy their tickets elsewhere than at Castle Garden. For example: emigrants bound for Winnipeg are now obliged to purchase tickets and go by the way of Chicago at a cost, for tickets alone, of \$33; whereas, the fare for an emigrant passenger from New York City to Brockville, Canada, via the New York, Ontario & Western Railway is but \$7.85; and the emigrant fare from Brockville, Canada, to Winnipeg, via the Canadian Pacific Railway, is but \$12, making the total all rail

that the said railroad companies mentioned in the first paragraph in this petition have, by their combined action, subjected your petitioners to undue and unreasonable prejudice and disadvantage in their business, hereinafter described, in violation of section 3 of said Act of Congress.

Specification. The business of the American Emigrant Company of Hartford, Connecticut, to which company your petitioners are successors, which business was established twenty-three years ago, has consisted in the sale to emigrants and others of lands situate in the Western States and Territories, and in the establishment of numerous colonies upon such lands, and in disseminating among the common people of various countries of Europe, but especially among the Scandinavians, correct information regarding the newer and more sparsely settled portions of our country, and in acting as the correspondent and agent of persons residing in foreign countries who were about to migrate hither, furnishing them specific information, purchasing their tickets, providing interpreters and agents to meet them upon their arrival and rendering them whatever advice and assistance they might need; and in the course of said business the said American Emigrant Company has become favorably known to a great number of foreign born people residing in every State and Territory of the United States, and a great number of such people have made it their financial agent, entrusting to it sums of money for a great variety of purposes, the chief of which has been the purchase of bills of exchange for transmission to relatives or friends in the old country, and the purchase, for relatives or friends coming to America, of tickets for the journey from New York to their ultimate destination; and also entrusting to it sums of money to be handed to relatives or friends upon their arrival in New York; and have also solicited its advice for such relatives or friends as to the route by which they should travel, and its assistance in procuring for them transportation and whatever else they might need, either in New York or upon their journey; and your petitioners, in continuing the said business, have become the financial agents of a very great number of said foreign born residents, who have entrusted to your petitioners sums of money amounting, in the aggregate, to hundreds of thousands of dollars annually, upon trusts, the performance of many of which is greatly hindered and impeded by the action of the said railway companies herein complained of; among which trusts are the meeting and assisting of emigrants upon their arrival; advising them as to the route to be traveled to reach their ultimate destination; acting for them in securing the most favorable rates possible and in purchasing their tickets; purchasing for them such articles of food or clothing as they might need for their journey; and delivering to them money supplied for their use; and because of their said compact hereinbefore mentioned, and in pursuance thereof, said railroad companies have refused, and each of them has refused, and they and each of them still refuse to sell to your petitioners emigrant tickets for any purpose whatever, and they have caused the

said Commissioners of Emigration to exclude, and to continue to exclude, your petitioners and their agents and interpreters from said Castle Garden, and have hindered and prevented, and still hinder and prevent, your petitioners and their agents and interpreters from communicating with, or advising, or in any manner acting for or serving, emigrants arriving at the Port of New York, and have hindered and prevented, and still hinder and prevent emigrants desiring to do so from seeing or communicating with your petitioners or their agents or interpreters; whereby your petitioners are greatly embarrassed and annoyed, and are hindered and prevented from discharging the duties and obligations which they have assumed toward many of their principals and depositors, by reason whereof their business standing and reputation are impaired, their credit is injured, and they are subjected to very great prejudice and disadvantage.

Of all of which matters and things hereinbefore alleged and set forth, your petitioners will make proof as they may be advised and as this honorable Commission may direct; and they respectfully pray that each and every the said several railroad companies herein complained of may be called upon to satisfy your petitioners or to answer hereto in writing within a reasonable time to be specified by this honorable Commission.

And your petitioners will ever pray, etc.
James C. Savery & Co.
Petitioners.

Blair & Rudd,
Attorneys for Petitioners,
No. 102 Broadway, New York.

DETROIT BOARD OF TRADE and Detroit
Merchants & Manufacturers Exchange

GRAND TRUNK R. CO *et al.* (The Trunk
Trunk Line Association.)
(No. 106.)

COMPLAINT filed December 19, 1887, alleging unjust discrimination in rates against Detroit.

Detroit, Mich. November 25, 1887.
To the Interstate Commerce Commission.

We, the undersigned duly elected officers of the Detroit Board of Trade, and of the Detroit Merchants & Manufacturers Exchange, do most respectfully tender you in behalf of the aforesaid corporations, duly organized in accordance with the laws of the State of Michigan, the following petition and complaint, to which we pray your early attention, in the manner laid down by your honorable body, in the rules adopted for its procedure:

The merchants of Detroit have for a long time suffered, without remedy, from the arbitrary and unjust discrimination in fixing the rates of freight by certain railroad corporations called "The Trunk Line Association," upon merchandise to and from seaboard cities, and places taking seaboard rates, originating at, or destined to this city, as compared with the rates of freight fixed upon similar merchandise to and from the same places, originating at, or destined to the City of Chicago, and other places.

COMPLAINT alleging violation of section 8 of the Act to Regulate Commerce.

On motion to amend complaint. *Motion denied.*

The nature of the proposed amendments is stated in the opinion.

Bragg, Commissioner:

The complainants in this proceeding move to amend their original complaint. The original complaint was filed on the 6th day of September, 1887, and answered by the Baltimore & Ohio Railroad Company on the first day of December, 1887.

The substance of the original complaint, briefly stated, is that the Baltimore & Ohio Railroad, prior to the filing of that complaint, had unjustly discriminated against the Yough Slope Mine in refusing to furnish that mine with its fair share of cars during the month of August, 1887, on shipments of coal to Arthur & Boylan, at Cleveland, Ohio.

The proposed amendment to this original complaint is as follows: "The complainants respectfully ask that the complaint, dated September 6, 1887, against the Baltimore & Ohio Railroad Company be amended by the filing of additional complaints as follows: 'That said respondent company, during the month of October, 1887, neglected and refused to furnish cars (their proportion each day) to the Yough Slope Mine, Anderson Mine, and other mines, for the transportation of coal to Buffalo, New York, and to Chicago, Illinois; and further during the months of November and December, 1887, said respondent company refused cars to the aforementioned mines (their proportion each day) for the transportation of coal to Cincinnati, Ohio. That, during the aforesaid months, said respondent company gave a preference to shippers of coke on the line of their road by furnishing said coke shippers with more than their proportion of box cars each day for shipments of coke, to the great injury of the aforementioned coal mines and your petitioners or complainants.'"

By this proposed amendment, as will be seen, complainants now desire to amend the original complaint by showing unjust discrimination by the defendant company against the "Anderson Mine" and "other mines" in refusing to furnish them cars "for the transportation of coal to Buffalo, New York, and to Chicago, Illinois, and further, during the months of November and December, 1887, said respondent company refuses the aforementioned mines their proportion each day for the transportation of coal to Cincinnati, Ohio." This amendment thus brings forward, for the first time, mines alleged to have been discriminated against in shipments to points nowhere referred to in the original complaint, and charges violations of the Statute against these mines and in these shipments, occurring a considerable period of time after the original complaint was filed, and some of them, in fact, after the original complaint had been answered by the defendant railroad company. The grievances stated in the amendment are new and distinct, entirely separate from, and having no relation to, the grievances mentioned in the original complaint.

In considering complaints and amendments,

such as are made and proposed, the Interstate Commerce Commission, under the statute, performs duties that are in their nature judicial. Liberal as our practice has heretofore been, and will continue to be, in allowing amendments to complaints and answers in proceedings before us in the administration of a highly remedial Statute, yet there must, under the rules of law, be a limit to this power of amendment; and this limit, we think, would be passed in allowing the amendment here proposed. The alleged grievances averred in this proposed amendment do not constitute grounds of complaint under the circumstances proper to be brought in by way of amendment to the original complaint in this proceeding.

That portion of the proposed amendment which charges that the defendant company gave a preference "to shippers of coke on the line of their road, by furnishing said coke shippers with more than their proportion of box cars each day for shipment of coke during the aforesaid months" is equally obnoxious to the objection above stated. The matters mentioned in this proposed amendment may be subjects for a new petition if complainants desire to present such a complaint, but not by way of amendment to the original petition.

The proposed amendment is, therefore, not allowed by the Commission.

LINCOLN BOARD OF TRADE

UNION PACIFIC R. Co. & Southern Pacific Co.

(No. 117.)

ABSTRACT of petition filed February 10, 1888, charging unjust discrimination against Lincoln, Nebraska.

Mr. G. M. Lambertson, for petitioner. **Messrs. Shellabarger & Wilson**, for defendant Union Pacific R. Co. **Mr. Charles H. Tweed**, for defendant Southern Pacific Co.

Petition alleges that defendants form a continuous all rail line between San Francisco, Sacramento, San Jose, Los Angeles, Riverside, Santa Anna and other prominent shipping points in California and Omaha, Kansas City and other points on Missouri River, and between said Pacific slope points and Lincoln, Nebraska; that they publish through tariffs, as required by law, on all classes of freight between said Pacific slope points and said Missouri River points but do not, in the same legal and systematic manner, publish through rates on similar traffic between said Pacific slope points and Lincoln, Nebraska; that in some instances rates have been quoted directly to points of destination, and on some articles they have been the same as to Missouri River points; but, as a rule, shippers are compelled to ship to Omaha and rebill from that point to destination, paying rates in effect between Pacific slope points and Missouri River points plus regular local rates between Omaha and Lincoln; that when the Union Pacific Railway was built to Lincoln, Nebraska, Missouri River rates on Pacific coast business were guaranteed, but since the Interstate Law took effect rates have been as herein set forth; that the principal articles of shipment from California are canned

prejudicial to the large towns which before had been specially favored.

2. The spirit and purpose of the Act to Regulate Commerce requires that when the circumstances and conditions will fairly admit of it the charges to all points for a like service should be made **relatively equal**.
3. When the reasonableness of rates is in question the charges made on long **through lines** cannot, for reasons stated in the opinion, form a just basis for comparison with **local rates** for relatively short distances.
4. A carrier is not made responsible for **rates made by a connecting road** because merely of its giving them in connection with its own rates to parties desiring to make through shipments.
5. A carrier is not compellable by law to give to the merchants of a town on its line the **privilege** of shipping their goods from the point of purchase to their own locality and again from thence to the place at which the goods may be sold by them at the same rate which would have been charged had there been but one shipment from the point of purchase to the point of ultimate delivery.
6. The fact that a refusal to give the through rate as for one shipment operates prejudicially to the town desiring the privilege and favorably to another town does **not** make the refusal operate as **unjust discrimination** when the carrier applies the same rule to all towns and accords the privilege to none.
7. **Discrimination** must consist in the doing for or allowing to one party or place what is denied to another; it cannot be predicated of action which in itself is impartial.

(Heard Nov. 14-15, 1887—Decided Feb. 15, 1888.)

COMPLAINT charging unjust rates and discrimination against Danville, Va.

REPORT AND OPINION OF THE COMMISSION.

Cooley, Chairman:

The original petition in this cause was framed with great care and precision, and in nine distinct paragraphs set forth separate grounds of complaint, which were averred to constitute violations by defendant of the Act to Regulate Commerce. For the purposes of an adjudication the following summary of the allegations will suffice:

After appropriate prefatory statement it was alleged:

First. That the defendant, through combination and arrangements with connecting lines of railroad north and west, has charged and continues to charge the people, merchants and tradesmen of Danville, Va., and adjacent country a greater price for the handling and transportation of their goods and merchandise purchased in New York, Philadelphia, Baltimore, Chicago, Cincinnati, Mansfield, Ohio; Grand Rapids, Mich.; St. Louis, Mo., and other places than the said railroad charges other persons

and localities under like conditions and for similar services;

Second. That the defendant for some time past has discriminated and continues to discriminate in its transportation and freight charges in favor of other persons and localities and against Danville and its people, merchants, tradesmen, and others. To instance: the said railroad has arranged its freight charges from Charlottesville, Richmond, and Lynchburg to Reidsville, Greensboro', Durham, Salisbury, High Point, Asheville, and Charlotte, N. C., points south of Danville, that far higher relative rates are charged to the people of Danville and country adjacent than are charged by said road to the people at the points which are referred to or named;

Third. That the defendant discriminates against Danville, its merchants and people adjacent, in its freight charges by applying or attaching to goods or merchandise received from other lines of road for Danville local rates or charges from the point of reception to point of delivery at Danville, notwithstanding it receives from said other lines of road goods of similar character for and carries to such other points at lower and through rates at the same time and by the same haul;

Fourth. That the defendant discriminates against the people of Danville and vicinity by denying to them a lower or approximate "through rate" upon the transportation of their goods which it accords to other persons and points south, say from Richmond to Durham, Salisbury, High Point, Asheville, and Charlotte, N. C.;

Fifth. That the defendant violates the long and short haul clause of the fourth section of the Act to Regulate Commerce by charging more for the transportation of meat, grain, etc., from Danville to points south thereof on its line than it charges from Richmond, Lynchburg, and Charlottesville for the transportation of the like property;

Sixth. That the defendant discriminates against Danville and its people and the vicinity in its charges for the transportation of iron and coal, and particularly in favor of Lynchburg;

Eighth. That the defendant charges to the manufacturers and others at Danville and others dealing with them exorbitant and unreasonable charges for the transportation of tobacco. For example, tobacco is shipped from Richmond to San Francisco, Cal., for from \$1.50 to \$1.61 per cwt.; but the charge for the same from Danville via Richmond by and under the auspices of said road to San Francisco is \$3 per cwt. Charges for the transportation of tobacco from Danville to points in Florida and other States are similarly high and unreasonable;

Ninth. That defendant exacts from the merchants and traders and people of Danville and vicinity unreasonable rates for transportation of property. For example, the charge on first class freight from New York to Lynchburg, 425 miles, is sixty cents per cwt., while from Lynchburg to Danville, sixty-six miles, it is thirty three cents per cwt.;

These several wrongs were charged to be in violation of the second, third and fourth sections of the Act to Regulate Commerce.

railroad ties. There have existed some other apparent irregularities which have presented themselves to complainant's mind as matters of grievance, arising in part from the fact that special rates were given him prior to the enactment of the Act to Regulate Commerce, in part from a misunderstanding about prepayment of freight, and in part from the fact that after the Act became operative the agents of the railroad company at points of shipment failed to conform to the instructions furnished them in respect to ascertaining actual weights, but at times allowed complainant to load cars very heavily, paying only the price of twelve tons, in respect both to lumber and ties. This irregularity was first corrected as to ties, while allowed to continue for a time in regard to lumber. The defendant's rule in this respect has not been consistently enforced, but the reasonableness of the rule, involving the propriety of charging for actual weight in all cases, is not seriously contested.

The results of the tariff now enforced by defendant from Corydon are as follows;

	To Salamanca.	To Olean.	To Rochester.
Lumber, special, per ton	\$0 60	\$0 60	\$1 10
Sixth class	1 00	1 00	2 30
Fifth class (ties)	1 20	2 00	2 70
Oak ties (each)	13	20	27
Oak ties at lumber rates would be, each	06½	06	11

A switching charge of \$1.18 per car is made at Salamanca upon all cars delivered to the Erie Road by defendant. Oak ties weigh about 200 pounds each.

The special rates made by defendant on lumber, as shown by its tariffs on file in the office of the Commission, include rough timber, boards, staves, headlugs, hoop poles, hoops, shooks, hemlock bark, lath, shingles, cordwood and piling.

Prior to the adoption of the official classification No. 2, July, 1887, the special rate upon lumber was treated by railroad companies as including ties. So far as the proof before us shows this was general, except in the case of this defendant—which, as above stated, about February, 1886, refused to treat ties as included in the special lumber class and exacted regular sixth class rates, afterwards raised to fifth class; the reason given by the general superintendent therefor being that he "didn't want the ties to go off from the road."

Upon these facts the case presents two questions:

First. Is the distinction in the "official classification No. 2" just and reasonable, by which railroad ties are placed in class five and other lumber in class six?

Second. Is it just and reasonable that defendant should give a low special rate upon coarse lumber in other forms, excluding ties?

No suggestion was made upon the hearing of any sound reason by which the raising of ties to the fifth class in the new classification can be justified. Defendant's general freight agent endeavored to make out a case of greater cost by saying that "tie shipments are less in quantity and require switching for single cars; whereas, in the case of lumber we switch a large number of cars together." This statement is not at all convincing, in view of the

fact that defendant has from six to seven thousand ties now awaiting shipment, and in August last had from forty to fifty men engaged in their manufacture. Lumber shipments from a mountain siding are not often made by the train load, and no special reason appears in the evidence why tie shipments are not likely to be as large per day as lumber shipments. Ties are purchased by railroad companies who use them in large quantities. They are shipped by manufacturers, who in that way use up material not adapted to the manufacture of lumber; the product must quite nearly approximate the lumber product from oak timber, taking the growth, small and large. Complainant testifies that his tie product considerably exceeds his lumber product on the same acreage.

Defendant's general freight agent further said that he "could think of nothing else that would make any difference in the cost of hauling a given number of cars of ties as compared with an equal number of cars of lumber." The distinction cannot be sustained on the ground of greater cost of movement, for no such greater cost is established.

An examination of said official classification No. 2 shows that other coarse products of the forest are placed in class six, viz.: boards, timber, box stuff, hoop poles, lath, logs, piles, shingles, staves, telegraph poles, wood pulp and empty boxes. Railroad ties from oak timber, which cost for sawing or hewing about twenty-five cents each, or \$2.50 per ton, are no more expensive to manufacture than the above articles; there is no special risk attending their transportation; their value is less per ton than that of most of the articles above enumerated; they naturally arrange themselves with the articles placed in class six.

On the contrary, class five, as now constituted in the official classification, contains a line of articles which do not at all correspond with railroad ties in the characteristics which influence classification. The following list enumerates the various articles manufactured from wood, found in class five, in car loads: axles, balusters, stair rails and other turned work, barrel covers, patent fruit barrels, base ball bats, brush blocks, butcher's blocks, ironing boards, ox bows, telegraph brackets in bags or boxed, bread boards in boxes or crates, bridge material, broom handles, buckets nested, bungs or plugs, butter ladles, molds and plates, churns, cigar boxes, lumber, curtain rollers and slats, dye woods in boxes or barrels, excelsior in bales, wooden fence in sections, blind frames, chair stuff, table leaves, legs, etc., boxed or racked, wooden gates, horse pokes, step ladders, last blocks, measures, moldings, oars, palls, paneling and wainscoting, plane bodies, potato mashers, pumps and tubing, towel racks, rolling pins, scale boards, flour scoops, bench screws, sieves, steak pounders, stove boards, cigar lighters, croquet sets, shoe pegs, sash, skewers, farm wagons, bob sleds, hubs, neck yokes, wagon materials, wagon wheels, wheelbarrows, Indian clubs, tubs, tooth picks. It requires no argument to prove that the placing of railroad ties in the same category with these articles is neither reasonable nor just. The mere fact that it is

the grounds of accusation on the part of the City of Danville was brought out and explained by leading citizens and traders. It is undeniable that the subject presented by the issues is one of very great importance to the people of Danville, and that many of them are firm in the belief that the defendant has been and still is guilty of serious violations of law. If they are not mistaken in this, and it is our power to bring the infraction of law to an end, we ought unquestionably to exert all our authority for the purpose. Danville is one of the leading towns on the lines of defendant's road; and if the fact is as the complainants aver, that the defendant discriminates to its prejudice in making its tariff sheets, the wrong is not only necessarily damaging, but it must be altogether inexcusable. Indeed, the defendant does not attempt to excuse discrimination, but denies its existence; and in so far as we shall find it to exist, it will stand undefended. If, however, what may seem to be discrimination shall prove to be unfavorable results from general causes not under defendant's control, the same proof that exonerates the defendant from responsibility will preclude the Commission from any attempt to give relief in this proceeding. This is too obvious to need more than bare mention; any adjudication against the defendant must necessarily be grounded on a finding of issues involving violation of law against it.

From the voluminous evidence taken in the case it appears that previous to the passage of the Act to Regulate Commerce there were several points on the line of defendant's roads which were recognized as points at which the competitive forces operated more strongly and persistently than they did at the intermediate stations, and to which for that reason more favorable rates were given than to such intermediate points, although the doing so resulted in the making of the greater charge on the shorter haul in many cases. One of the favored points was Richmond; others were Lynchburg, Charlottesville, Danville, Va., Columbia, S. C., Augusta and Atlanta, Ga. A diagram of the rates to the several stations on defendant's line, as they then were resembles to the eye the blade of a saw, the rates being higher at intermediate stations and descending sharply at the points named. There were also some points off the line of defendant's roads which were in like manner favored by the combination of rates which other carriers made with the defendant. In this respect the condition of things which existed on defendant's lines was the same which prevailed generally throughout the Southern States. At all points of great concentration of business the rates were very much lower than were given to intermediate and less important stations. They were given better rates because they were recognized as competitive points; and to speak of a town as a competitive point was to the common understanding equivalent to saying that it was a point to which exceptionally low rates of transportation were given by the railroad managers.

This condition of things as regards rates was of great importance to the towns favored, and tended to emphasize the advantages each of

them might otherwise have had over all the towns between it and the next competitive point to the north or south of it. It was, therefore, favorable to Danville, and resulted in its people paying lesser rates on longer hauls than were paid by people at noncompetitive points for shorter hauls of the like property over the same line and in the same direction. A strict enforcement of the fourth section of the Act to Regulate Commerce would have taken away, or at least have greatly modified, these advantages; and when defendant and other carriers applied for relief from its strict application many of the favored towns came forward with petitions that its request be granted. The complainants in this case, however, were not among the petitioners. On the contrary, they appeared with a protest, and in a printed argument filed with the Commission contended "That the operation of the fourth section of the Act for the Regulation of Commerce should not be suspended or practically nullified, but that the same should be executed with that force and vigor intended by the Congress which passed it. The clamor for its suspension comes mainly from railroad corporations whose grasping propensities and inexorable demands it was the intention of Congress to curb in the interest of the people, or from competitive points long separated from each other, which prosper upon the hardships inflicted by their allies, the railroads, upon intermediate points not favored by a competitive system." This was a very frank expression of opinion, and no doubt represented the honest and matured convictions of those who signed it.

After the orders which were made for relief under the fourth section of the Act had expired the defendant entered upon an extensive revision of its tariff sheets in the direction of bringing them more nearly into conformity with the general rule prescribed by that section, and with the result that there is not now any point on the line of defendant's roads north of Columbia, S. C., to which a consignment at the established rates would result in a greater charge being made for the shorter haul of the like kinds of property on the same line and in the same direction. This result has been brought about principally by a gradual reduction of the rates at noncompetitive points; and, although some increase in rates has been made at some of the competitive points, the increase has not been general, nor in any case which has been brought to our attention has it been very great. The charges, however, being in the direction of equalizing railroad advantages as between competitive and noncompetitive points, must necessarily to some extent prejudice the jobbing interests of towns situated as Danville has been, not only because they render it possible for rival establishments to spring up and maintain themselves in the smaller towns, but because the retailers in the smaller towns, under the favorable rates which are now given them, are enabled to deal directly in larger and more distant markets. Nobody can justly complain of a railroad company for so equalizing its rates as to render this possible; for the law had such an equalization of rates as one of its leading purposes, and provided for it because

justice as between the competitive and non-competitive points seemed, in the opinion of the Legislature, to require it.

It is evident from the testimony given by some of the witnesses that the equalization of rates by the defendant as between Danville and the smaller towns on each side of it has, in the minds of some parties, been regarded as a grievance. Thus the witness, John W. Caton, in answer to the question, "Is Danville regarded and held by the Richmond & Danville Railroad Company as a competitive point for traffic?" said, "It is not. I was informed by the general freight agent, in the presence of another high official of the road, that Danville was not a competitive point, and could not be so held by the road, and that they could not change their local freight rate as applied to Danville, for if the change was made in regard to Danville, Reidsville and Greensboro, although noncompetitive points, would be demanding the same thing; that Danville could not have through rates. These things were told me by the officials of the road when I was demanding better rates for myself and my town."

Now, to anyone who has given the Act to Regulate Commerce much attention it must be obvious that a complaint against a carrier that it gives to noncompetitive points the same rates which it gives to competitive is not a complaint that the Act is violated. On the contrary, the spirit and purpose of the Act require that when the circumstances and conditions will fairly admit of it the charges to all points for a like service should be made relatively equal. If, therefore, this defendant were to so arrange its tariffs as to give the least important station on its line rates as favorable as it allowed to the most important there would in its doing so be nothing out of harmony with the Law. The result might for a time be prejudicial to competitive points, but the carrier cannot be blamed for a consequence which the Law favors; and there can be no doubt that the Law favors Reidsville and Goldsboro' having rates as low as are given to Danville or to Richmond when the circumstances and conditions are such as to render it practicable. There is nothing, therefore, in the giving of such rates which the law will discountenance, much less punish.

But, passing from this general charge to some specific case in which the rates which were exacted by defendant are named, we find it to be an undoubted fact that charges have been made which cannot be justified:

First. There is evidence that defendant in two instances at least charged ninety-seven cents per cwt. for the transportation of cotton baled goods from Piedmont, S. C., to Danville, when the established rate from Piedmont to Richmond, 141 miles further, was but fifty-four cents. Investigation shows that these charges were not warranted by the tariff then in force, which was forty-eight cents per cwt. to Danville instead of ninety-seven cents. This is admitted by defendant, and the overcharge is claimed to have been the error of an agent. Whether the error was intentional or unintentional, the parties who paid the charge are entitled to have the overcharge refunded. It is stated on behalf of defendant that this

ENTER 8.

refunding has already taken place. Evidence has not been placed on file not find that to be the fact. On the other hand, it is to be said that the parties to be reimbursed have not applied for a commission for the purpose, and were informed that any order on their part would be acceptable. The proof of this comes into the case as evidence of the course of dealing, and not as a basis for a specific money claim; and there is no occasion to speak of it further. There is also evidence that in the case of the defendant on a number of occasions of melons by the car load from Greensboro, C., and other points to Danville received from consignees a sum of money which was then the current rates for transportation of like freight from Greensboro to such other points to Richmond as the distance. In respect to these cases, which were made after this process had begun, it appears that the defendant rates which were in force when the charges were made do not admit of any high freight made on a consignment of property to Danville from any point on the defendant's road south thereof than is made on a consignment of like property to Richmond. This is wrong, therefore, in so far as it makes the greater charge for the transportation, has been remedied for in other cases, and of this case, as of the last, it is that as the parties by whom the charges were paid are not now for the refunding of moneys wrongfully taken, this notice of the evidence in this case as it stands seems to call for

Similar remarks may be made in the case of a consignment of cattle from New to a purchaser at Danville, upon which a charge of \$14 per car is shown to have been made in excess of what was then the rate from Newport, through Danville, also regarding a charge on a consignment of cotton batting from Atlanta to Danville, which fifty-eight cents per hundred was charged in excess of the rate for transportation to Richmond. Neither of these actions is explained by the defendant, whether they could be justified by the making payment of the sums of money here demanding a refunding were not taken now to say. The transactions proved in support of the allegations do not violate the long and short of the Act, and they prove that factually. The proof shows, however, that time defendant's tariffs have been raised and at this time they will war between the points named and Danville is higher than the regular rate for property to Richmond. The charges, therefore, in so far as it was concerned, thus been brought to an end.

These, however, and one or two other actions of a like character are named as compared to the charge of defendant against Danville, supposed to be rates charged on shipments of heavy goods, particularly grain, flour, meat, produced at Danville from western and western points, and of tobacco from

rection. The discrimination is supposed to favor, particularly, Richmond and Lynchburg, which places are said to receive such advantages under defendant's established rates that competition with their merchants and traders on the part of the dealers in like goods at Danville is no longer possible on equal terms at any points on defendant's road in the vicinity of Danville or south of it.

The evidence which was given on this branch of the case comes from reputable business men of Danville, who show very clearly that in respect to the western and northwestern trade Danville is at great disadvantage in the competition. The reason is obvious: Richmond and Lynchburg receive consignments of grain, flour, provisions, etc., from Chicago, St. Louis, Louisville, Grand Rapids, and other western and northwestern towns on through bills of lading and over long through lines which accept for the transportation rates very much below the local rates on connecting roads. Consignments of like property for Danville will be delivered to defendant's road at Richmond, Lynchburg, or some other junction point to which the charge will be the same as to Richmond, and from the junction point to Danville will be charged local rates which, in proportion to distance, are very much greater than those charged on the through line. The Richmond & Lynchburg dealer therefore acquires his stock at a less cost than does the dealer at Danville, and is able to undersell the latter almost at his own doors. How great is the difference will appear when it is stated that the former pays twenty-two cents per cwt. on grain from Chicago, while the latter pays thirty-four cents, and the difference in the charges on flour, meats and other provisions are in like proportion. This is unquestionably a great hardship to the Danville dealer, who must not only pay more freight moneys than his competitor would pay on a like consignment, but more in proportion to the distance the property is transported.

What is true as to consignments from the west and northwest is equally true of those which are made for transportation in the other direction. The defendant exacts local rates from the local dealer to or from the points of junction with the through lines, and these are proportionately so much greater than the rates charged on the through lines that it is not surprising that one who compares them without making inquiry into the circumstances under which the charges respectively are made, is inclined to pronounce the charges of defendant unfair and excessive, as some of the witnesses did in the evidence taken by deposition. Thus, Samuel P. Wimbish, in answer to an inquiry whether the defendant charged to the people of Danville more than was reasonable and just for the transportation of property, said: "Yes; I should say so. If the charges made by said road to the people at other points for the transportation of their goods is any criterion to go by, I should say that the charges were unreasonable and unjust. The said road charges far more relatively for the transportation of goods from Danville to Lynchburg, only sixty-five miles, than other roads and the said Richmond & Danville together charge for transporting goods

of the same kind four or five times the distance to Richmond and Lynchburg under similar circumstances and frequently by the same haul."

Like evidence was given by other witnesses. Thus, Geo. W. Yarbrough, answering a similar inquiry, said: "I think it has. If the said road and its connections can bring grain from Chicago to Lynchburg, a distance of 800 or 900 miles, for twenty-two cents per hundred pounds it is certainly unreasonable and unjust to charge Danville, only sixty-five miles further, thirty-four cents per hundred pounds for the same service." And John W. Carter said: "I do not think the charges have been reasonable and just. By the rates shown it appears that the charges made by the Richmond & Danville road are much higher for the same service than are made by other roads. For example the charges made on meat, lard, grain, flour, etc., are very much higher relatively from Lynchburg and Richmond to Danville than from Chicago, St. Louis, and other places to Lynchburg and Richmond. In fact the rate of charges is from four to ten times greater, considering distance and other circumstances." Much other testimony was given to the same effect.

In all this testimony two assumptions appear to be made, which would be of greater importance in this case if they should be found warranted by the facts. The first is that defendant may be held responsible for the rates made on connecting lines when through rates are named to consignors over such lines in connection with its own; and the second is that rates made on long through lines may form a just basis of comparison with defendant's rates when the reasonableness of the latter is in question. Both these propositions are denied by the defendant. It is very evident from the testimony that the hardships of which the witnesses complain arise chiefly from the very great disparity between the through and local rates; and if defendant is responsible in whole or in part for both, there may be just ground of complaint against it. That it is responsible for the local rates is unquestionable, for it makes those without the concurrence or interference of any other carrier—at least so far as any evidence before us shows. Perhaps it is not unnatural that a customer of the road who did not inquire into the facts should suppose the defendant to be in some measure responsible for the through rates also, especially if he found that defendant issued through bills over its own and other lines, named the through rates to those who asked for them, and received payment of freight moneys for the whole distance, exactly as it would if the whole amount were its own.

All these things may happen and still the defendant not be responsible for the making of any rate off its own line. In most respects carriers by railroad may act independently, provided they afford to each other all reasonable facilities for the interchange of traffic. It is for this reason that railroad controversies and questions of rates are attended by so many special embarrassments; they cannot be adjusted as they might be if all roads belonged to one system and were under a single control. If that were the case, the rates might be

for the use of the coke trade, but, as already stated, these are cars which can be used either for the coal or coke trade.

The Pittsburgh & Lake Erie Railroad Company produced in evidence all its billing books and car moving records during the period to which the controversy relates. Its president, superintendent, general manager, freight agent and master of trains were each examined as witnesses at length, answering, so far as we could see, fully and unreservedly all the questions propounded to them; and each testified that, in the shipment of freights and distribution of cars, he had given no preference and knew of none that had been given by the company or any of its agents to any shipper over any other shipper concerning any of the matters involved in this complaint, and there was no evidence that contradicted them in these respects.

The conclusions we have reached upon this evidence and the reasons therefore only remain to be stated:

1. The first ground of complaint is that the Pittsburgh & Lake Erie Railroad Company during the period commencing September 28, 1887, and ending October 12 of the same year, violated section 3 of the Act to Regulate Commerce, approved February 4, 1887, by giving an unlawful preference to other coal mines situated along that portion of its line known as the Pittsburgh, McKeesport & Youghiogheny Railroad in not having furnished their proportion of cars daily to the Rainbow Coal Company and the Lake Shore Gas Coal Company for shipments of coal to Buffalo, in the State of New York.

By what construction the evidence in this proceeding could be held to sustain this charge we are unable to perceive. The Pittsburgh & Lake Erie Railroad is a local, interior road, with its termini at New Haven, in the State of Pennsylvania, and Youngstown, in the State of Ohio; and it does not extend to Buffalo. The Pittsburgh & Lake Erie Railroad Company was not then permitting any of its coal cars to go to Buffalo for reasons which were sufficient, and in no way in conflict with either the spirit or letter of any of the provisions of the Act to Regulate Commerce. These reasons were that, on account of causes for which it was in no sense responsible and for which it could in no way be justly blamed, it then had more work that it could possibly do in transporting freights over its own line; and if it had permitted its coal cars to go to Buffalo with coal for these two mines it would have resulted in these cars being absent from its line for certainly one week and more probably ten days or two weeks, according to the evidence; and it would have thereby rendered itself less able to serve all the business over its line. If complainants had a right to insist that this Company should send its cars at such a time with coal to Buffalo, then every other coal mine on its line had the same right, and this would have stripped this railroad of its equipment, leaving the other business along its line to go to ruin, but none of them had any such right. The Company had its legal duty to perform. Its first and most paramount legal duty to the shipping public was to make its entire freight equipment do its utmost in serving the ship-

pers along its own line. For this purpose, amongst others, it had been chartered by the States of Pennsylvania and Ohio; and for this purpose, chiefly, it had been constructed by those who had furnished their means in subscribing to its stock. If between the 28th of September, 1887, and the 12th of November following, when, as shown by the evidence, this railroad company was unable by its utmost efforts with all of its freight equipment added to that of the freight cars supplied to it by its connecting lines, to move promptly more than one half of the freights as fast as they accumulated along its line, it had furnished coal cars to the mines of the Rainbow and Lake Shore Gas Coal Companies to ship coal to Buffalo in order that they might obtain a better price for it than other shippers along its line were receiving at Cleveland and Ashtabula, and this, too, when it was refusing cars to all other shippers of coal to Buffalo, thus giving to complainants this exceptional advantage, it is quite possible that it would have been guilty of a violation both of the letter and spirit of section 3 of the Act to Regulate Commerce. Under such circumstances the legal duty of this Railroad Company was, as the evidence shows it did, to operate its cars so as to keep them as much as possible on its line, and confined to the business of its line. If, in that crisis it could not furnish sufficient cars to all the shippers along its line for the amount of their freight, then it was its duty to have done what is shown by the evidence it did; and this was to fairly endeavor to furnish its cars to shippers of coal in proportion to their shipments over its line, upon a basis that was relatively and substantially just.

While these shippers all complained, as was to be expected from men whose business was no doubt suffering, that they did not have as many cars as they needed to ship their coal and coke as fast as they were ready to ship it, yet it is but fair to presume that as intelligent men they were generally sufficiently cognizant of the fact to know that this railroad company was not to blame for the excessive volume of freights that had been held back during the summer and early fall on account of the high rates of vessels on the lakes, and then at the last moment had been rushed in upon it to be transported over its line. This Railroad Company did not own any of those vessels or have any control over them; and, as for that matter, the evidence does not show that any of those vessels were owned or controlled by any of its connecting lines. Neither this Company, therefore, nor any of these railroad companies, are shown by the evidence to have been interested in or responsible for the high rates charged by these vessels. In the light of the evidence, it is also but fair to presume that these shippers knew the unprecedented volume of freights that the Company was obliged to transport to the mills and furnaces at Pittsburgh, Bessemer, and other points along its line, coming by way of Youngstown from Cleveland and Ashtabula. These shippers must have known, and so did the Company, that at the utmost this crisis would end when navigation closed on the lakes, about the 20th of November, and that then there would be plenty of cars for all. The Lake Shore & Michigan Southern Rail-

the overcharge in quotation of rates in this instance occurred from ignorance or from carelessness or was an attempt at extortion is not now material; no shipment was shown to have been made under it, and it is not probable the error will occur again.

We have still to consider whether the rates charged on defendant's road are shown, by comparison made with rates on other lines, to be excessive and unreasonable. In the main the comparison has been made by the witnesses with rates on through lines over which the great bulk of the traffic in grain, flour, dressed and canned meats, and provisions passes from interior points to the seaboard. The difference between the rates charged for transportation over those lines and the rates made by the defendant is so very great that some of the witnesses in testifying have not hesitated to declare that defendant's charges were thereby proved to be excessive. The logic which brings the mind to this conclusion is that other roads would not accept the low rates unless they were justifiable, and, if profitable to them, rates made by defendant which are several times as high must necessarily be exorbitant. This logic, unfortunately, though at first blush it seems reasonable, does not always stand the test of examination.

It is a well known fact in transportation that the cost of carriage depends very largely upon the volume of business, the cost of carrying five tons being very much greater in proportion than the cost of carrying a thousand tons over the same line. That carrier, therefore, can give the best rates whose business is the largest and most steady; and as the through lines between the Mississippi and the seaboard are best situated for a large and steady business they can undoubtedly, as a general fact, give much better rates than the roads which intersect them; but it is equally well known that the proportionate cost is diminished with the increase of distance, and as the through lines carry the traffic mentioned a very long distance before delivering to defendant the proportion which is to go over its road they are, for this additional reason, enabled to make exceptionally low rates. These two facts are quite sufficient to render any comparison between the rates charged by the leading through lines and those made by the defendant of little or no value. The circumstances and conditions under which the traffic is carried by the through and the intersecting roads, respectively, are too great and too diverse to admit of useful comparison.

But another fact of importance is also to be borne in mind in the same connection. However reasonable may be the inference that long through lines will not accept rates that leave no margin for profit on the business, it is matter of public history that some of the through lines whose business has been very large have not been profitable to stockholders. Some of them have been quite the reverse of profitable, and after having been for some time in the hands of receivers have been sold under mortgage or reorganized on such terms that the original stock was either entirely or partially sacrificed. It cannot be safely affirmed that this has been altogether due to the low rates; but excessive competition and the ac-

ceptance of traffic for transportation at rates which were not fairly remunerative have been sufficiently common to rebut any presumption that carriers invariably refuse to accept business where there would be no profit in it. It has, moreover, been several times proved before the Commission without contradiction that much of the long haul traffic of the country is carried at rates which are little above the actual cost of movement; so that repairs, interest, rents and all fixed charges of the same roads are necessarily borne by their short haul traffic. No case under investigation, when such proof was given, concerned the roads whose low rates are in question here; but whether the like proof could be made in respect to this is not very important now. The fact is notorious, and is abundantly proved by the rate sheets now on file with the Commission, that the disparity between local and through rates is commonly very great; and when such is the case it is obvious that the local rates of one road are not proved to be excessive by testimony which shows only that they are very much above the rates which are charged upon long haul traffic by other roads. The comparison, if made at all, should be with local rates. Even then it would not be very conclusive without an inquiry into the conditions and circumstances of the traffic on the roads whose rates were compared, for freights on some roads, for a diversity of reasons which it is needless to undertake to specify here, can be carried much more cheaply than on others.

We are constrained to say, therefore, that the rates charged by the defendant, and which the petitioners complain of as excessive, are not shown by the proofs to be so. The comparison made with through rates on lines differently circumstanced is likely to be misleading, and is certainly altogether inconclusive. For the reasons given we could not base a judicial conclusion upon it. This leaves the allegation unsupported, for the other evidence on this branch of the case is slight and does not bear directly upon the point in controversy.

The complaint which in the minds of the petitioners and their witnesses seems to be the most serious is stated by them as a complaint of discrimination against Danville in denying to it through rates while according them to others. To understand what the discrimination consists in it is necessary to give some of the testimony. The witness Yarbrough, in answer to the question whether the defendant had denied to Danville the benefits of the through-rate system which has been accorded by it to other points, replied that it had. "I have asked for through rates frequently, and others have done the same in Chicago and elsewhere. I cannot state the time or times when I made such applications. The applications have always been refused."

It is to be observed that the only application here specified was one made at a great distance from defendant's line, and not stated to have been made to any agent of defendant. It is also to be observed that no points are named which are given rates in any way different from that in which are given to Danville. The witness, however, on being asked to state in what the discrimination against Dan-

ville consisted, went on to say: "It consists in according to other points, notably Richmond and Lynchburg, in the rehandling of provisions spoken of, a better rate and facilities than it accords to Danville for the same services." And he proceeds with specification as follows: "Provisions shipped from points north of the Ohio River and reshipped at Lynchburg and Richmond are carried through to points in North and South Carolina at rates considerably lower than if the same goods were shipped to Danville and reshipped from Danville to the same points South."

The witness, Samuel P. Wimbish, in answer to the question whether defendant, since the fifth of April last, had discriminated in matter of freight rates to Danville and other points and against Danville and its people, said: "To the best of my knowledge and belief it has. For example, defendant, before the fifth of April and since, had its freight charges so arranged as that said charges from Richmond and Lynchburg to Greensboro,' Charlotte, and other points were and are now far lower, relatively speaking, than between any of said towns and Danville."

Witnesses John W. Caton and B. S. Crews give similar evidence, and it seems to stand in contradistinction to that of the officers of the road, who testify positively that no advantage in rates is accorded to either Richmond or Lynchburg, and that the same charges in proportion to distance are made from them as from Danville to other towns on defendant's line. The supposed discrimination is, however, explained by tabulated statements which the witness, in support of the petition, files and from which we may see exactly what the discrimination consists in.

These tabulated statements show what the charges are which are made by defendant upon consignments of grain and of meats from Richmond and Danville, respectively, to other towns on defendant's line, and also the charges made from Richmond to Danville, the purpose being to show that, in competing for the trade of local points on defendant's road, Danville is placed at a disadvantage. The statement, so far as it relates to charges for the transportation of grain is here given.

From Richmond to Reidsville, N. C., 164 miles, charge eighteen cents per cwt.; from Richmond to Danville, 140 miles, fifteen cents; thence to Reidsville, twenty-four miles, eight cents; total, twenty-three cents.

From Richmond to Greensboro,' 218 miles, twenty cents; from Danville to Greensboro,' forty-nine miles, ten cents; added to rate to Danville, twenty-five cents.

From Richmond to Durham, 280 miles, twenty-one cents; from Danville to Durham, eighty miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to Charlotte, 281 miles, twenty-one cents; from Danville to Charlotte, 141 miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to Asheville, 360 miles, twenty-eight cents; from Danville to Asheville, 220 miles, twenty-seven cents; added to rate to Danville, forty-two cents.

From Richmond to Salisbury, 230 miles, twenty-one cents; from Danville to Salisbury, INTER S.

ninety miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to High Point twenty-one cents; from Danville to High Point, seventy-eight miles, nine cents; added to rate to Danville, thirty-six cents.

The showing in respect to meats is similar. The showing in respect to meats is similar, and another statement of shipper from Chicago or other western point to Danville, respectively, where reshipments were made to the city named, result in like discrepancies. The discrimination the petitioners complain of is that defendant's rates are so made that the Danville merchant cannot deliver his goods to Reidsville, Greensboro,' and other points named at which he may sell them at as low a rate of transportation as low as are accorded to other points.

The most casual inspection of the rates, however, will make plain that the difference in rates which is shown in favor of Richmond results from the fact that from Richmond the property may be taken directly to the several points named, while the Danville shipments are from Richmond to Danville and then to the ultimate destination. The difference in rate is, therefore, a difference in rate for one transportation covering the entire distance and that for two transshipments which aggregate the same distance. The petitioners think that upon such goods as are shipped from Richmond, as they sell at Reidsville, Greensboro,' and other points named, they should be charged the same rate as if they were shipped directly to the same points. The petitioners claim that when the consignment is made directly from Richmond to the same point, the rate is lower than when the Danville shipments are made directly from Richmond to the same point, but declines to allow it where the consignment is first to Danville and then to the ultimate destination. It is the denial of the right of having the two shipments which constitute the discrimination which constitutes the discrimination complained of.

The concession here claimed by defendant is an attempt to compel the petitioners to establish the system of some parts of the country is known as "a favor in transit"—a favor in transit most often, perhaps, allowed to the producers of flour, but which is known to the industries also. In proceedings before the commission where this system has been spoken of it has been said to be its origin in the desire of carriers to receive wheat for delivery to millers in order to control the transportation of a manufactured article and keep it from the hands of competitors. It is no doubt the sole reason for the practice mentioned it only as one that has been. The control of the carriage would be given by the consignor of wheat to the miller at the rate of reception at which he expected to market his flour with the privilege of converting it to flour at an intermediate point. The grant of such a privilege to the carrier would be shown by a supposed case. It is assumed that the rate on wheat from New York is twenty-five cents per

pounds and from Chicago to Rochester eighteen cents, while from Rochester to New York on flour it is fifteen cents. If, now, the Rochester miller purchases his wheat and sends it forward on the through rate with the privilege of milling it in transit, it is evident he will have saved when it has reached New York as flour eight cents per hundred pounds; and this very large saving would give him a great advantage over millers not having a like privilege.

It is obvious, however, that the giving of this privilege under the circumstances suggested would be equivalent to a concession in rates on the part of the railroad company, since the cost of the carrier of the two shipments, first of the wheat to Rochester and then of the flour to New York, would necessarily be somewhat greater than the cost of a single shipment of a like quantity from Chicago to New York direct without unloading on the way. It is hardly to be supposed, therefore, that a railroad company will voluntarily grant such a privilege unless some compensating advantage to itself will flow from it or unless the law compels it.

When the question of granting such a privilege is under consideration a railroad company will naturally consider, not the advantages merely, but what the disadvantages to itself are or may be, and some of these have also been suggested when the subject has been referred to on our hearings. The third section of the Act to Regulate Commerce makes it unlawful for any carrier subject to its provisions to give any undue or unreasonable preference or advantage to any particular locality. The question may be raised under this section whether it would not be unlawful for a carrier to give the privilege of milling in transit to one town on its line and deny it to others; but a railroad company might have an interest in granting the privilege to a town which was a common point for other roads and no such interest in granting it elsewhere; and the mere fact that a plausible question might be raised as to the right to grant it to one point only might be thought a sufficient reason for denying it altogether.

A question may also be raised—and, indeed, we are informed, has been raised in another part of the country—under the second section, which prohibits and renders unlawful any discrimination in rates as between persons. In the supposed case the miller, under the fiction of a continuous shipment of wheat from Chicago to New York, would in reality pay a proportion of the through rate as for a shipment to New York of flour from Rochester; but unless this proportion was less than the current rate on flour from Rochester to New York the privilege would be of doubtful value; and the fact that it is less constitutes the inducement to the miller for seeking the privilege. If, therefore, while one miller procures his stock in Chicago, his neighbor in the same business, and who expects to sell in the same market, purchases his wheat in the local market, the latter finds himself, when he sends forward his flour, placed at a disadvantage in rates, and he is not unlikely to raise the question whether it is lawful to make a charge for the

transportation of his flour which is greater than what would be the just proportion from Rochester to New York of the shipment made by the other from Chicago. The shipments of flour in the two cases would begin at the same place, the service as to each would be the same, and so also would be the cost of carriage.

We mention these as being questions which are frequently suggested, and which, therefore, a carrier is apprised may possibly be raised in case such a privilege is conceded. We do not say they are serious or difficult questions; they have not been discussed before the Commission; they have never in any form been presented for decision, and we shall, of course, refrain entirely from expressing any opinion upon them; but the fact that such questions may be raised must naturally have its influence with the carrier when the question of granting the privilege is under consideration. He will be apprised that the concession may not unlikely be followed by controversies—possibly by litigation.

It is evident that the privilege desired by complainants might raise like questions to those above indicated. Complainants wish to be at liberty to purchase goods at the points of supply, and instead of paying the regular rate for the transportation thence to Danville and the local rates from Danville to the place at which they make sale they ask that the whole shall be treated as one continuous shipment and paid for accordingly. Probably if the privilege were granted, the reshipment would sometimes be made without breaking bulk; but it could hardly be expected that this would occur very generally. The privilege would be in the nature of a concession in rates made to Danville. The officers of defendant decline to grant it, and the question is whether they are violating a legal right in so doing. One reason which they assign for their action is that if they make the concession to Danville they must do the same for Reidsville, Goldsboro', Durham, and all other places on their line that may ask it, or they will be guilty of a violation of the Act to Regulate Commerce; but the concession, if thus made general, would be of little or no advantage to anyone.

It does not become necessary in this case to decide whether if the concession were thus made to one town it must be made to all others, for that question is not before us. The defendant has declined to make the concession to any town, for reasons some of which are above indicated; and the charge is that this amounts to unjust discrimination, because the effect is prejudicial to Danville and favorable to some other localities; but this effect cannot determine the question at issue. There can certainly be no discrimination as against any particular town, in action which is general and applies alike to all towns. Discrimination must consist in the doing for or allowing to one party or place what is denied to another; it cannot be predicated of action which in itself is impartial. This requires no argument; the statement itself is conclusive. A regulation that is general and uniform is the opposite of discrimination. If the result is favorable to some localities and unfavorable to

others we may regret the fact, but we cannot under any authority the law has conferred upon us interpose to change it.

The conclusion is that the Commission cannot adjudge the defendant guilty of unjust discrimination in the particular mentioned. Neither can it find upon the evidence that any advantage which is obtained by Richmond or any other locality by means of low rates given by connecting roads is chargeable as a wrong done by defendant. The naming of a through rate by the defendant to or from any distant point and the receiving of the freight moneys on a consignment do not of themselves charge the defendant with any responsibility in respect to the rates beyond its own line. There is no wrong on its part in giving to its customers information respecting such rates nor in receiving payment for both itself and its connections. On the contrary, it is a great business convenience, and any carrier which should refuse to give through bills when it could do so or to name through rates which are made up by adding its own to the rates made by its connections would be justly liable to very severe censure. Through bills are among the most important and valuable of transportation facilities, and it is not only important that the consignor should know before he forwards the goods what the charges upon them for the whole distance are to be, but it commonly saves him much trouble and avoids mistakes

if he can procure the information of the receiving agent of the receiving line being compelled to apply at a distance. The result, therefore, to keep informed over connecting lines, whether they connect or not, and if through bills when they arrange with its connections not perform its full duty it does so.

The result of our investigation may be summarized very briefly. The defendant has been guilty of charges which the parties are entitled to have refunded if not already taken place. Also, that in the spring and summer defendant made rates which its road to Danville than to Danville, but its tariffs have changed that such greater charges. No application for refunding of moneys paid on question whether there should be before us. The Commission to require the defendant to allege sought for, corresponding in transit," and the evidence that the rates of the defendant and unjust is too inconclusive finding to that effect.

SUPREME COURT OF RHODE ISLAND.

STATE of Rhode Island

v.

William FITZPATRICK.

The provision of R. I. Pub. Stat. chap. 634, of May 4, 1887, § 1, which prohibits any person from keeping any intoxicating liquors "for the purpose of sale," is not, for the reason that it may incidentally interfere with foreign or interstate commerce, obnoxious to the Federal Constitution, art. 1, § 8, which confers upon Congress exclusive power "to regulate commerce with foreign Nations and among the several States."

(Providence—Decided January 7, 1888.)

ON constitutional questions certified to the Supreme Court under R. I. Pub. Stat. chap. 220, §§ 1-9.

The case is stated in the opinion.

Mr. Clarence A. Aldrich, Asst. Atty-Gen., for the state.

Mr. Hugh J. Carroll, for defendant.

Durfee, Ch. J., delivered the opinion of the court:

This case comes before us from the District Court of the Tenth Judicial District, by certificate, on a constitutional question. It is a complaint under Public Laws R. I. chap. 596, of May 27, 1886, and chap. 634, of May 4, 1887, against the defendant, for keeping without lawful authority intoxicating liquors "for the purpose of sale," in violation of chap. 634, § 1, in amendment of chap. 596, INTER 5.

§ 1, charging the offense sui language of the statute. In the defendant made the following:

"The defendant moves that complaint be dismissed, because under § 1 of chapter 634, of utes, which attempts to prohibit for the purpose of sale, of an enumerated in said section, any distinction as to whether within or without this State that he has a right to keep for purpose of sale without the Const. art. 1, § 8."

The district court overruled, and, having found the defendant certified the question involved for decision.

Chap. 634, § 1, so far as it cites it for the purposes of the following, to wit:

"No person shall manufacture or suffer to be manufactured, or suffer to be kept, or possess, or under his charge of sale, any ale, wine, strong or malt or intoxicating which is ale, wine, rum, or malt or intoxicating liquors, after provided."

The corresponding section utes, whether license or prohibition the words "within this State" "for the purpose of sale," keeping illegal only when it

pose of selling the forbidden liquors within the State. The defendant contends that, in consequence of the alteration, the keeping is prohibited if the liquors are kept in the State for the purpose of sale, even though they are intended to be sold out of the State; and that the section is therefore repugnant to the Constitution of the United States, art. 1, § 8, which confers upon Congress a variety of powers, and, among them, power "to regulate commerce with foreign Nations and among the several States."

It will be well to determine the scope and import of the question thus raised, before we proceed to consider and decide it. First, then, when is it that liquors, which are in the possession of a person in this State, are kept by him for the purpose of sale, within the meaning of the statute? They are clearly not so kept when they are kept by him for his own use, without any intention of selling them. Suppose he has the liquors in the State in the act of transporting them through this to another State, for the purpose of selling them in the latter; are they then being kept by him for the purpose of sale, within the meaning of the statute? We think not; for though in a general sense he keeps such liquors for the purpose of sale, it is not the purpose for which he is keeping them in this State,—the purpose for which he keeps them here being not sale, but transportation. If such a person were complained of for illegal keeping, the charge would be that in some particular town he did, without lawful authority, keep the liquors for the purpose of sale, and he could truly reply that he did not keep them in that town for that purpose, and was therefore not guilty. The same construction will hold if intoxicating liquors are kept in this State for storage simply, though they are intended to be ultimately carried elsewhere and sold. But if keeping in either of these ways is not prohibited, then the operation of § 1, in so far as it can interfere with commerce with foreign Nations and among the States, is extremely limited. We do not say, however, that liquors may not be kept in this State for the purpose of sale in other States, in such way that the keeping would violate § 1. For instance: If intoxicating liquors were kept in this State to be sold on orders received or procured in other States, or to customers coming from other States, we think the keeping would be within the prohibition, even though the sales were meant not to be completed in this State. In such a case, the place of keeping would be the headquarters of the traffic, or at least the place from which, if not at which, the sales would be made. Making the sales would be the purpose for which the liquors were kept there, and we think the General Assembly must be held to have intended that no such place should be tolerated in the State. But no other way occurs to us in which liquors not intended for sale in this State can be kept here so that the keeping would be within the prohibition of § 1. The question presented, then, is whether, because such keeping is prohibited, § 1 is in conflict with the Constitution of the United States.

It will be seen that the question, as presented, assumes that the prohibition, if it be unconsti-

tutional as it applies to intoxicating liquor kept in this State for sale elsewhere, is likewise unconstitutional as it applies to such liquors kept in this State for sale within it. This is not clear to us. *State v. Amery*, 12 R. I. 64. Nor are we clear that the question presented can be properly raised by a mere motion to quash. *Mugler v. Kansas*, 123 U. S. 623 [31 L. ed. 205]. But passing these points, which have not been argued at the bar, we proceed to consider the question in the larger way in which it has been discussed.

We deem it perfectly well settled, by the decisions of the Supreme Court of the United States, that the several States have power to restrict and even to prohibit altogether the sale of intoxicating liquors for use as a beverage within their borders, and consequently, of course, to prohibit the keeping of them for sale to the same extent. *Cooley*, Const. Lim. 582, 583, and cases cited; *Mugler v. Kansas*, *supra*. The power to do this has been denominated a police power; a power not delegated to the general government, but remaining to the States, to enable them to regulate for their own welfare, as they understand their welfare, their internal or domestic concerns. The power is signally exercised in legislation designed to promote popular education; to protect the public health and morals; to punish and prevent crime; to alleviate and prevent pauperism; and, especially, to diminish and prevent the demoralization and impoverishment, and the numberless vices and miseries which are the sure concomitants and consequences of a free traffic in intoxicating liquors, by restraining or prohibiting it. The power was exhaustively discussed and considered in the Supreme Court of the United States in the *License Cases*, 46 U. S. 5 How. 504 [12 L. ed. 256], with particular reference to its exercise in legislation for the restraint of the liquor traffic; and while the justices did not fully agree in the reasons given by them for decision, they did agree in fully affirming the authority of the States within their own borders. *Chief Justice* Taney, and *Justices* Catron and Nelson, rested their judgment distinctly on the ground that the power of the States to pass restrictive laws in the matter was complete, notwithstanding the laws might indirectly interfere with interstate commerce, so long as they did not come into conflict with any law or regulation of Congress; and some of the other justices, enough to make a majority of the court, unless we misunderstand their opinions, concurred with them, though they preferred to take their stand upon a still deeper and broader ground of State rights. If this doctrine of *Chief Justice* Taney, and *Justices* Catron and Nelson, be correct, and is still adhered to by the Supreme Court of the United States, the defendant's contention of course cannot prevail, for it is not pretended that there is any federal regulation of interstate commerce with which the provisions under which he is complained of comes into conflict. But not to put too much reliance on this view, we will proceed to the broader consideration of the question:

As we have seen, there can be no doubt of the power of the States (under the decisions of the Supreme Court of the United States) to prohibit altogether the sale of intoxicating liq-

uors within their borders, and yet it is perfectly evident that such a prohibition does obstruct the freedom and lessen the extent of commerce among the States. For example: A manufacturer of intoxicating liquors of another State could not send the product of his manufactory to a prohibitory State and sell it there. He could not even receive orders for his liquors from such a State, and fill them, if a delivery in such State were necessary to a complete compliance with the orders. Nor could a person, living in another State, go into such a State and purchase intoxicating liquors there to carry home with him, though it might be very advantageous for him to do so if he were not prevented by the law. In the *License Cases*, 46 U. S. 5 How. 504 [12 L. ed. 256], a law of New Hampshire, under which a sale in that State of gin imported from Boston was punished, was held not to be void for interfering with the power of Congress to regulate commerce among the States, though the gin was sold in the cask in which it was imported. In the same case, in reply to the argument that the restrictive legislation tended to lessen importation, *Mr. Justice McLean* said that "A law of a State is not rendered unconstitutional by an incidental reduction of importation; and especially not when the State regulation has a salutary tendency on society, and is founded on the highest moral considerations." And he further remarked: "When, in the appropriate exercise of their federal and state powers, contingently and incidentally, their lines of action run into each other, if the state power be necessary to the preservation of the morals or safety of the community, it must be maintained." The doctrine of the justices who took the broader view, if we rightly understand their opinions, was that a state law, passed in good faith for the suppression of intemperance or of the traffic in intoxicating liquors, could not be condemned as unconstitutional because it might incidentally, among its effects, hamper the freedom or lessen the extent of interstate commerce. And see *State v. Peckham*, 3 R. I. 289. The question which we now propose to consider is whether this State has transcended the power thus conceded to it, by the enactment under which the defendant was complained of.

In considering this question we will, in the first place, recur to a matter to which we have already adverted, namely: that the quantity of intoxicating liquors kept in this State solely for the purpose of selling them elsewhere must, from the nature of things, be very small. For what is there to induce any person who has liquors to sell in other States to keep them in this State for that purpose? Some such per-

sons there may have been enacted under the prohibitory law into effect, but that law did keep for the purpose of sale and there was ample time to do so kept before this present law. There might be such persons selling of intoxicating liquors but manufacturing is prohibited. In its practical operation the enactment can have but interstate commerce.

In the second place, we repeat the prohibition is, it is likely to be; for if intoxicating liquors be lawfully kept in the State of sale elsewhere, the fact that they are kept is liable to be availed of as a pretext under which to cover a sale for sale in this State. The State cannot afford a favorable ground for such an evasion or circumvention. Moreover, if the traffic be allowed, it will permit itself to be the starting point of the evil shall proceed into other States, out some loss of the moral principle which it must preserve in its laws that popular homage to out which they cannot be effective. Certainly the State would have to follow its own judgment, and has done in this matter, unless it is croaches unwarrantably upon Congress; and in that regard, it is difficult to see how a law which forbids the sale of intoxicating liquors in one State in another interferes with interstate commerce any more than a law which forbids such liquors in one State, which is imported from another; and yet, a law of the latter description to be a proper exercise of the power of the States by the Supreme Court. And see *Pearson v. Ingersoll* (Iowa), 34 N. W. Rep. 1.

We see no reason for doubt that such a law was passed in perfect good faith for the purpose of carrying the prohibition into effect, or to suppose that, with foreign or interstate commerce, interference is other than a mere defect or consequence. It is our duty to maintain it as constitutional until we are convinced it is unconstitutional. We are of the opinion that the provision of our Prohibition law which the defendant has transgressed, is unconstitutional. We sustain the judgment of the lower court, and send the case back to the lower court for sentence.

Order accordingly.

THE INTERSTATE COMMERCE COMMISSION.

KENTUCKY & INDIANA BRIDGE CO.

LOUISVILLE & NASHVILLE R. R. CO.

(No. 118.)

ABSTRACT of Answer filed February 20, 1888. See Petition *ante*, 708.

Messrs. Lyttleton Cooke and Edward Baxter, for respondent:
LATER S.

Respondent admits that it operates a line of railroad and branches through Southern States, Florida and to New Orleans. It assumes it to be true that the petitioners are as stated in the petition. The petitioner's railway extends from the end of petitioner's bridge at Louisville to respondent's rail-

has a mere physical connection therewith, but denies that it consented to such connection, and states, that when petitioner first applied for permission to make said connection respondent refused to allow the same, but that, upon petitioner taking legal steps to compel respondent to allow said connection, respondent was advised by its counsel that under its charter it could not prevent the connection being made, though, after such physical connection was made by petitioner, respondent could not be compelled to make the necessary contracts for an interchange of traffic between the two companies.

Respondent states that it has four freight yards in or near the City of Louisville; that its third or South Louisville yard has a passenger platform, but no freight handling facilities except to switch in car load lots; that at its fourth or Ninth Street and Broadway yard it receives all cars destined to Louisville proper or to points north of the Ohio River and which are to cross said river at Louisville, and at this yard it receives all freight coming from the north crossing said river at Louisville, as well as all freight originating at Louisville proper, except such as is received and delivered on side tracks under special contract, and said yard is its main freight yard where ample facilities for receiving and delivering freight are provided; that said connection with petitioner's railway is between the third and fourth yards and is about one mile distant from the fourth and two miles distant from the third; that it is true respondent has certain switch engines, which at certain times of the day run between yards Nos. 3 and 4, passing such point of connection; but only in this sense can it be said that said connection is located in respondent's freight yard.

Respondent admits that at said connection cars may be switched from one railway to another, but denies that said connection affords easy and convenient means of interchanging traffic or that such interchange can be made without using respondent's terminal facilities by petitioner or its connections, and states that the mere switching of freight cars from petitioner's to respondent's track, or *vice versa*, is but the inception of the interchange of traffic, as buildings, platforms and other structures, officials and clerks are necessary to such business, and no such facilities are afforded by either petitioner or respondent at said point of connection; and also that neither, petitioner nor respondent has any land at said point upon which depots, platforms, etc., could be constructed, but that at Louisville respondent's facilities are fully adequate, have been provided at great cost, and it is unwilling to incur further expense in that regard. Respondent does not know whether petitioner is or is not a common carrier, but that it is certainly true that petitioner is distinctively known as a Bridge Company, that it has not one single freight car, and though it claims to operate a railway, respondent does not know whether it assumes any obligation for the transportation of freight, or makes charges therefor, other than certain tolls it may charge as a Bridge Company for switching cars across the Ohio River; respondent believes it to be true that petitioner transports passengers wholly by

railroad between the Cities of New Albany and Louisville, but petitioner has never offered any passengers for transportation over its road, and whether petitioner is subject to the Act to Regulate Commerce is a question respectfully referred to the Commission; respondent admits that it is a common carrier, but does not undertake for the carriage of freight or passengers beyond its lines, though it issues bills of lading and sells passenger tickets over other roads, acting as agent therefor and guarantying rates over the same, and whether respondent is subject to said Act to Regulate Commerce is a question it is not called upon to answer; but it is not true that it holds itself out to the public as subject to said Act.

Respondent denies that prior to or at the time of the filing of the petition, the petitioner was receiving large amounts or any amount of freight from the Ohio and Mississippi Railway Company or the Louisville, New Albany & Chicago Railway Company for transportation over its bridge and railway to points on beyond or *via* respondent's road, or that petitioner tendered large quantities of freight to respondent at the said connection in Louisville for transportation over respondent's road and connections to destination, on the contrary, up to the time of filing said petition the said railway companies transported their freight across the Ohio River on the Louisville Bridge and tendered it to respondent at its yard on the corner of Ninth Street and Broadway; it is true that petitioner did bring to said connection a few cars of freight and pushed them on respondent's track, which cars it may have received from certain companies or individuals at New Albany and some of respondent's agents or employees, not apprised of the impropriety thereof, received said cars and shipped them south, but the number of such cars did not exceed one hundred, and the practice was stopped as soon as known by respondent's superior officers; respondent admits that during October and November, 1887, certain persons directly or indirectly connected with petitioner caused certain shipments to be made from Birmingham and probably other points South and caused bills of lading to be marked *via* petitioner's road or bridge; but respondent's agents were unaware of the impropriety thereof—and at Louisville other subordinate agents delivered the same to petitioner without respondent's superior officers' knowledge; and it is denied that in any other sense has freight been received for transportation to Louisville and thence over petitioner's railway to destination; it is denied that the interchange of traffic between petitioner and respondent has ever been habitual or authorized, and it is untrue that such interchange would be reasonable or proper, for it would be unreasonable and improper to require respondent to go to further expense to handle the same, while it has its present facilities at its four yards to handle all the freight traffic at this point. It is true that respondent refuses to interchange traffic with petitioner at said point of connection, and it is also true that it affords facilities for such interchange of traffic passing over the Louisville Bridge Company's bridge; but it does not afford such facilities for the last named traffic at said point of connection or at

any other point within a mile of the point where petitioner has seen fit to connect with respondent's track, on the contrary, the said interchange is done in respondent's said freight yard at 9th Street and Broadway, and respondent denies any violation of law or conspiracy with said Louisville Bridge Company or railroad companies therein interested.

Respondent further says it is true that there are two bridges across the Ohio River at Louisville, that on June 5, 1873, respondent entered into a written contract with said Louisville Bridge Company, the Jeffersonville, Madison & Indianapolis Railroad Company and the Ohio & Mississippi Railroad Company, to the effect that freight from the north coming to respondent should cross said river over said Louisville Bridge; that to interchange traffic with petitioner would be a violation of said contract and of other contracts between respondent and other parties which were made in good faith and in the interest of its patrons, that compelling all freight to come over said Louisville Bridge is not alone the sole reason of respondent's refusal to interchange traffic with petitioner, but that other reasons are: 1, to maintain its contract obligations; 2, to avoid a useless and expensive transfer station at said connection; 3, to secure the construction of a Union Depot at 10th Street and Broadway for the use of all railroads at Louisville; 4, that respondent's tolls and charges over said Louisville Bridge are lower than they can be via petitioner's bridge;—and there are others not now mentioned.

Respondent therefore shows that prior to the construction of said Louisville Bridge all freights, mails and express goods had to be ferried over said river, which entailed great expense, serious damage from ice blockades in winter and great detriment and inconvenience to the public; that it was concluded to build said bridge and respondent subscribed \$300,000 of the capital stock of the Louisville Bridge Company, said bridge being built at a cost of \$3,300,000, represented by \$1,000,000 paid up capital, and \$800,000 mortgage bonds bearing 7 per cent interest, payable semi-annually; that on June 5, 1873, aforesaid a written contract was entered into between the Louisville Bridge Company of the first part, the Jeffersonville, Madison & Indianapolis Railroad Company of the second part, the Ohio & Mississippi Railroad Company of the third part, and respondent, of the fourth part, whereby it was agreed that the tolls and charges for the use of said bridge by said railroad companies should be fixed per ton or per passenger or per car engine or other means of transportation at a sum that should not exceed sufficient to pay the cost of repairs to said bridge, a 6 per cent semi-annual dividend upon said capital stock, interest upon said bonds, a sinking fund sufficient to pay said bonds at maturity, an amount sufficient to keep up the corporate organization, including taxes; and in the event of the bridge being destroyed by casualty, additional 7 per cent bonds were to be issued by said Bridge Company, and sufficient charges were to be made against said railroad companies to meet the interest and sinking fund upon such additional bonds; it was provided, also, that said tolls and charges

LEVIN B.

should be yearly reduced reduction of the interest, operation of the sinking should be the same to one and further that tolls at other railroad companies, if paid by the original cost

It will be seen that as as new decreases respondent are proportionately diminished are nearly paid off and it is during the current year they Resp before found using arrangement Com endeavor railr as to use also respondent want if petition Ohio & Mississippi Railroad other companies to withdraw from, or if it can compel re a portion of its traffic to y it will increase proportion tolls on said Louisville although petitioner's charges than those of the Louisville as respondent is obliged by t a certain annual sum to the pay, whatever petitioner's they would represent an extra upon the traffic, which respondent to pay. The said Louisville pie capacity to accommodate al said river at Louisville, and convenient to the public, and low as those of petitioner, persons may build another bridge river they have no right to co to retire from its contract with Bridge Company.

And respondent further says petitioner is its avowed enemy; and move in the direction of requ to take traffic from its ally and give it to its enemy and respondent interchanges traffic sections or with said Louisville company only in pursuance of agreement duly entered into, and th had any agreement with petitioner interchange of traffic at any that under its charter its roads by any company or person or its consent, and that petitioner any permission to use any part to transport persons or property

A true copy of said contract 1873 is attached marked Exh 11

And respondent prays to be

Ruben L. RICE et al., Partners
inson & Withrop,

WESTERN NEW YORK
VANIA R. CO. and G. C.
Receiver of the Buffalo, New
delphia R. R. Co.

(No. 110.)

A BETRACT of complaint filed
A 1880, charging unjust and

for the transportation of petroleum, and discrimination in favor of the Standard Oil Company.

Mr. M. J. Heymang, for petitioners.

I. Petitioners are co-partners doing business under the firm name and style of Rice, Robinson & Witherop, at Titusville, Pennsylvania.

II. Petitioners are now, and have been for a long time past, engaged in refining petroleum, shipping and selling the same when refined, and own extensive works at Titusville. They have an agency or branch house at Buffalo, New York, to which they ship large quantities of refined oil each month from their works in Titusville, over the Western New York & Pennsylvania Railroad, which is a line of railroad owned and operated by the Western New York & Pennsylvania Railway Company, between Oil City, Pennsylvania, and Buffalo, New York, running through Titusville.

III. The Western New York & Pennsylvania Railway Company is successor by the re-organization to the Buffalo, New York & Philadelphia Railroad Company. G. Clinton Gardner was appointed receiver of the latter corporation on or about May 20, 1885, and operated the said railroad from that time as such receiver until within a few weeks last past. Petitioners are not informed as to the precise time when the receivership of the said Gardner ceased and the property held and operated by him as such receiver was surrendered and turned over by him to the said Western New York & Pennsylvania Railway Company.

IV. From the month of February, 1883, to the day that the Act of Congress entitled "An Act to Regulate Commerce" went into effect, namely: April 5, 1887, the corporations and persons operating the said line of railroad during said period, including the said Receiver during the time he was Receiver prior to said date charged, levied and exacted from petitioners as toll or freight charges for transporting refined oils in barrels from Titusville to Buffalo, 25 cents for each barrel of oil or, if reckoned by weight, at the rate of 64 cents per hundred weight, each barrel of oil being taken and deemed to weigh 400 pounds. Under this charge petitioners were allowed to place fifty barrels of oil as the minimum number on each car, which was just sufficient to fill the bottom of the car and did not require placing one barrel upon another. The said charge for said service was an excessive one and beyond a just and reasonable one but was submitted to by petitioners because they were without redress as they believed. Upon the day that the Commerce Act went into effect, the said receiver raised the rate between Titusville and Buffalo upon refined oil from 25 cents per barrel as aforesaid to 34 cents per barrel reckoning by weight from 64 cents per 100 pounds to 84 cents per 100 pounds and required petitioners to ship in each car not less than sixty barrels filled with oil, which requires that ten barrels be placed upon and over those placed in the bottom of the car, which entails upon petitioners extra and greater expense in loading said oil, requires more time and care in loading and necessitates expense in the purchase of lumber and nails in bracing, fastening and securing

said ten barrels that are placed upon the others. Oil cannot be safely transported when there are barrels placed one upon another; there has been and doubtless will continue to be loss to petitioners from breakage and leakage as a direct result from this requirement or petty exaction. The extra work and expense above mentioned amounts to at least \$1 per car. This does not include anything for loss from leakage or breakage. Before said date of April 5, 1887, the said Receiver and the corporations operating said railroad before him while the rate was 25 cents per barrel as aforesaid received as carrying charges for and upon each car of oil shipped by petitioners from Titusville to Buffalo, \$12.50 and since said date the said Receiver and the corporation which succeeded him, received and continue to receive for the same service \$20.40 per car.

V. The conditions are the same in every respect under which the said oil was carried for 25 cents per barrel and for which petitioners are now charged 34 cents per barrel, save in the matter of the minimum number of barrels to a car as aforesaid, which is more favorable to the railroad company and is more onerous, burdensome and vexatious to petitioners.

VI. The said Receiver, during his entire receivership, and the said Western New York & Pennsylvania Railway Company since said receivership ceased, have for precisely the same service for which they have exacted and charged and do exact and charge from petitioners the rate or toll of thirty-four cents per barrel charged and received and do charge and receive when transporting oil to Perth Amboy, a shipping port on the eastern coast of New Jersey, twelve cents per barrel or, when reckoned on the weight, three cents per 100 pounds. The oil when so transported goes to Buffalo over said railroad and from thence is carried by the Lehigh Valley Railroad Company to Perth Amboy.

VII. The said charge of thirty-four cents per barrel for the said service is unjust and unreasonable and is in violation of the provisions of the said Act of Congress and unlawfully discriminates against the said City of Buffalo and the traffic of petitioners destined for Buffalo. Petitioners ship nine-tenths of all the refined oil that goes to the said City of Buffalo from the oil regions of Pennsylvania. Petitioners also say that the regulation, requirement or exaction of 60 barrels to the car as a minimum is as refers to said traffic unjust and unreasonable and in violation of the provisions of the said Act.

VIII. Petitioners believe that for the service aforesaid the rate or charge of twelve cents per barrel with 60 barrels to the car would be a just and reasonable charge. Petitioners prefer to pay 14 cents per barrel for said service with minimum at fifty barrels to the car, but if the minimum must, for any reason, be held at 60 barrels to the car, then twelve cents per barrel is all that should be charged for said service.

IX. Petitioners complained to the said Receiver and the Western New York & Pennsylvania Railway Company, his successor in the control of said railroad, about said charges, exactions and regulations and objected and protested against the same many times as un-

just and unreasonable, but without avail. They asked the general freight agent of the said railroad on October 12, 1887, if the said rate or charge for the said service was not raised from twenty five cents per barrel to thirty four cents per barrel at the request and dictation of the Standard Oil Company. The answer to said question was, in substance and effect, that the rate or charge for said service was so raised and increased at the request and dictation of the Standard Oil Company; that said Standard Oil Company was a large shipper of freight over their road and branches and that (meaning the railroad management) felt obliged to comply with the wishes of the said Standard Oil Company in these matters and obey its hints, as a failure to so comply and obey would result in a loss of business from said Standard Oil Company to said road.

X. The Standard Oil Company is a corporation engaged in the same business as petitioners and is a rival of petitioners in said business. Petitioners charge that the said Standard Oil Company has for years past and still does exert its influence with and over said railroad, its management and officials to compel them to exact unjust, unreasonable and extortionate rates and charges and conditions of shipment from petitioners, and other refiners and shippers of oil in Western Pennsylvania, in order to injure, embarrass, cripple, and if possible, ruin their business. That the efforts of the said Standard Oil Company in this direction are unceasing and have heretofore and do now prevail with said railroad management and officials as well as with the other railroad companies operating in said region. That the rate or charge of twenty five cents per barrel for said service prior to April 5, 1887, instead of twelve cents per barrel, was due to the interference and dictation of the said Standard Oil Company with a view to injure the business of petitioners, and others.

XI. Petitioners shipped from Titusville to Buffalo aforesaid over the said railroad since April 5, 1887, to the 14th day of February A. D. 1888, 12,298 barrels of refined oil in 122 cars. Owing to lack of information petitioners are unable to state when said Receivership ceased, and are therefore unable to give the precise number of barrels shipped during said receivership, and the number shipped during the time that the Western New York & Pennsylvania Railway Company has had control of said road. Petitioners request the privilege of stating the number of barrels carried by each when the information shall be furnished them.

XII. Petitioners have sustained and suffered loss and damage by reason of the unjust and unreasonable toll, rates and charges herein complained of and the unjust and unreasonable conditions of shipment imposed upon their traffic as aforesaid, and the discrimination practiced by said Receiver and the said Western New York & Pennsylvania Railway Company against the said City of Buffalo and the traffic of petitioners as aforesaid since April 5, 1887, the sum of \$2,886.46 and that the interest thereon to the 14th of February A. D. 1888, amounts to about \$74, which is also claimed. And petitioners are continuing to sustain loss and damage each time a shipment is made. Petitioners request that they be allowed to state

amount of loss and damage during the time of said receivership when the facts are known each respondent with his or

Petitioners pray that the Gardner, Receiver, and the York & Pennsylvania Railroad be required to mail a number of barrels of oil on April 5, 1887, for petitioners to Buffalo; and that the final hearing of petitioners be as early as shall be just and proper; and that the York & Pennsylvania Railroad be notified and ordered to cease the violations of said Act and the said Receiver and said Western New York & Pennsylvania Railway Company be ordered to, and further reparation as shall be proper, and that such further proceedings be had as shall be proper.

William H. HEA

GEORGIA R. R.
(No. 46.)

1. Passengers paying the same on the same railroad in white or colored, are entitled to the same equality of transportation to the character of the service they travel, and the conveniences supplied.
2. Separation of white and colored passengers paying the same fare is not unlawful, if cars and conditions equal in all respects to both, and the same care and attention of passengers observe.
3. By requiring the petitioners to pay a first class fare to a car set apart for colored passengers, with accommodations inferior to the car for white passengers in the same train who pay the same fare, and without the protection of the Georgia Railroad, the Georgia Railroad subjected him to undue and able prejudice and discrimination, a violation of the third section of the Act to Regulate Commerce.

(Heard Dec. 12, 1887; Decided

COMPLAINT based upon the fact that a colored passenger from a car was subjected to discrimination. See pleadings, ante, 498.

Messrs. J. W. Cromwell and others, for petitioner.

Mr. Joseph B. Cumming,

REPORT AND OPINION OF THE
Scheenmaker, Commissioner
The issue presented by the p

*Headnotes by COOLEY, Chairman

proceeding is whether the petitioner was subjected to undue or unreasonable prejudice or disadvantage upon the defendant's road in being required, while holding a first class ticket, to travel in a compartment of a car allotted to colored persons and inferior, in its accommodations and comforts, to the car for white persons in the same train.

The undisputed facts are in substance that the petitioner, a colored person who resides at Charleston, South Carolina, and is a minister of the African Methodist Episcopal Church, was in Ohio on business, and, wishing to return home, purchased at Cincinnati, on June 16, 1887, a first class through ticket from Cincinnati, Ohio, to Charleston, South Carolina, for \$19.55, the regular price of such tickets, upon the Cincinnati Southern, the East Tennessee, Virginia & Georgia, and the Georgia Railroads, which ticket was honored by all of those roads. The petitioner, with other colored persons, left Cincinnati on that day and reached Atlanta, Georgia, on the evening of the 17th of June and remained there until the next morning. In the journey to Atlanta over the Cincinnati Southern and the East Tennessee, Virginia & Georgia Railroads no distinction was made in respect to white and colored passengers, but both were allowed seats in the same cars. From Atlanta to Charleston the journey was over the defendant's road. On the morning of June 18 the petitioner took the first train out from Atlanta to Charleston, which consisted of two passenger cars besides the locomotive and baggage car. By the regulations of the Company the rear car was allotted exclusively to white passengers. The other car was divided by a partition at or near the center into two compartments, with an open space of about a foot in width between the top of the partition and the ceiling of the car, and there was a door in the center. The rear apartment was used as a smoker for passengers of both colors. The forward compartment was used for colored passengers of both sexes, having only one closet, and the compartment being often full of smoke. Train hands and laborers with their tools sat in this compartment, and it was not provided with iced water, the seats were not upholstered, and there was no carpet on the floor. In the white passengers' car the seats were upholstered, the floor carpeted, and there was iced water. The car in which the colored compartment is located is popularly termed a "Jim Crow car."

When the petitioner took the train at Atlanta he attempted to enter the rear car, but was prevented by the conductor and directed to go in the colored car, which he did. The compartment for colored passengers was dusty and dirty, and at times as full of smoke as the adjoining compartment, in which men were smoking. There were many colored passengers in the compartment, including about a dozen females. The petitioner remonstrated with the conductor against the condition of the car and requested permission to ride in the other car. This the conductor refused, and told him that that was the colored car and he must ride in it or walk; that he (the conductor) had to obey orders or lose his place. On the journey white men came in the compartment with

whisky and drank it from the glass used by the passengers for water, and indulged in rude and profane language. On the request of the petitioner the conductor caused these men to leave the compartment.

It appears by the testimony of the general manager of the defendant that the Georgia Railroad Company has established rules and regulations in regard to the classes of passengers and cars in which they shall travel; that white passengers must be excluded from the compartment reserved for colored passengers unless the train is so crowded that seats cannot be provided for them elsewhere, and that smoking is not allowed in the compartment provided for colored passengers. He further states that the accommodations are substantially the same for colored as for first class white passengers; that the interests of the colored as well as white passengers in Georgia are better observed by separating them, and that the colored travel on the defendant's road is limited, not sufficient to justify separate cars, and hence the plan of compartment cars; that on special occasions, when large numbers of colored persons travel, one or two cars are furnished from which white persons are excluded. These rules are made by the general manager and are only oral.

It appeared in the case that in South Carolina and some other States, where a large colored population resides, no separation of white and colored passengers is required on railroad trains, but first and second class cars are provided with lower rates of fare for the second class, and that both colors may travel in cars of either class, as they may prefer.

Upon the testimony in the case there is no room for doubt that the petitioner and those of his color who traveled with him on the train in question were subjected to undue and unjust prejudice and disadvantage, and that the discrimination was made solely on account of color.

The petitioner's conduct and bearing, so far as the testimony shows, were unexceptionable. He is a minister of the Gospel, in apparently good standing in a respectable religious organization, and is evidently a man of education and decorous behavior. His subjection, therefore, to the inferior accommodations and discomforts of the colored compartment amid fumes of tobacco smoke and whisky, while the Railroad Company had his money for a first class passage, enjoyed by white passengers but denied to him, was a palpable violation of the third section of the Act to Regulate Commerce, a clear breach of duty under the contract of carriage, and an indignity to the petitioner, for which no extenuation was shown.

The question of discrimination on the ground of color has been before the Commission upon a different state of facts in the case of *Council v. Western & Atlantic R. Co.* 1 Inters. Com. Com. Rep. 339, ante, 292, and the ruling in that case that the forcible ejection of a colored passenger who had paid a first class fare from the car in which he was seated, which in that case was designated a ladies' car, and compelling him to ride in a compartment car similar to the one in this case, where the colored passengers were con-

gregated in half a car adjoining a smoking apartment, annoyed by tobacco smoke and other improprieties, subjected him to undue and unreasonable prejudice and disadvantage under the third section of the Act to Regulate Commerce, is entirely decisive of the question here presented, and must be followed in this case.

That decision was based upon the principles of justice and equality in the transportation of persons and property embodied in the Act, and resting upon no less a foundation than the Constitution of the United States.

Equality of civil and political rights, and the equal protection of the laws, with no discrimination except for misconduct or crime, are subjects not open for discussion. They are fundamental principles of government and jurisprudence. Whoever attempts to deny these principles in their just application puts himself in antagonism to the established law of the land. Questions may arise with regard to the extent of the application of these principles, and the manner in which effect shall be given to them when considerations are involved arising out of facts that laws cannot change.

The undeniable fact of a difference in color is one for which government and law are not responsible. It exists by a fiat transcending human knowledge, and has existed through the epochs of history. It should be recognized and dealt with like other unchangeable facts, justly always, but with discretion and reason. When it becomes an element in a judicial controversy one color or race has no exclusive right to recognition nor ground for special favor over the other, but white and black alike are entitled to fair and impartial consideration; and the principle of equality of rights is to be applied with even handed justice, but without unnecessary extension beyond its legitimate purview. It is not, therefore, with sole regard to the wishes or conceptions of ideal justice of colored persons, nor only with deference to the prejudices or abstract convictions of white persons, that a practical adjustment is to be reached, but with enlightened regard to the best interests and harmonious relations of both, constrained by long past events for which none now living are responsible to make their habitations and support themselves as best they can under the same government.

The disposition of a delicate and important question of this character, weighted with embarrassments arising from antecedent legal and social conditions, should aim at a result most likely to conduce to peace and order, and to preserve the self respect and dignity of citizenship of a common country. And, while the mandate of the statute must be our paramount guide, we may be assisted by the knowledge familiar to all of past and present circumstances relating to our diverse population, and such lights of reason and experience as surround the question, in giving effect with the least amount of friction to the purposes of the law.

It being manifest upon the facts of this case that by the discrimination between white and colored passengers, and the character of accommodations furnished to colored passengers, the petitioner was subjected to unjust preju-

INTER S.

dice and disadvantage under the statute, the duty of the carrier to make such accommodations is deemed appropriate.

But the arguments which subject itself authorize, further consideration. The defendant, a public carrier of the State of Georgia, at a place where the colored population is large, that renders separation on the ground of color a safeguard against disturbance for good reasons, it is obvious that two colors should be equal in accommodations, and that each color should have no occasion to unfavorably modify their mode of travel. That of white travelers in both pay the same price for less than this will comply with the requirement of the Law. The cause not founded on malice that may be offensive or in right to separate in different cars who pay the same fare, the equality of furnishing equal accommodations and of protection from

A rule requiring separate cars invites officious interference of meddlesome persons who, by strong prejudices and rights of others, are doubtless and law observing in their reluctance than the authorized employer in the responsible discharge. If, therefore, the rule is sound it can only be done by showing protection is afforded to each against assaults and indignities in equality in separate cars is imperative.

It is not surprising that it persons as irony to be put in a car, popularly designated as of which only half is at the ability to interruptions and to call that equality of accommodations. It is said in behalf that the Company is not responsible for the designation of the less is so; but the defendant the character of the car, at which it is used. Educated colored persons, like the person therefore for complaining conditions of transportation violated the just and equal accommodation which they pay and to which under the Law.

To what extent a public carrier that renders separation in different cars does not appear. Whether or local testimony in this case show. The practice, however, the separation by assigning passengers to a segment of a car for different points, while charging the same fare, is one that violates the provisions of the law, and is

In many States where railroads and colored persons less nu-

tion or distinction is made; but passengers paying the same fare occupy the same cars in common, and questions of discrimination or disputes on the ground of color do not occur.

In South Carolina, according to the evidence and as was alleged in argument, in the States of Virginia and North Carolina, where the colored population is large, no separation is made, but two classes of cars are provided with some difference in the fare, corresponding with the quality of the car; and persons of both colors may purchase tickets for and ride in either class of car according to their inclination or ability to pay, and it is said that the method works well and is generally satisfactory. A method like this does not appear to be in violation of the Law.

The argument in behalf of the petitioner was directed largely to the obliteration of all distinctions in transportation and forcibly urged identity of white and colored passengers paying the same fare as the only absolute equality under the law. The case of *Washington etc. R. Company v. Brown*, 84 U. S. 17 Wall. 445, [21 L. ed. 675] was cited as supporting this proposition. That case arose under special Acts of Congress applying to the Alexandria & Washington Railroad Company, chartered by the State of Virginia, by which the company was authorized to extend its road into the District of Columbia and to connect with the Baltimore & Ohio Railroad. The privilege was accompanied with the provision "that no person shall be excluded from the cars on account of color."

The company provided separate cars for white and colored passengers, claimed to be equally good, and charged the same fare for either car. A refusal by the company to permit a colored passenger to ride in a car with white passengers was held by the court to be a violation of the enactment "that no person should be excluded from the cars on account of color." Assuming that provision to have been properly interpreted (although the court concedes that the words taken literally might have borne the interpretation put upon them by the railroad company), it is not decisive of the point presented under a statute materially different.

The statute governing this case declares to be unlawful and forbids undue or unreasonable preference or advantage to any person or the subjection of any person to any undue or unreasonable prejudice or disadvantage.

It by no means follows that separation into cars of equal quality and where the same protection is accorded is undue preference to one class of passengers or undue prejudice to the other class. Circumstances and conditions may exist to justify such separation, and it may be in the interest of both that it should be done.

The same section applies the same principles to the transportation of property as to persons, but no one would seriously insist that the statute requires all property of the same kind or all kinds of property to be carried in the same car. If like property receives like transportation and at like rates, the carrier's duty in that regard is performed. The number of cars used for the purpose is immaterial.

Identity, then, in the sense that all must be

admitted to the same car and that under no circumstances separation can be made, is not indispensable to give effect to the statute. Its fair meaning is complied with when transportation and accommodations equal in all respects and at like cost are furnished and the same protection enforced.

The order of the Commission, on the facts of the case, is that the Georgia Railroad Company, by requiring the petitioner to occupy a seat in a half car deficient in comforts and conveniences, subjected him to undue prejudice and disadvantage in violation of the third section of the Act to Regulate Commerce, and that the said Railroad Company cease and desist from subjecting colored passengers to such undue and unreasonable prejudice and disadvantage, and that so long as its rule separating passengers is maintained its duty is to furnish for all passengers paying the same fare, cars in all respects equal and provided with the same comforts, accommodations, and protection for travelers.

George RICE

v.

LOUISVILLE & NASHVILLE R. R. CO.;
ST. LOUIS, IRON MOUNTAIN & SOUTH-
ERN R. CO.;

MOBILE & OHIO R. R. CO.;

CINCINNATI, NEW ORLEANS & TEXAS
PACIFIC R. CO.;

CINCINNATI, NEW ORLEANS & TEXAS
PACIFIC R. CO. and ALABAMA GREAT
SOUTHERN R. CO.;

MISSISSIPPI & TENNESSEE R. R. CO.;

NEWPORT NEWS & MISSISSIPPI VAL-
LEY CO. and LOUISVILLE, NEW OR-
LEANS & TEXAS R. R. CO.;

NEWPORT NEWS & MISSISSIPPI VAL-
LEY CO. and ILLINOIS CENTRAL R. R.
CO.;

ILLINOIS CENTRAL R. R. CO.

(Nos. 51-53, 55-60.)

*1 When for a special traffic—*e. g.* the transportation of petroleum oils—a carrier provides rolling stock for one method, but does not provide it for another for which it publishes rates, but the shippers are expected to provide the same, the terms on which such rolling stock is to be provided should be uniform and be published with the rate sheets, and cannot lawfully be left to be the subject of bargain and of different terms in the case of different shippers.

2. It is properly the business of a carrier by railroad to supply the rolling stock for the freights he offers or proposes to carry; and if the diversities and peculiarities of traffic are such that this is not always practicable, and consignors are allowed to supply it for themselves, the carrier must not allow its own defi-

*Head notes by COOLEY, Chairman.

ciencies in this particular to be made the means of putting at unreasonable disadvantage those who make use in the same traffic of the facilities it supplies.

3. When two methods for the transportation of an article of merchandise are nominally offered by the carrier, for only one of which it offers rolling stock, and for the other of which the shipper must supply his own rolling stock at considerable expense, it cannot be said that the resort to the latter by the shipper is so far a matter of choice that he has no concern with the charges for transportation in the other mode. The man of small means being compelled to make this choice, by reason of the carrier's failure to supply rolling stock for the other mode, has a right to insist that the charges for transportation in the two modes shall be relatively just and equal.
4. When oil is transported in tanks permanently affixed to car bodies, the tank is to be considered as part of the car; and for oil transported therein the charge for transportation should be the same by the hundred pounds that the carrier charges for transportation between the same points, of barrels filled with like oil and taken in car load lots. The carrier is guilty of unjust discrimination if the shipper in barrels is charged a higher rate.
5. Neither the fact that the shipper in the one case supplies the rolling stock, nor the alleged fact—which is not found sustained—that for the tanks there is a greater probability of return loads, nor the further alleged fact that with barrel shipments there are greater risks to the carrier's property and that which it carries, can justify imposing upon the barrel shipments the greater burden.
6. Under this rule the carrier will be at liberty, and will be expected, to make to the owner of tank cars a reasonable allowance for their use.
7. When an important question is raised by the pleadings in a case, the determination of which will affect others quite as much as the parties before the Commission, but the parties give their attention almost exclusively to other questions, and neither by the evidence nor in argument supply the Commission with the information to enable it to be understandingly determined, the Commission will decline to decide it, and leave the parties to bring it forward again as they may be advised.

(Heard Nov. 21-23, 1887, Jan. 16-18, 1888; Decided Feb. 15, 1888.)

COMPLAINTS alleging unjust discriminations in favor of the Standard Oil Company and against complainant, in the transportation of petroleum oil. See pleadings *ante*, 376, 443, 478-483.

Mr. J. Randolph Tucker, for complainant:

ENTER S.

The present status of that freedom of interstate mal condition, and that directly or indirectly, although Congress has passed to it.

Robbins v. Shelby Co. U. S. 489, (30 L. ed. 694) there cited.

The constitutional dispute restraints on the free commerce necessarily attacked by it and acting *Non det qui non habet*. M corporations chartered by pair the freedom of this State can give no chartered its own powers.

But restraints on this may be imposed in many may be forbidden, or subject and rules which impair it, taxes and charges which may limit it; and such action is constitutional right, that of the clause which gives to the State the privileges and immunities in the several States.

(See dissenting opinion of case cited, *supra*.)

Tolls and freight charges reasonable and excessive may be forbidden, or subject of commerce. In other reasonable charge for use of constitutional, yet any such under color of compensation comes a regulation of commerce constitutional and void.

Railway corporations are power; they exercise public are the servants of the public plaintiff is one, coequal in right and of whom his customer with those of his competitor.

These Corporations are bound by their being to afford equal transportation to him and his competitors and their customers. Equality, is also the law for all alike, in the form and under rates, can be lawful which is able and legal equality of right freight rates is an easy cover wrong; and he relies on the tear away the cover and to effect the injustice and wrong.

It is admitted that diverser same quantity of oil in tank this is sought to be justified.

It is said the tank cars are shipper and can be carried in the carrier is the owner of is bound to furnish vehicles carrier and shipper are distinct in business, the one private and the other the vehicle for To allow one shipper to put road, which another cannot advantages to one which and in respect to instrumental utility, is to permit pooling of carrier and shipper, favors this Law and contrary to its

If it is answered that Rice could do the same, it is insufficient. A dealer with small capital has no surplus to furnish cars to carry his product; a large dealer has. If the cars which the carrier says are best for transportation are to be furnished at all, should they not be by him whose public duty requires him to do so for his business?

See *Ogdensburg etc. R. Co. v. Pratt*, 89 U. S. 22 Wall. 128 (22 L. ed. 827).

If tank cars are essential to just and equal rates, to safety and convenient transportation of oil, the railroad must permit them to all or allow them to none; or, if allowed to some, then with no advantage as to rates.

It is said there is now a return cargo in tanks, and comparatively none in cars which carry barrels of oil.

A common carrier is allowed to charge to every shipper what is just and reasonable for the service rendered, neither increasing because of incidental disadvantage nor decreasing because of incidental benefits. His rates are to be fixed on the basis of the general business he undertakes. A reasonable rate induces business; high rates drive it away.

A person has no right to demand a decrease of rate because others send by the same carriage nor has the carrier a right to increase the rate because nothing else is sent. A carrier publicly contracts to carry my goods, if none else goes, and he cannot charge me the full expense of the trip because mine only goes. He may give up his business because it does not pay, but he must perform the public duty he has undertaken as long as he is a public carrier.

Nor can he say, I will charge you for the return trip if I have no return cargo; that is the misfortune of his business, not my fault. I cannot be charged double because he has no cargo for his return trip, nor can he charge others less because he has a return cargo. There is no privity between me or the other shipper and the shipper of the return cargo which makes the charge to either of us depend on the accident of the return cargo. He must charge me and the other shipper the same price for the same service.

Messrs. W. B. Loomis and A. D. Follett also filed a brief, and *Mr. Franklin B. Gowen* made an oral argument, for complainant.

Messrs. Edward Baxter and L. H. Noble, for defendant Louisville & Nashville R. R. Co.

Messrs. John S. Blair, John F. Dillon and Wager Swayne, for defendant St. Louis Iron Mountain & Southern R. Co.

Mr. E. L. Russell, for defendant Mobile & Ohio R. R. Co.

Messrs. Edward Colston and Charles M. Cist, for defendants Cincinnati, New Orleans & Texas Pacific R. R. Co. and Alabama Great Southern R. Co.

Mr. Holmes Cummins, for defendants Newport News & Mississippi Valley Co. and Louisville New Orleans & Texas R. Co.:

The burden of proof is upon complainant to establish his charge that the rates on barreled oil are unjust and unreasonably high.

Fulton v. Chicago etc. R. Co. 1 Inters. Com. Rep. 375; *Harding v. Chicago etc. R. Co.* 1 Inters. Com. Rep. 375.

The charge made by a connecting line for

its service cannot be made a ground for complaint against another carrier *en route* whose proportion of the through rate is by itself reasonable.

Allen v. Louisville etc. R. Co. 1 Inters. Com. Rep. 586.

Defendants may demand for such service both the cost of performing it and a fair profit on the money cost of their plant; *Canada Southern R. Co. v. International Bridge Co.* 8 Fed. Rep. 190; *Louisville & N. R. Co. v. R. R. Commission*, 19 Fed. Rep. 679; to say nothing of a premium on their liability as insurers of goods as common carriers.

Angell, Carriers, § 127; *Ivatt, Carriers*, § 199; *Hutchinson, Carriers*, § 447; *Riley v. Horne*, 5 Bing. 217; *Manchester etc. R. Co. v. Brown*, L. R. 8 App. Cas. 703.

However difficult it may be for any court to pass on a question as to what is a reasonable charge by a carrier for any one article or class of freight, without at the same time having before it the entire tariff and volume of business of that line and the country tributary to it, yet where, as in the complaint under consideration, the particular rate or charge complained of is the very lowest charge made by these or other carriers for any such service, and besides, where, with far the larger part of the defendants' traffic charged at much higher rates, still no profit whatever is earned or remains to the benefit of the carrier after payment of operating expenses and interest, or rather its earnings are insufficient to meet its entire interest dues after payment of operating expenses—no court or commission can hesitate to say that the rates in themselves are not unjust nor unreasonably high.

The defendants, until grounds for suspecting misrepresentation appeared, had a right to rely upon the statement of the Standard Oil Company as to the capacity of the tanks, as true.

Dismore v. Louisville etc. R. Co. 8 Fed. Rep. 598; *Southern Express Co. v. St. Louis etc. R. Co.* 10 Fed. Rep. 869.

The facts that the Standard Oil people positively assured defendant, and induced it to believe that eighty-five barrels was a high average for the tank cars shipped by them over its road, while in fact the average capacity was 106 barrels of fifty-two gallons each, or 118 barrels of fifty gallons each, whatever they show of wrong done the defendants by the misrepresentations of the Standard Oil people, still wholly fail to sustain complainant's charge of being subjected to unjust prejudice and disadvantage for the benefit of the Standard Oil Company.

Barrel oil is charged 6 $\frac{1}{4}$ mills per ton per mile, against 5 $\frac{1}{4}$ mills per ton per mile charged on tank oil from Louisville to Vicksburg, while the former pays 4 $\frac{1}{4}$ mills per ton per mile to New Orleans, against the latter paying four mills. A difference of $\frac{1}{4}$ mills per ton per mile against barreled oil to Vicksburg, and of 4 $\frac{1}{4}$ mills per ton per mile against the same oil in New Orleans shipments.

The different circumstances and conditions about these two modes of carrying oil fully justify these differences in the rates, viz.: the carrier furnishes the car for transporting the barrel oil, while the shipper supplies car and tank for carriage of tank oil, and that as

justice as between the competitive and non-competitive points seemed, in the opinion of the Legislature, to require it.

It is evident from the testimony given by some of the witnesses that the equalization of rates by the defendant as between Danville and the smaller towns on each side of it has, in the minds of some parties, been regarded as a grievance. Thus the witness, John W. Caton, in answer to the question, "Is Danville regarded and held by the Richmond & Danville Railroad Company as a competitive point for traffic?" said, "It is not. I was informed by the general freight agent, in the presence of another high official of the road, that Danville was not a competitive point, and could not be so held by the road, and that they could not change their local freight rate as applied to Danville, for if the change was made in regard to Danville, Reidsville and Greensboro, although noncompetitive points, would be demanding the same thing; that Danville could not have through rates. These things were told me by the officials of the road when I was demanding better rates for myself and my town."

Now, to anyone who has given the Act to Regulate Commerce much attention it must be obvious that a complaint against a carrier that it gives to noncompetitive points the same rates which it gives to competitive is not a complaint that the Act is violated. On the contrary, the spirit and purpose of the Act require that when the circumstances and conditions will fairly admit of it the charges to all points for a like service should be made relatively equal. If, therefore, this defendant were to so arrange its tariffs as to give the least important station on its line rates as favorable as it allowed to the most important there would in its doing so be nothing out of harmony with the Law. The result might for a time be prejudicial to competitive points, but the carrier cannot be blamed for a consequence which the Law favors; and there can be no doubt that the Law favors Reidsville and Goldsboro' having rates as low as are given to Danville or to Richmond when the circumstances and conditions are such as to render it practicable. There is nothing, therefore, in the giving of such rates which the law will discountenance, much less punish.

But, passing from this general charge to some specific cases in which the rates which were exacted by defendant are named, we find it to be an undoubted fact that charges have been made which cannot be justified:

First. There is evidence that defendant in two instances at least charged ninety-seven cents per cwt. for the transportation of cotton baled goods from Piedmont, S. C., to Danville, when the established rate from Piedmont to Richmond, 141 miles further, was but fifty-four cents. Investigation shows that these charges were not warranted by the tariff then in force, which was forty-eight cents per cwt. to Danville instead of ninety-seven cents. This is admitted by defendant, and the overcharge is claimed to have been the error of an agent. Whether the error was intentional or unintentional, the parties who paid the charge are entitled to have the overcharge refunded. It is stated on behalf of defendant that this

refunding has already taken place, but the evidence has not been placed on file, and we cannot find that to be the fact. On the other hand, it is to be said that the parties entitled to be reimbursed have not applied to the Commission for the purpose, and we are not informed that any order on their behalf would be acceptable. The proof of the overcharge comes into the case as evidence of a general course of dealing, and not as a basis for a specific money claim; and there is consequently no occasion to speak of it further.

There is also evidence that in July, 1887, the defendant on a number of consignments of melons by the car load from Columbia, S. C., and other points to Danville charged and received from consignees a sum in excess of what were then the current rates for the transportation of like freight from Columbia and such other points to Richmond, the greater distance. In respect to these consignments, which were made after this proceeding was begun, it appears that the defendant's revised rates which were in force when the hearing was had do not admit of any higher charge being made on a consignment of any species of property to Danville from any point on defendant's road south thereof than is made on a consignment of like property to Richmond. The wrong, therefore, in so far as it consisted in making the greater charge for the shorter transportation, has been remedied for the future; and of this case, as of the last, it may be said that as the parties by whom such greater charges were paid are not now here asking for the refunding of moneys wrongfully exacted, this notice of the evidence is all that the case as it stands seems to call for.

Similar remarks may be made regarding a consignment of cattle from Newport, Tenn., to a purchaser at Danville, upon which a rate of \$14 per car is shown to have been charged in excess of what was then the current rate from Newport, through Danville, to Richmond; also regarding a charge on a consignment of cotton batting from Atlanta to Danville, on which fifty-eight cents per hundred pounds was charged in excess of the rate for the greater distance to Richmond. Neither of these transactions is explained by the defense, and whether they could be justified if the parties making payment of the sums exacted were here demanding a refunding we cannot undertake now to say. The transactions were proved in support of allegations that defendant violated the long and short haul clause of the Act, and they prove that fact unquestionably. The proof shows, however, that since that time defendant's tariffs have been changed, and at this time they will warrant no charge between the points named and Danville which is higher than the regular rate upon the like property to Richmond. The wrong done, therefore, in so far as it was continuous, has thus been brought to an end.

These, however, and one or two other transactions of a like character are minor matters as compared to the charge of discrimination against Danville, supposed to be shown in the rates charged on shipments of heavy freights, particularly grain, flour, meat, provisions, etc., made to Danville from western and north-western points, and of tobacco in the other di-

Mr. H. D. Money, for defendants Mississippi & Tennessee R. R. Co. and Illinois Central R. R. Co.

OPINION OF THE COMMISSION.

Cooley, Chairman:

The questions at issue in these cases are to some extent identical and, where not the same, are so far similar that it was deemed practicable by the parties that they should all be tried together. They have accordingly been so tried, the evidence being, by consent, taken in the case first entitled, but received and applied in each of the others, so far as it was found to be applicable. The principal grievance complained of is that the defendant companies discriminate against the complainant in their charges for the transportation of petroleum oil; but the rates for the transportation of the oil in barrels, which is the method made use of by complainant, are also alleged to be excessive, and in some cases a violation of the fourth section of the Act to Regulate Commerce is complained of. The petition in the case first entitled, after setting out the line of the defendant's road and the cities and other points reached thereby, proceeds to say:

"That one of the important duties of said Louisville & Nashville Railroad Company is the transportation of refined illuminating petroleum oil (mostly produced and manufactured in the States of Pennsylvania and Ohio) from Cincinnati, Ohio, and Louisville, Kentucky, to the aforementioned cities and other points on the said carrier's said lines of railroad in the said several States and other States into and through which said carrier's railroad lines pass.

"That such oil is an article of extensive commerce and of prime necessity to the people reached by said carrier's railroad lines, and that in the transportation of such oil by said carrier two prevailing methods are employed, one by means of box cars, carrying the oil in barrel packages, and the other by iron tank cars, generally holding 100 barrels and upwards, built and used for that express purpose.

"And said complainant further says that he is engaged at Marietta, Ohio, and in that vicinity in the business of producing, manufacturing, and dealing in such petroleum oils, and shipping the same to various markets in Southern and Western States of this country; that he has large capital invested in this business and extensive facilities therefor, and, but for the acts of said carrier hereinafter complained of, would produce and sell many thousands more barrels of such oil than now; that many of his principal markets for his said manufacture are in the territory reached and traversed by said carrier's system of railways; that it is absolutely essential to the continued existence and success of his said business that he should have rates and facilities both reasonable in themselves and equally as favorable as those accorded to his competitors for the transportation of said products to such markets, many of which can only be reached by said carrier's roads, and none of which can be reached as conveniently or cheaply by any other means, if said complainant is accorded reasonable and just rates by said carrier.

"Complainant further states that the Stand-

ard Oil Company, a corporation organized and existing in and under the Laws of the State of Kentucky, is a very extensive dealer in and shipper of such petroleum oils, and is his chief and almost sole competitor for the sale thereof in the aforesaid markets."

"And said complainant further states that said carrier has been guilty of violation of the provisions of the Act of Congress of the United States of America entitled 'An Act to Regulate Commerce,' approved February 4, 1887, and which took effect April 5, 1887, in the following particulars, to wit:

"First charge. By making charges for services to be rendered by said carrier in the transportation of such as aforesaid from Cincinnati, Ohio, and said Louisville, Kentucky, to points on the said carrier's said railroad lines in the said States other than Ohio and Kentucky which were in themselves unjust and unreasonably high.

"Under this charge the complainant makes the following specifications, each and all of which are rates per 100 pounds charged by said railroad company on May 9, 1887, and, as complainant is informed and believes and so alleges, ever since that day for services to be rendered by said company in the transportation in barrel packages in car load shipments of such oils from said Louisville, Kentucky, to the respective destinations named, each and all of which destinations are points reached by the lines of railroad owned, leased, and operated by said railroad company and each and all of which rates complainant alleges to be unreasonable and unjust.

- "1. Mobile, Ala., 80 cents.
- "2. New Orleans, La., 80 cents,
- "3. Montgomery, Ala., 45 $\frac{1}{2}$ cents.
- "4. Selma, Ala., 45 $\frac{1}{2}$ cents.
- "5. Birmingham, Ala., 45 $\frac{1}{2}$ cents.
- "6. Nashville, Tenn., 18 $\frac{1}{2}$ cents.
- "7. Memphis, Tenn., 15 cents.
- "8. Clarksville, Tenn., 16 $\frac{1}{2}$ cents.

"9. All other points reached by said lines of railroad located in States other than Kentucky, the rates of which appear in the statement of rates required by said Act of Congress and on file with said Commission, and each and all of which rates complainant alleges to be unreasonable and unjust. Complainant, under said charge, also makes the following specifications, each and all of which are the rates per 100 pounds charged by said railroad company for the transportation of such oils in barrel packages, in car load shipments from Cincinnati, Ohio, to the respective destinations named, each and all of which are points reached by the lines of the railroad owned, leased and operated by defendants, and are in States other than the State of Ohio, which rates appear on the tariff sheets of defendant, furnished by it to complainant May 9, 1887, as showing its rates then in force, and which rates complainant is informed and believes and alleges have ever since been in force, each and all of which rates complainant alleges to be unreasonably high and unjust.

- "10. Nashville, Tenn., 25 cents.
- "11. Decatur, Ala., 50 cents.
- "12. Birmingham, Ala., 59 cents.
- "13. Calera, Ala., 59 cents.

tween the circumstances under which said Rice and said company, respectively, ship their oils, justifying any difference in rate, if there be any, are small and insignificant in comparison with the differences in the rates charged them, respectively."

"Complainant is informed and believes and therefore states that—

"3. Defendant owns a number of tank cars, as hereinbefore described, and furnishes the same to the said Standard Oil Company for its use in transporting oil shipped by said company from Cincinnati, Ohio, to points reached by defendant's said lines of railroad in States other than Ohio, and from Louisville, Kentucky, to points reached by defendant's said lines of railroad in States other than Kentucky, but refuses to furnish the same to said George Rice for his use in transporting oil from said Cincinnati, Ohio, and Louisville, Kentucky, to such points in States other than Ohio and Kentucky.

"4. Defendant, in its freight rates for the transportation of such oils from Cincinnati, Ohio, to points reached by defendant's said lines of railroad in States other than Ohio, and from Louisville, Kentucky, to points reached by defendant's said lines of railroad in States other than Kentucky almost uniformly, since April 5, 1877, has charged a higher rate per 100 pounds for oil transported by it in barrel packages, in car load shipments, owner's risk, than it charged per 100 pounds for such oils transported by it at the same time between the same points contained in tank cars, owner's risk; while at no time has there been any difference between the cost, expense and convenience of transporting said oils by said two methods, or any circumstances justifying a difference of rate between said two methods of transportation which even approximated the differences in defendant's freight rates for transportation by said two methods, any differences between the cost, expense and convenience to defendant of transportation by said two methods, or any circumstances justifying a difference in rate between said two methods being slight and insignificant compared with the differences in rate between said two methods actually made by defendant. Complainant ships his oils over defendant's lines of railroad exclusively in barrel packages, while said Standard Oil Company ships its oil over defendant's lines of railroad almost exclusively in tank cars.

"5. Defendant's freight rates per 100 pounds for the transportation of such oils from Louisville, Kentucky, to the following destinations are the same whether the oil is carried in barrel packages or in tank cars:

Mobile, Ala.	Jackson, Miss.
New Orleans, La.	Jackson, Tenn.
Meridian, Miss.	Vicksburg, Miss.

"While defendant's freight rates per 100 pounds for the transportation of such oils from Louisville, Kentucky, to nearly all, if not all, the other points reached by defendant's lines of railroad in States other than Kentucky are much higher for oils carried in barrel packages than for oils carried in tank cars.

"6. Defendant's freight rates per 100 pounds for the transportation of such oils from Cin-

cinnati, Ohio, to Nashville, Tennessee, and Mobile, Alabama, are the same whether the oil is carried in barrel packages or in tank cars, while the defendant's freight rates per 100 pounds for the transportation of such oils from Cincinnati, Ohio, to nearly all, if not all, the other points reached by defendant's lines of railroad in States other than Ohio are much higher when the oils are carried in barrel packages than when the oils are carried in tank cars.

"7. Defendant has, since April 5, 1887, charged for the transportation of oils from Cincinnati, Ohio, and from Louisville, Kentucky, to Birmingham, Alabama, Calera, Alabama, Montgomery, Alabama, and Selma, Alabama, the same freight rates in all cases to each of said localities, although by defendant's line of road said Calera is thirty-three miles farther from said Cincinnati and said Louisville than said Birmingham, and said Montgomery is sixty-three miles farther from said Cincinnati and said Louisville than said Calera, and said Selma is fifty miles farther from said Cincinnati and said Louisville than said Montgomery; and oils transported by defendant from Cincinnati, Ohio, or Louisville, Kentucky, to said Selma are necessarily carried by it through said Birmingham, said Calera and said Montgomery, and the distance from said Cincinnati to said Selma over defendant's line of road is 650 miles, and the distance from said Louisville to said Selma over defendant's line of road is 540 miles.

"Fourth charge. Complainant, for a fourth charge against defendant, says that defendant has, since April 5, 1887, charged and received for the transportation by it of such oils from Cincinnati, Ohio, and Louisville, Kentucky, to points reached by defendant's said line of railroad in States other than Ohio and Kentucky a greater compensation in the aggregate for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance, such oils being a like kind of property in all cases and such transportation being under substantially the same circumstances and conditions.

"Under the above charge complainant makes the following specification: the rate charged by defendant for the transportation of such oils in barrel packages in car load shipments from Cincinnati, Ohio, to and from Louisville, Kentucky, to destinations named below, with the distances of each destination from the place of shipment over defendant's said line of railroad, are as follows:

"From Cincinnati, Ohio:

Destination.	Distance.	Rate per 100 pounds.
New Orleans, La.....	821 miles.	30 cents.
Birmingham, Ala.....	504 "	29 "
Mobile, Ala.....	780 "	28 "

"From Louisville, Kentucky:

Destination.	Distance.	Rate per 100 pounds.
New Orleans, La.....	811 miles.	35 cents.
Birmingham, Ala.....	594 "	32 "
Mobile, Ala.....	780 "	28 "

"Said complainant further alleges that the aforesaid discriminations against him in rates

ville consisted, went on to say: "It consists in according to other points, notably Richmond and Lynchburg, in the rehandling of provisions spoken of, a better rate and facilities than it accords to Danville for the same services." And he proceeds with specification as follows: "Provisions shipped from points north of the Ohio River and reshipped at Lynchburg and Richmond are carried through to points in North and South Carolina at rates considerably lower than if the same goods were shipped to Danville and reshipped from Danville to the same points South."

The witness, Samuel P. Wimblish, in answer to the question whether defendant, since the fifth of April last, had discriminated in matter of freight rates to Danville and other points and against Danville and its people, said: "To the best of my knowledge and belief it has. For example, defendant, before the fifth of April and since, had its freight charges so arranged as that said charges from Richmond and Lynchburg to Greensboro,' Charlotte, and other points were and are now far lower, relatively speaking, than between any of said towns and Danville."

Witnesses John W. Caton and B. S. Crews give similar evidence, and it seems to stand in contradistinction to that of the officers of the road, who testify positively that no advantage in rates is accorded to either Richmond or Lynchburg, and that the same charges in proportion to distance are made from them as from Danville to other towns on defendant's line. The supposed discrimination is, however, explained by tabulated statements which the witness, in support of the petition, files and from which we may see exactly what the discrimination consists in.

These tabulated statements show what the charges are which are made by defendant upon consignments of grain and of meats from Richmond and Danville, respectively, to other towns on defendant's line, and also the charges made from Richmond to Danville, the purpose being to show that, in competing for the trade of local points on defendant's road, Danville is placed at a disadvantage. The statement, so far as it relates to charges for the transportation of grain is here given.

From Richmond to Reidsville, N. C., 164 miles, charge eighteen cents per cwt.; from Richmond to Danville, 140 miles, fifteen cents; thence to Reidsville, twenty-four miles, eight cents; total, twenty-three cents.

From Richmond to Greensboro,' 213 miles, twenty cents; from Danville to Greensboro,' forty-nine miles, ten cents; added to rate to Danville, twenty-five cents.

From Richmond to Durham, 280 miles, twenty-one cents; from Danville to Durham, eighty miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to Charlotte, 281 miles, twenty-one cents; from Danville to Charlotte, 141 miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to Asheville, 360 miles, twenty-eight cents; from Danville to Asheville, 220 miles, twenty-seven cents; added to rate to Danville, forty-two cents.

From Richmond to Salisbury, 230 miles, twenty-one cents; from Danville to Salisbury,

ninety miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to High Point, 248 miles, twenty-one cents; from Danville to High Point, seventy-eight miles, nineteen cents; added to rate to Danville, thirty-six cents.

The showing in respect to meats is similar to this, and another statement of shipments from Chicago or other western point to Richmond and to Danville, respectively, would, when reshipments were made to the other points named, result in like discrepancies. The discrimination the petitioners complain of is that defendant's rates are so made that the Danville merchant cannot deliver his goods at Reidsville, Greensboro,' and other towns named at which he may sell them at rates for transportation as low as are accorded to Richmond.

The most casual inspection of this statement, however, will make plain to the mind that the difference in rates which it shows in favor of Richmond results from the fact that from Richmond the property is supposed to be taken directly to the several points named, while the Danville shipments are first made from Richmond to Danville and then from Danville to the ultimate destination. The difference is, therefore, a difference between the charge for one transportation covering a definite distance and that for two transportations which aggregate the same distance. The petitioners think that upon such goods bought in Richmond, as they sell at Reidsville or other points named, they should be charged in the aggregate only the rates which are charged when the consignment is directly from Richmond through to the same point. Defendant assents to this when the Danville merchant ships directly from Richmond to the place of sale, but declines to allow it when the shipment is first to Danville and then to the ultimate destination. It is the denial of this privilege of having the two shipments count as one which constitutes the discrimination complained of.

The concession here claimed bears resemblance to an attempt to compel the railroad company to establish the system which in some parts of the country is known as "milling in transit"—a favor in transportation most often, perhaps, allowed to manufacturers of flour, but which is known in other industries also. In proceedings before the Commission where this system has incidentally been spoken of it has been said to have had its origin in the desire of carriers which received wheat for delivery to millers on their line to control the transportation of the manufactured article and keep it from passing to the hands of competitors. It is not likely that this is the sole reason for the practice, and we mention it only as one that has been named. The control of the carriage would be assured by giving to the consignor of wheat a through rate from the point of reception to the point at which he expected to market his flour, but with the privilege of converting the wheat into flour at an intermediate point. The advantage of such a privilege to the consignor may be shown by a supposed case. Let it be assumed that the rate on wheat from Chicago to New York is twenty-five cents per hundred

Pensacola, Fla., forty-five cents.

Mobile, Ala., thirty-nine cents.

New Orleans, La., thirty-nine cents.

"Except that the rate furnished for shipment to Nashville, Tenn., was twenty-eight and three fourths instead of twenty-five cents; that to Pensacola was forty cents instead of forty-five cents; that to New Orleans and that to Mobile was thirty-four cents each instead of thirty-nine cents; and defendant admits that all of said points are reached by its lines of road, except Selma, and except all points between Decatur and Montgomery, Alabama, which cannot be thus reached; but defendant says it is not true and it denies that said rates or any of them are unjust or unreasonably high."

"For answer to the second charge made in complainant's bill and the specifications thereunder defendant—

"1. Denies that it has at any time since April 5, 1886, charged complainant for services to be rendered by this defendant in the transportation of such oils to points in States other than Ohio reached by its lines of railroad, or from Louisville, Kentucky, to points in States other than Kentucky reached by said lines of railroad, a greater compensation than it charged said Standard Oil Company of Kentucky for like and contemporaneous services rendered or to be rendered by this defendant for said company in the transportation of such oils for said company from said Cincinnati, Ohio, or from Louisville, Kentucky, to said points or any of them in States other than Kentucky, and denies that the shipments referred to by complainant in his said bill were made for him and for said Standard Oil Company under substantially similar circumstances or conditions.

"2. It admits that the rate per 100 pounds charged by it to complainant on May 9, 1887, and ever since for the transportation of such oil from Louisville, Kentucky, to the respective destinations named in complainant's bill is the rate given therein, to wit:

"To Montgomery, Alabama, forty-five and seven tenths cents; Selma, Alabama, forty-five and seven tenths cents; Birmingham, Alabama, forty-five and seven tenths cents; Nashville, Tennessee, eighteen and three fourth cents; Memphis, Tennessee, fifteen cents, and that on some oil shipped by it during that time for the Standard Oil Company defendant charged from Louisville to said respective points per 100 pounds the following rates, as stated in complainant's bill, to wit:

"To Montgomery, thirty cents; to Selma, thirty cents; to Birmingham, thirty cents; to Nashville, fifteen cents, and to Memphis, twelve and one half cents.

"3. It further admits that its rate to complainant on May 9, 1887, and ever since, for shipments of oil from Cincinnati, Ohio, to the following points, per 100 pounds, were the rates stated in complainant's bill, to wit:

"To Decatur, Alabama, fifty cents; to Birmingham, Alabama, fifty-nine cents; Calera, Alabama, fifty-nine cents; Montgomery, Alabama, fifty-nine cents; Selma, Alabama, fifty-nine cents; to Pensacola, Florida, forty-five cents, to Mobile, Alabama, thirty-nine cents, and to New Orleans, Louisiana, thirty-nine

cents, with the exception that the charge was and is from Cincinnati to Pensacola forty cents, instead of forty-five cents, and to Mobile and to New Orleans each thirty-four cents, instead of thirty-nine cents; and the defendant further admits that during said time it was shipping some oil for the Standard Oil Company from Cincinnati to aforesaid towns at the following rates per 100 pounds, to wit: to Decatur, forty-six cents; to Birmingham, forty-seven cents; to Calera, forty-seven cents; to Montgomery, forty-seven cents; to Selma, forty-seven cents; to Pensacola, forty cents; to Mobile, thirty-four cents; to New Orleans, thirty-four cents, except that to Birmingham, since May 11, 1887, the rates have been a little less than forty-seven cents per 100 pounds. But defendant denies that in its said rates for shipment for the Standard Oil Company and for complainant from Cincinnati and from Louisville, respectively, to aforesaid respective towns or any of them, it discriminated in favor of the Standard Oil Company or against complainant, or that by said rates, shipped under the circumstances that said oils were respectively shipped, defendant charged complainant per 100 pounds a greater compensation than it charged said Standard Oil Company.

"Defendant says that all the rates for shipments for complainant made so as aforesaid from Cincinnati and from Louisville, respectively, to aforesaid respective towns were made for shipments in barrel packages and car load shipments, and all of the rates for shipments for the Standard Oil Company so as aforesaid from Cincinnati and from Louisville, respectively, to said respective towns were made for shipments in tank cars, cost of transportation or the shipment and risk of which is much less than the cost of transportation or shipment and the risk of a like quantity of oil in barrels; that the rate paid or to be paid as aforesaid by complainant for such shipments is the same rate per 100 pounds, neither greater nor less than was and is by defendant charged to and paid by the Standard Oil Company for shipments of oil in barrel packages, car load shipments, at the same time and from and to the same points that said shipments for complainant were made; and defendant also states that at the same rates charged the Standard Oil Company for the shipments of its oil so as aforesaid in tank cars from Cincinnati and from Louisville, respectively, to said several respective towns, complainant could have shipped, as he well knew, his oil in like kind of tank cars at any time on or after the 9th day of May, 1887, and the same rates as aforesaid were offered him and published in defendant's schedules of rates furnished the honorable Interstate Commission.

"4. Defendant admits that in its shipment of oil in barrels for complainant it has charged or intended to charge him for the actual weight of such oils, and it has also charged or intended to charge in its shipments of oil in barrels for the Standard Oil Company for the actual weight of such oils, and it denies that it has in any shipment of oil in barrels made any difference in this respect between oil shipped for complainant and oil shipped for the Standard Oil Company.

"Defendant says that as to the shipment of

others we may regret the fact, but we cannot under any authority the law has conferred upon us interpose to change it.

The conclusion is that the Commission cannot adjudge the defendant guilty of unjust discrimination in the particular mentioned. Neither can it find upon the evidence that any advantage which is obtained by Richmond or any other locality by means of low rates given by connecting roads is chargeable as a wrong done by defendant. The naming of a through rate by the defendant to or from any distant point and the receiving of the freight moneys on a consignment do not of themselves charge the defendant with any responsibility in respect to the rates beyond its own line. There is no wrong on its part in giving to its customers information respecting such rates nor in receiving payment for both itself and its connections. On the contrary, it is a great business convenience, and any carrier which should refuse to give through bills when it could do so or to name through rates which are made up by adding its own to the rates made by its connections would be justly liable to very severe censure. Through bills are among the most important and valuable of transportation facilities, and it is not only important that the consignor should know before he forwards the goods what the charges upon them for the whole distance are to be, but it commonly saves him much trouble and avoids mistakes

if he can procure the information from the local agent of the receiving company instead of being compelled to apply to two or more agents at a distance. The receiving carrier ought, therefore, to keep informed respecting rates over connecting lines, whether it joins in making them or not, and it ought also to give through bills when they are desired if it can arrange with its connections to do so. It will not perform its full duty to the public unless it does so.

The result of our investigation of this case may be summarized very briefly. The defendant has been guilty of some overcharges which the parties paying them are entitled to have refunded if the refunding has not already taken place. The proofs show, also, that in the spring and summer of 1887 the defendant made rates which were greater on its road to Danville than to Richmond through Danville, but its tariffs have since been so changed that such greater rates are no longer charged. No application is made for the refunding of moneys paid on such rates, and the question whether there should be any is not before us. The Commission has no authority to require the defendant to concede the privilege sought for, corresponding to that of "milling in transit," and the evidence offered to show that the rates of the defendant are excessive and unjust is too inconclusive to justify any finding to that effect.

SUPREME COURT OF RHODE ISLAND.

STATE of Rhode Island

v.

William FITZPATRICK.

The provision of **R. I. Pub. Stat. chap. 634**, of May 4, 1887, § 1, which prohibits any person from keeping any intoxicating liquors "for the purpose of sale," is not, for the reason that it may incidentally interfere with foreign or interstate commerce, obnoxious to the Federal Constitution, art. 1, § 8, which confers upon Congress exclusive power "to regulate commerce with foreign Nations and among the several States."

(Providence—Decided January 7, 1888.)

ON constitutional questions certified to the Supreme Court under R. I. Pub. Stat. chap. 220, §§ 1-9.

The case is stated in the opinion.

Mr. Clarence A. Aldrich, Asst. Atty-Gen., for the state.

Mr. Hugh J. Carroll, for defendant.

Durfee, Ch. J., delivered the opinion of the court:

This case comes before us from the District Court of the Tenth Judicial District, by certificate, on a constitutional question. It is a complaint under Public Laws R. I. chap. 596, of May 27, 1886, and chap. 634, of May 4, 1887, against the defendant, for keeping without lawful authority intoxicating liquors "for the purpose of sale," in violation of chap. 634, § 1, in amendment of chap. 596, INTER 8.

§ 1, charging the offense substantially in the language of the statute. In the district court the defendant made the following motion, to wit:

"The defendant moves that the above entitled complaint be dismissed, because it is brought under § 1 of chapter 634, of the Public Statutes, which attempts to prohibit the keeping, for the purpose of sale, of any of the liquors enumerated in said section, without making any distinction as to whether the sale is to be within or without this State; and he claims that he has a right to keep the same for the purpose of sale without this State. U. S. Const. art. 1, § 8."

The district court overruled the motion, and, having found the defendant guilty, has certified the question involved in it to this court for decision.

Chap. 634, § 1, so far as it is necessary to recite it for the purposes of the question, is as follows, to wit:

"No person shall manufacture or sell, or suffer to be manufactured or sold, or keep, or suffer to be kept, on his premises or possessions, or under his charge for the purpose of sale, any ale, wine, rum, or other strong or malt or intoxicating liquors, a part of which is ale, wine, rum, or other strong or malt or intoxicating liquors, unless as hereinafter provided."

The corresponding sections in earlier statutes, whether license or prohibitory, contained the words "within this State" after the words "for the purpose of sale," thus making the keeping illegal only when it was for the pur-

"7. Defendant admits that since April 5, 1887, it has charged for the transportation of oils from Cincinnati and from Louisville to Birmingham, Alabama; Calera, Alabama; Montgomery, Alabama, and Selma, Alabama, the same freight rate in all cases to each of said points, and that the distance from Cincinnati and Louisville by its road is to Calera, thirty-three miles greater than to Birmingham, and to Montgomery is sixty-three miles greater than to Calera, and that oils transported over its lines of road from Cincinnati or Louisville to Montgomery, are carried through Birmingham and Calera, but not through Selma, nor is Selma on defendant's lines of railroad; but said rates were not made nor are they controlled by this defendant. The same are fixed and regulated by the competition with water ways and railroad lines over which defendant had and has no control, and are in and of themselves fair, just and reasonable."

For answer to the fourth charge made in complainant's bill and the specifications thereunder, defendant—

"1. Denies that it has, since April 5, 1887, charged or received for the transportation by it of such oils from Cincinnati or from Louisville to points reached by its lines of railroad in States other than Ohio and Kentucky, a greater compensation in the aggregate for a shorter than a longer distance on the same line in the same direction, where the shorter was included within the longer distance, and whose transportation being under substantially the same or similar circumstances and conditions.

"2. Defendant admits that the charges made by it for shipments of oil from Cincinnati and from Louisville to the various points set out in complainant's bill under this charge, and the distance to each of said points from Cincinnati and Louisville, respectively, is as given by complainant in its first and second specifications under the fourth charge in his bill, with the exception that the rate from Cincinnati to New Orleans should be thirty-four cents per 100 pounds and to Mobile the same, and the distance from Louisville to Mobile is 670 miles, and the rates should be from Louisville to New Orleans thirty cents per 100 pounds, to Birmingham 45 $\frac{1}{4}$ ¢ and to Mobile thirty cents but defendant says that said respective shipments to said several points were made under the very dissimilar circumstances and conditions as aforesaid, justifying and authorizing, as it believes, the different rates charged to the different places as aforesaid.

"3. Defendant denies that any of the alleged discriminations against complainant, or the alleged unreasonably high and unjust charges against him set out in his bill of complaint, have had any effect or were designed to affect or to give to said Standard Oil Company a monopoly of the traffic in such oils at the points or any points reached by its lines of railroad, or to exclude complainant's products from nearly all or any of aforesaid points, and it denies that such alleged discriminations or charges, or both, have been made by defendant at the dictation of the Standard Oil Company; and it denies that by reason of such alleged discriminations or such alleged unjust and unreasonably high charges, or both, complainant has been injured in his business, or

that, thereby, he has lost profits that he would otherwise have realized.

"Whether complainant in all other respects than for said transportation during all or any of the time since April 5, 1887, has had ample facilities or what facilities it has had for the transaction of a large or a profitable business in the sale of said oils in said markets, or that but for said alleged unjust and unreasonable charges and alleged unjust discriminations, complainant would have prosecuted such with profit to himself, defendant does not know and cannot state from its belief or otherwise."

All the other petitions were filed simultaneously with the one above mentioned—that is to say, July 22, 1887.

The pleadings in the other cases it is deemed sufficient to present in brief synopsis:

The petition against the St. Louis, Iron Mountain & Southern Railway charges that defendant violates the Act to Regulate Commerce—

I. By making charges for services to be rendered in the transportation of petroleum oils from St. Louis, Missouri, to points on its line in the State of Arkansas which in themselves are unreasonably high;

II. By having, ever since April 5, 1887, charged complainant for services to be rendered by defendant in the transportation of such oils for complainant from St. Louis, Missouri, to points in other States a greater compensation than it has charged the Waters Pierce Oil Company of Missouri for like and contemporaneous services;

III. By having, since April 5, 1887, in its charges for the transportation of such oils, uniformly given undue and unreasonable preferences and advantages to said Waters Pierce Oil Company of Missouri, and subjected complainant to undue and unreasonable prejudice and disadvantage.

The answer of this defendant meets the charges with full and specific denial.

In the case against the Mobile & Ohio Railroad Company the issue was so far narrowed by a stipulation of the parties hereinafter given as to render unnecessary any statement of the pleadings in this place.

In the case against the Cincinnati, New Orleans & Texas Pacific Railway Company, the charges are that defendant has violated the provisions of the Act to Regulate Commerce.

I. By making charges for services to be rendered in the transportation of petroleum oil from Cincinnati, Ohio, to points on its road in other States than Ohio, which in themselves were unjust and unreasonably high;

II. By charging complainant for services to be rendered in the transportation of petroleum oil a greater compensation than it charged the Standard Oil Company of Kentucky for like and contemporaneous services;

III. By having in its rates charged for services rendered and to be rendered for the transportation of said oils for complainant and said Standard Oil Company of Kentucky, uniformly made and given undue and unreasonable preferences and advantages to said Standard Oil Company, and subjected complainant to undue and unreasonable prejudice and disadvantage.

fendant for transporting coal oil over its line of railroad as specified and shown in the third paragraph of the answer of the defendant to the petition of the complainant, except that said specification of rates shows that the defendant charges less for the transportation of oil from Cairo, Illinois, to Mobile, Alabama, than it does to points between Mobile, Alabama, and Cairo, Illinois.

"It is further understood and agreed that the defendant admits that its rates for the transportation of oil over its lines from Cairo, Illinois, to Mobile, Alabama, are less than the rate for like transportation of oil from Cairo, Illinois, to points between Cairo, Illinois, and Mobile, Alabama.

"It is further understood and agreed that the defendant claims that the rate for the transportation of coal oil to Mobile, Alabama, is fixed by water competition in connection with the short rail haul from New Orleans, Louisiana.

"It is further understood and agreed that the defendant claims that it is authorized to make the less charge for transporting oil in cases like Mobile, Alabama, by the terms of the provisions of the fourth section in the Interstate Commerce Act."

The question which this paper undertakes to submit to our decision concerns other carriers and their customers, quite as much as it does these parties; and a decision upon it would be far reaching in its consequences. This fact of itself would be ample reason why we should proceed cautiously in any consideration we should give it, and why we should require from a party raising it a very full presentation of such facts as would have legitimate bearing upon it.

A full presentation was not made on the hearing; the matter received very little attention and the facts were very imperfectly brought out. We could not intelligently dispose of the question on the facts now in proof, and it would be unjust to parties not now before us to make any attempt to do so. Under the circumstances, therefore, we shall make no order in this case, leaving the parties to bring the subject to our attention hereafter as they may think they have occasion. This disposition of the case for the time being decides nothing and concludes no one.

What is said on this subject is equally applicable to each of the other causes in which a violation of the long and short haul rule of the fourth section of the Act was charged. In none of the cases was special attention given to this feature of the controversy on the hearing, or any such examination of the facts gone into as would assist the Commission to safe judgments. Other charges were contested sharply and persistently, but this particular charge was scarcely noticed. Under such circumstances, if we were to pass judgment upon it, it would be necessary to institute further inquiries and make investigations on our own behalf; and this we think uncalled for in this controversy at this time. If a decision upon it is deemed important it may be assumed the parties, when it suits their convenience, will renew the subject, and present the considerations which bear upon it more fully.

The other of the two cases mentioned is that

of the Mississippi & Tennessee Railroad Company, in which the only matter put in issue was whether the rates charged upon barrel oil from Memphis, Tennessee, to Grenada, Mississippi, are reasonable. The shipments made over defendant's road are very few, and have been mostly made by others than complainant. It does not appear that others are complaining. Upon the question of reasonableness the case is almost entirely without proof. Complainant relies upon the three facts that the rates are higher than generally prevail elsewhere, that they were formerly lower on this road, and that the defendant now carries the same commodity to points beyond Grenada at lower rates. The first two grounds of objection are not very conclusive. It is probable that defendant could not support a useful existence if it were compelled to measure its charges by those made by carriers whose lines command a heavier and more steady business. It is also not unlikely that this defendant at times has made rates it could not abide by permanently without bankruptcy. Most of the railroad companies of the country at some time or other have done so.

The third ground presents the same question which, in the *Case of the Mobile & Ohio Railroad Company*, we declined to decide without some showing to enable us to see how the decision would affect the railroad business of the section. We are absolutely without any such showing in this case; and we think it entirely reasonable and proper, therefore, to decline to make any order.

We now proceed to dispose of the cases of the other defendants, and in doing so it is to be understood that when the term *defendants* is made use of it applies to those only whose cases are under consideration, and does not include the Mobile & Ohio and the Mississippi & Tennessee Railroad Companies or either of them.

From the evidence it appears—and we find the fact to be—that there are two general methods for the transportation of petroleum oil and its products by rail, the one being in barrels holding an average of fifty gallons, and the other being in large iron tanks which are permanently fixed upon flat cars so as to constitute a part of the cars themselves. Some oil is carried in cans also, but that method does not come in question in these cases. The tanks vary greatly in size, some holding not more than three thousand gallons, or sixty barrels, while others hold twice that quantity. The refined oil, which is the kind that constitutes the subject of controversy in these cases, weighs six and a half pounds to the gallon; the barrels in which the oil is shipped weigh about seventy-five pounds each, and a barrel with its contents about 400 pounds. The tank cars which are sent into the territory in which the defendants operate are all either owned by the shippers themselves or are procured by them from some other source than the railroad companies, the latter never having supplied themselves with rolling stock for the purposes of this traffic. The Louisville & Nashville Railroad Company and the Cincinnati, New Orleans & Texas Pacific Railway Company are several owners of the trucks and bodies of a few tank cars, but even of these the tanks

so arranged and controlled as to prevent many of the inequalities that are now liable to operate oppressively to particular localities. When intersecting roads are separately controlled and owned it may well happen that one which is of the very highest importance to the community it serves and which deals with them fairly, shall nevertheless be powerless to prevent the rates of other roads giving to some of its towns great advantages over others, unless it consents to sacrifice its own revenues in so doing. Possibly such may be the case here.

The defendant insists and produces evidence to show that it has no voice in making rates except on its own roads; that it is enabled to name through rates only, first ascertaining what the rates charged by connecting roads are, and then adding to them its own rates; that it issues through bills over other roads and honors the through bills issued by other carriers under mutual arrangements made to facilitate business and accommodate the public, and that when it receives freight moneys for a transportation of property over the lines of other carriers it does so as the agent merely of such other carriers, and because doing so is a general convenience to the patrons of the road and not because it is in any way responsible for the making of the rates upon which the moneys are paid. This testimony stands uncontradicted in the case, and if we accept it as presenting the actual facts, as under circumstances we must, it relieves the defendant from all responsibility for injurious results to the business of Danville, consequent upon unfair or unequal through rates, and leaves it to defend only the rates which are made for transportation on its own lines.

The difference between the local and the through rates is certainly very marked and striking, and it results unfavorably to Danville because Richmond and Lynchburg, which are competing towns for the trade along the line of defendant's road, are directly upon the long through lines, while Danville is not. The latter must therefore pay local rates from or to the points of junction of defendant's road with the through lines upon all the freights sent or received over such lines; but this is an advantage which the towns first named have in their situation; they are specially fortunate because the long through lines reach them and do not reach Danville. For this good fortune the defendant is not to be thanked by the favored towns or blamed by the other, for the through lines have become established where they are without its aid or intervention. The obligation of defendant is to make rates on its own line which are fair, reasonable and undiscriminating; and if it does this the responsibility, if there is any, for inequalities as between towns on its line which result from the rates made by other carriers must rest upon those who make them.

The assumption that defendant is in some way responsible for rates made over other roads is very prominent in the complaints made in the testimony of the witnesses Wimbish and Yarbrough. Mr. R. Louis Dibrell, also, after testifying what were the rates of the defendant to Toronto, St. Louis, Mo., and Quincy, Ill., on tobacco, complained of them as excessive and also as being unstable and frequently changed. The instability may or may not be chargeable to defendant; the witness does not state the facts sufficiently to enable us to judge, and it is possible that defendant's rates may have remained unchanged while those of some other carrier in the line were unstable. In respect to the aggregate of the rates, however, the witness presents the facts sufficiently so that, if he labors under no mistake, the responsibility for any wrong that was committed can be definitely fixed. He desired to make a consignment of tobacco from Danville to St. Louis, and on applying to the agent of defendant's road at Danville he was told the charge would be sixty-five cents per cwt. This he thought excessive, and he says: "By paying a forwarding agent in Lynchburg and other points we can and did obtain rates through him much lower than those quoted and charged to me by the Richmond & Danville road." And he goes into explanations which show that the lower rates he obtained were in reduction of the rates from Lynchburg to St. Louis, no part of them being rates made by the defendant.

The most obvious comment upon this evidence is that while it fixes no responsibility upon the defendant it tends to prove a violation of law on the part of the carrier connecting with defendant at Lynchburg. It need hardly be remarked that if the law is obeyed by carriers the intervention of a broker can be of no service in obtaining better rates because they cannot be given rates which are lower than those open to the public in general. If the law is complied with, all rates will be open and public, and no carrier will be at liberty to depart from them at the solicitation of a broker or of any other person. If, as this evidence tends to show, a special rate was obtained in this case through the influence or persuasions of a broker, a penal offense was committed, and the transaction was one of a kind that the Act to Regulate Commerce was specially designed to put an end to. The Commission has, therefore, felt impelled to institute an inquiry on its own behalf in order to ascertain whether either of the roads connecting with defendant at Lynchburg was guilty of a violation of law, as the proofs tend to show. This investigation has been pursued so far as to show that, although the transaction testified to by the witness took place as stated, there is reason to believe that the intervention of the broker had nothing to do with the obtaining of low rates. It is claimed by the road over which the shipment westward from Lynchburg took place that the low rate was given by its agent inadvertently, through the use of an old special tariff which had escaped the attention of the general freight agent. Whether the giving of the rate to the broker in this case was an excusable error or an intentional violation of law it is plain that no wrong in respect to it is brought home to the defendant. It, however, appears that the sixty-five cent rate named to the witness as the charge from Danville to St. Louis was higher than it should have been. Errors of such a kind will sometimes occur when the rate is made up by adding together those made by several carriers, especially when the point of destination is one to which a shipment from the initial point is seldom made. Whether

charged, the Commission may, under the *third* section, determine whether such difference in rates 'makes or gives any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic,' but I deny that the Commission has any power, under the *first* section, to declare that a rate open to all persons is not *reasonable* merely because it gives an advantage to the person who accepts it over another person who voluntarily selects a different mode of transportation for which a higher rate is charged.

"A mere difference of rates may in many cases constitute a violation of sections 2 and 3, but it can never constitute a violation of section 1 of the Act.

"It matters not how great the difference between two rates may be, it can never amount to a violation of section 1 if the higher rate is 'in and of itself, reasonable and just'—i. e., only a fair compensation for the service for which that particular rate is charged.

"The fact that sections 2 and 3 of the Act give to the Commission ample powers in regard to *differences* in rates is strongly persuasive that section 1 was intended to be confined to the reasonableness of rates."

In support of these views cases are cited, and particularly *Nicholson v. Great Western R. Co.* 5 C. B. N. S. 366, and *Great Western R. Co. v. McCarthy*, 29 Am. & Eng. R. R. Cas. 87.

The question thus presented is one of considerable importance, and it is forcibly and ingeniously argued in an elaborate brief. It is seen that it assumes at the outset "That the different modes of transportation with the corresponding rates are offered equally and impartially to all shippers alike; that it is possible for the class of persons usually engaged in that particular traffic to conform to either of the modes of transportation, and that the highest rate charged for either mode of transportation is reasonable in and of itself."

This assumption makes the resort to the one method of transportation rather than the other a matter purely of voluntary choice on the part of the shipper, and if the argument is correct in further assuming that the two methods are equally open to all who usually engage in the business, it may justly be urged with very great force that the party resorting to the one is by the choice itself precluded from raising any question of relative reasonableness by comparing the rates he chose with the lesser rates he might have chosen, but did not. It is conceded in the statement of the question that no two kinds of traffic are in question, but only one kind of traffic conducted in different ways. The merchandise in question is a single or identical article, and the purpose of the transportation is to deliver the commodity to consignees whose competition in the sale of it will be wholly unaffected by the method in which it has been brought to them. Whether it has come in barrels or in tanks is immaterial when the owner offers it in market; he can place no higher price upon it in the one case than the other. It is therefore obvious that if a heavier burden is laid upon one method of transportation than is imposed upon the other, it must, under ordinary circumstances, be impossible for those who adopt the first method

to succeed in the competition when they meet the others in the same markets. Their interest, therefore, in the charges which are made to their competitors is obvious. Unreasonably low charges to their competitors would be as fatal to their success as unreasonably high charges to themselves.

The most important question that arises upon the assumptions made as the basis for this argument is whether there are in fact two different modes of transportation which are offered, with their corresponding rates, equally and impartially to all shippers alike, and which it is possible for the class of persons usually engaged in the traffic freely to choose between. If no such offer is in fact made we have no occasion to follow the reasoning of the argument.

Unless we wholly misapprehend the real situation, when the rate sheets of these defendants are presented to the class of persons usually engaged in the traffic, the assumption that two different modes of transportation are offered to them equally and impartially is baseless. No one of these defendants offer two modes of transportation in the same sense in which it offers its facilities for transportation to shippers of other commodities. Each of them supplies rolling stock for one method only, and that one is shown to be the method on which, by their rate sheets, the heaviest burdens are imposed. No such choice is given to adopt the other mode as would be implied from the language used in stating the question; on the contrary, an applicant for that method of transportation would be told he must furnish his own rolling stock; and this means very much more than might seem to be indicated by this statement; it means, if he would make his business a success, that he shall supply himself with a very considerable number of cars, costing perhaps \$700 each, and that he shall also have stationary tanks at the points to which his shipments are to be made. The cost of the necessary terminal facilities which he must supply for himself we have no means from the evidence in these cases of comparing with the cost of making provision for the storage of barrels by one who adopts that method. It was testified that the terminal facilities of the Standard Oil Company of Kentucky at Selma, Alabama, cost about \$2,000, and at New Orleans about \$30,000. The vice president of the Waters-Pierce Oil Company estimates the average cost of putting up stationary tanks to accommodate tank shipments, including side tracks, etc., to be from \$1,000 to \$50,000, according to the requirements of the station, except at St. Louis, where he estimates it at \$250,000. It is obvious, we think, from the facts stated, that instead of the defendants offering two methods of transportation which are open to the acceptance of all, they offer only one which is so open. The other is offered on such terms that it can by possibility be accepted only by parties who can control a considerable capital, and who will supply for themselves an important part of the means of transportation, and also supply terminal facilities. The man of small means who adopts the method of transportation in barrels cannot be said to do so of choice when the failure of the carrier to supply for the other the cus-

ville consisted, went on to say: "It consists in according to other points, notably Richmond and Lynchburg, in the rehandling of provisions spoken of, a better rate and facilities than it accords to Danville for the same services." And he proceeds with specification as follows: "Provisions shipped from points north of the Ohio River and reshipped at Lynchburg and Richmond are carried through to points in North and South Carolina at rates considerably lower than if the same goods were shipped to Danville and reshipped from Danville to the same points South."

The witness, Samuel P. Wimbish, in answer to the question whether defendant, since the fifth of April last, had discriminated in matter of freight rates to Danville and other points and against Danville and its people, said: "To the best of my knowledge and belief it has. For example, defendant, before the fifth of April and since, had its freight charges so arranged as that said charges from Richmond and Lynchburg to Greensboro,' Charlotte, and other points were and are now far lower, relatively speaking, than between any of said towns and Danville."

Witnesses John W. Caton and B. S. Crews give similar evidence, and it seems to stand in contradistinction to that of the officers of the road, who testify positively that no advantage in rates is accorded to either Richmond or Lynchburg, and that the same charges in proportion to distance are made from them as from Danville to other towns on defendant's line. The supposed discrimination is, however, explained by tabulated statements which the witness, in support of the petition, files and from which we may see exactly what the discrimination consists in.

These tabulated statements show what the charges are which are made by defendant upon consignments of grain and of meats from Richmond and Danville, respectively, to other towns on defendant's line, and also the charges made from Richmond to Danville, the purpose being to show that, in competing for the trade of local points on defendant's road, Danville is placed at a disadvantage. The statement, so far as it relates to charges for the transportation of grain is here given.

From Richmond to Reidsville, N. C., 164 miles, charge eighteen cents per cwt.; from Richmond to Danville, 140 miles, fifteen cents; thence to Reidsville, twenty-four miles, eight cents; total, twenty-three cents.

From Richmond to Greensboro,' 213 miles, twenty cents; from Danville to Greensboro,' forty-nine miles, ten cents; added to rate to Danville, twenty-five cents.

From Richmond to Durham, 280 miles, twenty-one cents; from Danville to Durham, eighty miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to Charlotte, 281 miles, twenty-one cents; from Danville to Charlotte, 141 miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to Asheville, 360 miles, twenty-eight cents; from Danville to Asheville, 220 miles, twenty-seven cents; added to rate to Danville, forty-two cents.

From Richmond to Salisbury, 230 miles, twenty-one cents; from Danville to Salisbury,

ninety miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to High Point, 248 miles, twenty-one cents; from Danville to High Point, seventy-eight miles, nineteen cents; added to rate to Danville, thirty-six cents.

The showing in respect to meats is similar to this, and another statement of shipments from Chicago or other western point to Richmond and to Danville, respectively, would, when reshipments were made to the other points named, result in like discrepancies. The discrimination the petitioners complain of is that defendant's rates are so made that the Danville merchant cannot deliver his goods at Reidsville, Greensboro,' and other towns named at which he may sell them at rates for transportation as low as are accorded to Richmond.

The most casual inspection of this statement, however, will make plain to the mind that the difference in rates which it shows in favor of Richmond results from the fact that from Richmond the property is supposed to be taken directly to the several points named, while the Danville shipments are first made from Richmond to Danville and then from Danville to the ultimate destination. The difference is, therefore, a difference between the charge for one transportation covering a definite distance and that for two transportations which aggregate the same distance. The petitioners think that upon such goods bought in Richmond, as they sell at Reidsville or other points named, they should be charged in the aggregate only the rates which are charged when the consignment is directly from Richmond through to the same point. Defendant assents to this when the Danville merchant ships directly from Richmond to the place of sale, but declines to allow it when the shipment is first to Danville and then to the ultimate destination. It is the denial of this privilege of having the two shipments count as one which constitutes the discrimination complained of.

The concession here claimed bears resemblance to an attempt to compel the railroad company to establish the system which in some parts of the country is known as "milling in transit"—a favor in transportation most often, perhaps, allowed to manufacturers of flour, but which is known in other industries also. In proceedings before the Commission where this system has incidentally been spoken of it has been said to have had its origin in the desire of carriers which received wheat for delivery to millers on their line to control the transportation of the manufactured article and keep it from passing to the hands of competitors. It is not likely that this is the sole reason for the practice, and we mention it only as one that has been named. The control of the carriage would be assured by giving to the consignor of wheat a through rate from the point of reception to the point at which he expected to market his flour, but with the privilege of converting the wheat into flour at an intermediate point. The advantage of such a privilege to the consignor may be shown by a supposed case. Let it be assumed that the rate on wheat from Chicago to New York is twenty-five cents per hundred

ing its general traffic into account, or without its being allowed to show how excessive competition at one point or in one traffic has forced higher rates elsewhere than might otherwise be reasonable, or how, on the other hand, good returns from one traffic which the traffic can bear without being oppressed, permit of very low rates to some other traffic which otherwise might be unprofitable. Thus the railroad practice appears to be to treat those rates as reasonable in and of themselves which, on a consideration of the whole field of operations, it is seen that the carrier can afford to accept, and which at the same time the owner of the property can afford to pay, because they are not in excess of what the service is worth to him; but in fixing upon rates it is specially important, if not absolutely necessary, to have something like uniformity in the rates upon articles which are of like kind and value and which supply the same demand since otherwise those which are made to bear the heavier rates would be driven out of the market.

This being the method whereby reasonable rates are customarily determined we have no occasion to discuss the soundness of the position taken by counsel, that if a rate is reasonable in and of itself the Commission cannot require it to be changed. We do not question the proposition of counsel that Congress has not conferred upon the Commission the authority to force a change of reasonable rates. By the Act to Regulate Commerce the Federal Legislature intended to be just to the carriers as well as to do justice to the general public; and we agree that it has not authorized their rates to be changed against their will when in themselves the rates are just and reasonable. If, therefore, it shall be found that the charges made by these defendants for the transportation of oil in barrels are in themselves just and reasonable, no order will be made by this Commission for their alteration; but in determining their reasonableness we shall consider ourselves not only at liberty but absolutely required to keep in view the disparity which is shown to exist between them and the rates which the same companies charge upon the same article of merchandise, when they receive and transport it in the cars furnished by shippers themselves. That disparity has an inevitable and very important bearing upon the question of reasonableness; *prima facie* it is unjust, because it is oppressive, and the defendants are fairly called upon to exhibit good reasons for it.

This view of the case also renders it unnecessary for us, in considering the evidence adduced in support of the complaints, to distinguish as between that which is offered to prove excessive rates on barrel shipments and that which is given to show unjust discrimination.

Whatever evidence tends to show that the rates on barrel shipments are unreasonable because too greatly in excess of the charges made on tank shipments will also in like degree tend to show that in making rates on barrel and tank shipments, respectively, the defendants were guilty of unjust discrimination. This is self evident.

On the hearing the defendants entered upon a justification of their rates, and it was

planted by them on several distinct grounds. These we may summarize as follows:

I. Those who have their property sent in tanks furnish the rolling stock for the purpose, and save the carriers the necessity and expense of supplying it.

II. This method of transportation exposes the carrier to less risk of losses by fire and of damage to other property transported by it.

III. It is more profitable to the carrier, because the probability of a return load is greater, and also because the load of a car may be greater, and the carrier neither loads nor unloads the property nor furnishes store room for it.

Each of these grounds of justification deserves and must receive some attention at our hands:

I. The fact that the owner supplies the rolling stock when his oil is shipped in tanks, in our opinion is entitled to little weight when rates are under consideration. It is properly the business of railroad companies to supply to their customers suitable vehicles of transportation; *Ogdensburg etc. R. Co. v. Pratt*, 89 U. S. 22 Wall. 128, 188 [22 L. ed. 827]; and then to offer their use to everybody impartially. If the varieties of traffic are such and their requirements of rolling stock so numerous and diversified that this becomes impracticable or burdensome, so that the aid of their customers becomes essential or convenient, the supply obtained by their assistance cannot with any justice be utilized by the carrier in such manner as to establish discriminations which would otherwise be inadmissible. The carrier has no right to hire rolling stock and then allow it to be used exclusively by one class of persons on such terms as will drive out of business those who are compelled to use its own rolling stock in a competitive traffic. This, however, is precisely what takes place in this traffic if the rates for the transportation in barrels are considerably in excess of those which are charged for the transportation in tanks. The tank cars which are furnished to the carrier by shippers, whether the use is paid for or not, ought properly to be held for the use of all; but if this is found impracticable, it is very certain and very obvious that proprietorship of the car for the use of which the carrier pays, as it generally does, can fairly entitle the owner to no special consideration in the making of rates. He has an advantage, arising from his ownership, in being able to control the use; but that circumstance can be no reason for extending to him exceptional consideration which will make the advantage specially oppressive to competitors. It is, on the other hand, a very forcible reason why the carrier should see to it that its patrons who are forced to make use of such facilities as it provides for them shall not find its own want of proper rolling stock made a ground of discrimination against them. On this point the misapprehension of the situation is very apparent in some of the arguments which have been made for the defense. The complainant, it is said, asks the railroad companies to relieve him from the consequences of his own lack of capital to carry on his business to the best advantage. He cannot choose the best method, because that method requires

others we may regret the fact, but we cannot under any authority the law has conferred upon us interpose to change it.

The conclusion is that the Commission cannot adjudge the defendant guilty of unjust discrimination in the particular mentioned. Neither can it find upon the evidence that any advantage which is obtained by Richmond or any other locality by means of low rates given by connecting roads is chargeable as a wrong done by defendant. The naming of a through rate by the defendant to or from any distant point and the receiving of the freight moneys on a consignment do not of themselves charge the defendant with any responsibility in respect to the rates beyond its own line. There is no wrong on its part in giving to its customers information respecting such rates nor in receiving payment for both itself and its connections. On the contrary, it is a great business convenience, and any carrier which should refuse to give through bills when it could do so or to name through rates which are made up by adding its own to the rates made by its connections would be justly liable to very severe censure. Through bills are among the most important and valuable of transportation facilities, and it is not only important that the consignor should know before he forwards the goods what the charges upon them for the whole distance are to be, but it commonly saves him much trouble and avoids mistakes

if he can procure the information from the local agent of the receiving company instead of being compelled to apply to two or more agents at a distance. The receiving carrier ought, therefore, to keep informed respecting rates over connecting lines, whether it joins in making them or not, and it ought also to give through bills when they are desired if it can arrange with its connections to do so. It will not perform its full duty to the public unless it does so.

The result of our investigation of this case may be summarized very briefly. The defendant has been guilty of some overcharges which the parties paying them are entitled to have refunded if the refunding has not already taken place. The proofs show, also, that in the spring and summer of 1887 the defendant made rates which were greater on its road to Danville than to Richmond through Danville, but its tariffs have since been so changed that such greater rates are no longer charged. No application is made for the refunding of moneys paid on such rates, and the question whether there should be any is not before us. The Commission has no authority to require the defendant to concede the privilege sought for, corresponding to that of "milling in transit," and the evidence offered to show that the rates of the defendant are excessive and unjust is too inconclusive to justify any finding to that effect.

SUPREME COURT OF RHODE ISLAND.

STATE of Rhode Island

v.

William FITZPATRICK.

The provision of **R. I. Pub. Stat. chap. 634**, of May 4, 1887, § 1, which prohibits any person from keeping any intoxicating liquors "for the purpose of sale," is not, for the reason that it may incidentally interfere with foreign or interstate commerce, obnoxious to the Federal Constitution, art. 1, § 8, which confers upon Congress exclusive power "to regulate commerce with foreign Nations and among the several States."

(Providence—Decided January 7, 1888.)

ON constitutional questions certified to the Supreme Court under R. I. Pub. Stat. chap. 220, §§ 1-9.

The case is stated in the opinion.

Mr. Clarence A. Aldrich, *Asst. Atty-Gen.*, for the State.

Mr. Hugh J. Carroll, for defendant.

Durfee, Ch. J., delivered the opinion of the court:

This case comes before us from the District Court of the Tenth Judicial District, by certificate, on a constitutional question. It is a complaint under Public Laws R. I. chap. 596, of May 27, 1886, and chap. 634, of May 4, 1887, against the defendant, for keeping without lawful authority intoxicating liquors "for the purpose of sale," in violation of chap. 634, § 1, in amendment of chap. 596.

INTER S.

§ 1, charging the offense substantially in the language of the statute. In the district court the defendant made the following motion, to wit:

"The defendant moves that the above entitled complaint be dismissed, because it is brought under § 1 of chapter 634, of the Public Statutes, which attempts to prohibit the keeping, for the purpose of sale, of any of the liquors enumerated in said section, without making any distinction as to whether the sale is to be within or without this State; and he claims that he has a right to keep the same for the purpose of sale without this State. U. S. Const. art. 1, § 8."

The district court overruled the motion, and, having found the defendant guilty, has certified the question involved in it to this court for decision.

Chap. 634, § 1, so far as it is necessary to recite it for the purposes of the question, is as follows, to wit:

"No person shall manufacture or sell, or suffer to be manufactured or sold, or keep, or suffer to be kept, on his premises or possessions, or under his charge for the purpose of sale, any ale, wine, rum, or other strong or malt or intoxicating liquors, a part of which is ale, wine, rum, or other strong or malt or intoxicating liquors, unless as herein after provided."

The corresponding sections in earlier statutes, whether license or prohibitory, contained the words "within this State" after the words "for the purpose of sale," thus making the keeping illegal only when it was for the pur-

the point of delivery of the petroleum oil and putting it down where the oil was received. The advantage in the latter case would be very great; in the former it might be trifling; but in all cases where cotton seed oil is the return loading the advantage would seem to be reduced to a minimum by the very low charge which is made for the transportation of that commodity. This charge, for some reason not satisfactorily explained to the Commission, is made astonishingly low when compared with the charge made upon petroleum, although the cotton seed oil is much the more valuable article. It is very manifest from the evidence that the cotton seed oil traffic in itself is not one of more profit to these defendants.

The capacity of some of the tank cars is such that a larger quantity of oil can be taken by them than in such cars as barrels are conveyed in. This, of course, is favorable to the carrier, and enables him to carry more cheaply in proportion to quantity; but a considerable proportion of the tanks are not of this great size, and the load they carry does not exceed the ordinary car load in barrels. Moreover, it has been shown that heretofore the great size of some of the tanks has been ignored by some of these defendants altogether, and they have made no distinction in charge between carrying sixty barrels in a tank and carrying twice that quantity. They may, therefore, be gainers instead of losers by the establishment of a rule which measures their compensation for the service rendered by the tonnage carried, whether it be in the one mode or in the other.

We are entirely satisfied that this ought to be the rule. Barrel shipments in car load lots, loaded by the consignor and to be unloaded by the consignee elsewhere than in the carrier's warehouse, if subjected to higher rates, would be charged more than is either just or reasonable. We also think, and so find, that the great difference in rates shown in these cases to have been generally made as between barrel and tank shipments amounted to unjust discrimination as against the former. The rule should be to consider the tank a part of the car itself, and for the load carried in it the charge ought to be the same by the hundred pounds as is made on the transportation of barrels of oil in car load lots in other cars. Even then the shipper in barrels is at some disadvantage, for he must pay freight on barrels as well as on oil; but this, as between him and the carrier, is not unjust.

We find, then, on a careful review of the testimony in this case and after full reflection, that no sufficient reason is shown to justify the defendants making a distinction in their charges as between the parties employing the two different modes of carriage. We hold that when transportation is in car load lots the same charge by the hundred pounds should be made upon all consignments from and to the same points. Particular routes might be named on which it would be just to allow the oil to be carried in tanks at a lower rate; but on other routes the transportation in barrels might be most likely to insure return loads. There neither is nor can be any rule on that subject, and the attempt to consider each road of a system and each several feeder by itself, and to discriminate for each according to the

probabilities of return loads, would be far more perplexing than useful, and would breed many vexatious controversies. The roads constituting the Southern Railway & Steamship Association submitted the subject to three arbitrators in 1886; and the arbitrators, by an award made October 27, 1886, decided as follows:

"The board decides and awards that, taking effect November 1, 1886; coal oil in barrels, in car load quantities, be put in sixth class released, the same as coal oil in tank cars."

By this award both methods of transportation were to be put, in respect to rates, on the same footing for the whole system; the arbitrators apparently deeming it impracticable to make any difference from a consideration of the probabilities of return loads. We assent to this view because we think the attempt to take these probabilities into account would not be likely to have beneficial results.

This ruling concerns a traffic in which one method of transportation has no other or different effect upon the value of the article carried than has the other. The oil, when delivered, is of no higher value because of having been conveyed in barrels; and the owner has in no respect been supplied with superior accommodations or facilities which can be made the basis for an additional charge against him. The additional charge heretofore made has necessarily been grounded on something besides additional benefit to the party subjected to it.

This ruling does not preclude such allowance for the use of tank cars as is customary, provided it be reasonable; but, on the contrary, it assumes that such allowance will be made. But it should be made on some system, by some rule of uniformity; and the authority to make it must not, carelessly or otherwise, be made a means of discrimination.

It is now to be considered how far these parties, severally, are to be deemed guilty of unlawful discrimination in what they have done during the period covered by the complaints:

Upon this subject we have to say at the outset that, in our opinion, the mere fact that they have hitherto made a difference in rates as between the shipments in barrels and the shipments in tanks ought not of itself to be considered proof of unjust discrimination. There is room for great differences in opinion as to the relative rates which can justly and properly be charged, and a considerable difference might honestly be made in framing a rate sheet. There should be further proof than this mere difference to make out the unlawful discrimination as regards consignments made prior to the time of promulgating this opinion.

In the case of the Louisville & Nashville Railroad Company this additional proof is furnished in several ways:

One of the proofs is to be found in the making of the rate by the tank car regardless of weight or quantity. When one tank holds twice as much as another there can be no valid excuse for this; it necessarily makes the rates excessively low to the shipper in large tanks and specially oppressive to the shipper in barrels, when the largest tanks are made use of,

but the wrong was emphasized in the case of this company by the public being led to suppose that when the contents of the car exceeded a certain quantity or weight an extra charge was made, when in fact this was never done. But proofs of intentional disregard of the rights of the complainant, or of such want of regard for them as is equivalent, are made very evident in the correspondence between himself and the agents of the company.

The general freight agent of the company testified that its freight rates on oil in tanks up to April 5, 1877, were made regardless of quantity; that they were then changed to rates by the hundred pounds, but on the 11th of May following the company again went back to tank car rates irrespective of quantity. Fixing the rate in tank cars by the hundred pounds does not seem, however, to have meant much, for there were some shipments within this period by the Standard Oil Company regardless of actual weight, and the witness testified that a tank would have been received as holding 20,000 pounds, although this was greatly below the average quantity carried in one. He testified further that the Southern Railway & Steamship classification as printed and as given out by this company has this note: "Coal oil or its products in tank cars must always be charged at actual weight;" but, though a member of that association, his company made only the tank car rate regardless of weight. That rate was printed on a type writer and posted in its offices. The association has inspectors to report any underweighing; and if a tank was billed at 20,000 pounds and on weighing they found it to be more they should report the fact, the witness said, but the report, so far as we can discover, would perform no valuable function whatever. The posting of a rate in the company's office was supposed by the witness to show sufficiently that the company did not accept the rule of the association as to actual weights. In this he was in error. The public would have a right to understand that his rate sheet and the note in the classification were to be construed together, and effect given to both thus construed.

The correspondence between this witness and the complainant will best show the discrimination, so far as it seems to have been personal.

May 16, 1887, the witness, in response to inquiries by the complainant, says the company has no tank cars and cannot furnish them. "Regarding charge for returning empty tank cars, we first wish to know to what points shipments of oil in tank cars would be made. Generally, however, I may say the rate returning will be one and a half cents a mile." "The rates on coal oil, car load, from Louisville to Huntsville, Ala., are, in barrels, thirty-seven cents per 100 pounds." This statement of the Huntsville rate was conceded to have been an error. The witness says the rate was twenty-nine and one half cents, but was mistakenly given by a subordinate who wrote and signed the letter in his name.

May 18 complainant replied, complaining that the rates actually made by defendant had the effect of discrimination as between tank car and barrel shipments to the extent of over

50 per cent in favor of the freight injury of his business in favor of Oil Company, and adding:

"Please state why it is that retail and bulk are made the same and 50 per cent difference to you can you thus discriminate against you give a lower rate than 5 per 100 pounds in barrels, Louisville, Alabama, and are you shippers ship their oil at a less

"What I desire to know is to prorate on an equitable basis W. & B. on my oil shipments. Please answer promptly and

May 21 the witness answers "The rate to Huntsville and which we have quoted are as present prepared to name."

Here the witness adopts and repeats what he says was a mistake, after his attention had been called to the figures. He thus notified that the rate to thirty-seven cents, though other twenty-nine and one-half cents there seem to have been shipped Standard Oil Company of Kentucky seven and one half cents, but possibly an inadvertence. He proceeds to justify the difference between tank and barrel shipments goes on to say:

"I do not see that it is any other whether we prorate with the C. C., W. & B. roads or not. You obtain through rates from them for division of revenue between companies and our roads is a matter only our respective lines and not

Here was a third mistake. I admit the business of the complainant, if he could, whether this be prorate on an equitable basis or not, road over which he desired to ship in that way obtain through rates the case shows that through rates exist, unless it be the statement that through rates could be obtained of the other roads; but such rates, there was nothing in complainant endeavoring to obtain; and his inquiry on that point not wanting in either civility or

Further the letter proceeded

"In conclusion let me repeat furnished you are just as low as anybody else; that whatever rates are furnished by the L. & N. road appears, and that all communications asking for rates of freight or directly to your shipments over meet with respectful consideration; but I have neither the time to give attention to your letter the reasons governing the policy of the Louisville & Nashville Railroad Company its rates, or suggesting basis for between its connections and its I shall not reply to any such communication in the future."

This lacks accuracy, for the rate was still thirty-seven cents to the

twenty-nine and one half cents to other persons, and it overlooks altogether the fact that "the policy" of the company, so far as it affected his shipments, was complainant's concern as well as the concern of the company, and he was entirely within the bounds of what pertained to his business as well as of right in endeavoring to bring about a change.

May 17, in answer to an inquiry from the office of the witness, complainant was given a rate of \$1.80 on oil in car load lots, Cincinnati to Nashville. This is also conceded to be an error and excess over the rate then charged to others; but the error was not corrected, as it should have been, in the subsequent correspondence.

August 29 complainant wrote the witness as follows: "Please name rate on coal oil in barrels and tank cars, Louisville to Nashville, and advise what rate per tank car you allow; also rate to Columbia, Tennessee, car load, and what classification do you now use." On the next day he wrote again: "Please name rate on tank cars, Louisville to Montgomery, Alabama," etc.

September 2, instead of answering these letters, the witness writes to ascertain by what line or lines the shipments would be forwarded from Marietta; a fact which could have no bearing on the inquiry made of him. His company was supposed to have regular and stated rates on its own lines, and he was asked to give them. He should have given them with the same promptness when the oil was to be delivered to him over another road that would be expected from him when the traffic originated at Louisville.

On the hearing the witness was asked whether he had not refused to give complainant rates on barrels to Knoxville and Nashville, and he replied:

"No, sir; not that I know of. I will add that I know of no reason why we should refuse him rates to Knoxville and Nashville, and I would say that we have not."

It nevertheless appeared that the witness, on being pressed by complainant to give rates on defendant's line, referred him to Mr. Frazer, of the Cincinnati, Washington & Baltimore road, for through rates. He was told in reply that Mr. Frazer refused to give rates, but he still continued to refer complainant back to him. The witness was asked by a member of the Commission:

"What objection could you have, no matter over what roads the oil came to Louisville, to name rates from Louisville to Nashville?"

"Ans. Nothing, except that I thought he ought to get rates from the lines he dealt with. They had our rates."

The question in substance was repeated for further answer.

Ans. Well, if Mr. Rice was prepared to or had delivered his oil directly, there would have been no objection. We would, of course, have been willing to name him tariff rates, but he was away from our line and we preferred to let him get the rates through our connections. We felt that if we furnished him a rate and that rate was advanced and we did not give him any special notice of the change, and he went along doing business basing his price

on the rate that had formerly been quoted him, that he would hold us for the overcharge.

Q. Was that the reason, so that you might be in position to advance the rates without notice?

Ans. Without special notice to him; that was the main reason. There was another reason that also influenced me in not giving him rates. I found that Mr. Rice had been asking the Cincinnati office for part of the rates and our office for part of the rates; and while the rates in our office and in the Cincinnati office are supposed to be the same, still if he got the rates partly from my office and partly from the Cincinnati office we would not know to what points they had quoted him rates, and the Cincinnati office would not know to what points we had quoted him rates.

Q. What was the objection to his being quoted rates from any other office if they were the same?

A. If he got the rates from our office and he had to be notified by special letter in case of an advance in those rates, I would not know if the Cincinnati office had quoted him any rates, and would not be able to notify him of the advance in the rates quoted by the Cincinnati office. If he had to be notified by the Cincinnati office of an advance in rates, they would not know that we had quoted him any rates. I was clearly of the opinion and still think that the proper place for him to get his rates was from the line that took his business in the first instance. With the number of people writing constantly for rates, the giving special notice to shippers of changes is very liable to be overlooked.

It will be noted that this testimony comes from the officer who would be expected under the law to have the rates on his own lines printed and posted in the offices of the company, and open to public examination. If the rates were thus printed and posted much of the correspondence would seem to have been needless; and the inference is very strong that the Law, in its spirit, at least, was not observed. The injurious consequences resulting therefrom were not relieved by answers to complainant's letters. He was not given the rates, because, as we are told, the officer supposed if that were done and the rates afterwards changed he would be under obligation to give him personal notice of the change. This hardly seems a plausible excuse. The law imposed upon defendant's officers no obligation to give special notice to shippers in case of lawful change of rates, and the giving out of the tariff sheets or the quoting of rates could no more create such an obligation than could the posting of the sheets at the company's stations, as the Law required.

The witness was further asked whether he did not persist in his refusal to quote rates after he had been notified that Frazer declined to name them. He replied: "That is likely, but I do not think I am to be blamed for Mr. Frazer's action." This is quite true; he should not be blamed for Mr. Frazer's action. It was his own illegal refusal to act that he was blamable for. Mr. Frazer was not compellable to name rates over any road but his own

ville consisted, went on to say: "It consists in according to other points, notably Richmond and Lynchburg, in the rehandling of provisions spoken of, a better rate and facilities than it accords to Danville for the same services." And he proceeds with specification as follows: "Provisions shipped from points north of the Ohio River and reshipped at Lynchburg and Richmond are carried through to points in North and South Carolina at rates considerably lower than if the same goods were shipped to Danville and reshipped from Danville to the same points South."

The witness, Samuel P. Wimbish, in answer to the question whether defendant, since the fifth of April last, had discriminated in matter of freight rates to Danville and other points and against Danville and its people, said: "To the best of my knowledge and belief it has. For example, defendant, before the fifth of April and since, had its freight charges so arranged as that said charges from Richmond and Lynchburg to Greensboro,' Charlotte, and other points were and are now far lower, relatively speaking, than between any of said towns and Danville."

Witnesses John W. Caton and B. S. Crews give similar evidence, and it seems to stand in contradistinction to that of the officers of the road, who testify positively that no advantage in rates is accorded to either Richmond or Lynchburg, and that the same charges in proportion to distance are made from them as from Danville to other towns on defendant's line. The supposed discrimination is, however, explained by tabulated statements which the witness, in support of the petition, files and from which we may see exactly what the discrimination consists in.

These tabulated statements show what the charges are which are made by defendant upon consignments of grain and of meats from Richmond and Danville, respectively, to other towns on defendant's line, and also the charges made from Richmond to Danville, the purpose being to show that, in competing for the trade of local points on defendant's road, Danville is placed at a disadvantage. The statement, so far as it relates to charges for the transportation of grain is here given.

From Richmond to Reidsville, N. C., 164 miles, charge eighteen cents per cwt.; from Richmond to Danville, 140 miles, fifteen cents; thence to Reidsville, twenty-four miles, eight cents; total, twenty-three cents.

From Richmond to Greensboro,' 213 miles, twenty cents; from Danville to Greensboro,' forty-nine miles, ten cents; added to rate to Danville, twenty-five cents.

From Richmond to Durham, 230 miles, twenty-one cents; from Danville to Durham, eighty miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to Charlotte, 281 miles, twenty-one cents; from Danville to Charlotte, 141 miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to Asheville, 360 miles, twenty-eight cents; from Danville to Asheville, 220 miles, twenty-seven cents; added to rate to Danville, forty-two cents.

From Richmond to Salisbury, 230 miles, twenty-one cents; from Danville to Salisbury,

ninety miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to High Point, 218 miles, twenty-one cents; from Danville to High Point, seventy-eight miles, nineteen cents; added to rate to Danville, thirty-six cents.

The showing in respect to meats is similar to this, and another statement of shipments from Chicago or other western point to Richmond and to Danville, respectively, would, when reshipments were made to the other points named, result in like discrepancies. The discrimination the petitioners complain of is that defendant's rates are so made that the Danville merchant cannot deliver his goods at Reidsville, Greensboro,' and other towns named at which he may sell them at rates for transportation as low as are accorded to Richmond.

The most casual inspection of this statement, however, will make plain to the mind that the difference in rates which it shows in favor of Richmond results from the fact that from Richmond the property is supposed to be taken directly to the several points named, while the Danville shipments are first made from Richmond to Danville and then from Danville to the ultimate destination. The difference is, therefore, a difference between the charge for one transportation covering a definite distance and that for two transportations which aggregate the same distance. The petitioners think that upon such goods bought in Richmond, as they sell at Reidsville or other points named, they should be charged in the aggregate only the rates which are charged when the consignment is directly from Richmond through to the same point. Defendant assents to this when the Danville merchant ships directly from Richmond to the place of sale, but declines to allow it when the shipment is first to Danville and then to the ultimate destination. It is the denial of this privilege of having the two shipments count as one which constitutes the discrimination complained of.

The concession here claimed bears resemblance to an attempt to compel the railroad company to establish the system which in some parts of the country is known as "milling in transit"—a favor in transportation most often, perhaps, allowed to manufacturers of flour, but which is known in other industries also. In proceedings before the Commission where this system has incidentally been spoken of it has been said to have had its origin in the desire of carriers which received wheat for delivery to millers on their line to control the transportation of the manufactured article and keep it from passing to the hands of competitors. It is not likely that this is the sole reason for the practice, and we mention it only as one that has been named. The control of the carriage would be assured by giving to the consignor of wheat a through rate from the point of reception to the point at which he expected to market his flour, but with the privilege of converting the wheat into flour at an intermediate point. The advantage of such a privilege to the consignor may be shown by a supposed case. Let it be assumed that the rate on wheat from Chicago to New York is twenty-five cents per hundred

This last rate is corrected to forty-five cents by letter dated the next day. These letters of May 5 and May 9 are both written under the heading of Missouri Pacific Railway Company.

May 10 the commercial agent writes:

"In looking over our correspondence we note the concluding portion of your letter, which asks if Waters-Pierce Oil Company have any preference as to number of cars shipped. We answer, No, sir; you are exactly on the same level as any other oil shipper over our line. We carry all shipments at actual weight and make the usual mileage charge on return of empty tanks."

This last statement was not warranted by the facts; defendant made an allowance to the owner of the car of three fourths of a cent per mile for the use of the car.

May 11 complainant writes the assistant general freight agent:

"Do I understand that tank cars of bulk oil are taken at 10,000 pounds each? Also that 200 cases (or 60 barrels) are taken also at 20,000 pounds (per special rate No. 52 A)?"

May 16 complainant writes the commercial agent:

"Do you charge extra for return of empty tank cars; if so, how much?"

The special rate, 52 A, above referred to was put in evidence. It purports to be issued by the Missouri Pacific Railway Company and gives rates "on illuminating and lubricating oils in car loads of 300 cases or sixty barrels, or per tank car of 20,000 pounds from St. Louis, Missouri, to Vinitia, Indian Territory, \$65; McAlistar and Muscogee, Indian Territory, \$110." These points are not on defendant's road.

Also special rate 53 A, issued by the Missouri Pacific Railway Company, and taking effect at the same time, as follows: "Coal oil, car loads, from St. Louis and Carondelet, Missouri, to Newport, Arkansas, \$50 per car of 55 barrels, or per tank car; Little Rock, Arkansas, \$50 per car of fifty-five barrels, or per tank car; Texarkana, Arkansas, 45 cents per 100 pounds." The rates per tank car by this last would apparently be irrespective of actual weight.

May 19 the assistant general freight agent writes complainant:

"Replying to your communication of the 11th, I beg to advise that the rates mentioned in our special No. 52 on illuminating and lubricating oils are per tank car of 20,000 pounds, that the excess over the number of cases or barrels mentioned loaded in box cars, or the excess over 20,000 pounds contained in a tank will be taken at a proportionate rate per 100 pounds. In this connection I beg to advise you that our rate on oil in tank cars to McAlistar and Muscogee is 50 cents per 100 pounds. In other words, we do not exceed to McAlistar or Muscogee the rate which is made to Denison fifty cents per 100 pounds when in tank cars."

May 21 complainant writes the assistant general freight agent:

"Do you actually in each and every instance weigh tank cars of oil as shipped out, as well as the empty tank cars on their return, and charge full net weight thereon as thus shown, or do you estimate them, or how do you do this? Please answer promptly and to the point, and oblige."

May 25 an answer to other portions of this letter ignores the above query altogether.

Several other letters passed between the part is relating specially to the discrimination made by the published tariffs between the shipments in barrels and cans and by tank cars.

September 8 complainant writes the assistant general freight agent:

"Please inform me if you are still taking tank car oil at an estimated weight per car, or do you actually weigh each and every car, or do you take the estimate given you by the consignor? Will you give me the same net rates and weight by tank car to Austin, Dallas, Palestine, Houston, and Galveston that you may now give the Waters-Pierce Oil Company, or as low net rates as is given any shipper over your various lines? and please name me those rates to above points."

This was answered as follows:

"The charge on oil loaded on tank cars is on a basis of actual weight, minimum weight 25,000 at the established rates which are open to any shipper. This also answers your letter of the 8th to Mr. O'Connor."

The minimum car rate is stated in the evidence to have been raised on defendant's road to 25,000 pounds in July.

September 28 complainant writes the assistant general freight agent:

"You refer to my two letters of the 8th, but fail to answer the most important part of those letters, which I repeat once more in order that you may clear up the obscurity of your vision: I am desirous and will build twenty tank cars to carry bulk oil over your system of roads provided you will assure or guaranty to me the same net rates that you allow the Waters-Pierce Oil Company or as low a net rate in tank cars as is accorded to any other shipper to such general points as Austin, Dallas, Palestine, Houston, Galveston and other points reached by your vast system."

September 27 reply was made: "The rates charged by this Company are open and alike to all shippers."

September 30 the complainant writes the assistant general freight agent:

"Please inform me of the largest size or the largest capacity of tank cars you will carry over your lines and the largest capacity now used; and have you any particular requirements how they shall be built in order to conform to your general rules? Will you state to me more definitely and assure or guaranty me, in case I build tank cars, that you will give me as low net rates per car or per 100 pounds that you will give to the most favored shipper that ships in that manner over your lines, regardless of the quantity shipped? This assurance and guaranty I desire before I put my money into it, that I shall be treated exactly alike and have as low net rates in all other respects (regardless of commissions, etc.) that is accorded any other shipper, large or small. I am now in correspondence with tank car builders on this subject, and desire an early answer."

October 4 this was answered:

"We have no regulations governing the weight carried in tank cars different from the customary rules between western roads as to the weight carried in ordinary cars; nor do we

others we may regret the fact, but we cannot under any authority the law has conferred upon us interpose to change it.

The conclusion is that the Commission cannot adjudge the defendant guilty of unjust discrimination in the particular mentioned. Neither can it find upon the evidence that any advantage which is obtained by Richmond or any other locality by means of low rates given by connecting roads is chargeable as a wrong done by defendant. The naming of a through rate by the defendant to or from any distant point and the receiving of the freight moneys on a consignment do not of themselves charge the defendant with any responsibility in respect to the rates beyond its own line. There is no wrong on its part in giving to its customers information respecting such rates nor in receiving payment for both itself and its connections. On the contrary, it is a great business convenience, and any carrier which should refuse to give through bills when it could do so or to name through rates which are made up by adding its own to the rates made by its connections would be justly liable to very severe censure. Through bills are among the most important and valuable of transportation facilities, and it is not only important that the consignor should know before he forwards the goods what the charges upon them for the whole distance are to be, but it commonly saves him much trouble and avoids mistakes

if he can procure the information from the local agent of the receiving company instead of being compelled to apply to two or more agents at a distance. The receiving carrier ought, therefore, to keep informed respecting rates over connecting lines, whether it joins in making them or not, and it ought also to give through bills when they are desired if it can arrange with its connections to do so. It will not perform its full duty to the public unless it does so.

The result of our investigation of this case may be summarized very briefly. The defendant has been guilty of some overcharges which the parties paying them are entitled to have refunded if the refunding has not already taken place. The proofs show, also, that in the spring and summer of 1887 the defendant made rates which were greater on its road to Danville than to Richmond through Danville, but its tariffs have since been so changed that such greater rates are no longer charged. No application is made for the refunding of moneys paid on such rates, and the question whether there should be any is not before us. The Commission has no authority to require the defendant to concede the privilege sought for, corresponding to that of "milling in transit," and the evidence offered to show that the rates of the defendant are excessive and unjust is too inconclusive to justify any finding to that effect.

SUPREME COURT OF RHODE ISLAND.

STATE of Rhode Island

v.

William FITZPATRICK.

The provision of **R. I. Pub. Stat. chap. 634**, of May 4, 1887, § 1, which prohibits any person from **keeping any intoxicating liquors** "for the purpose of sale," is not, for the reason that it may incidentally interfere with foreign or interstate commerce, **obnoxious to the Federal Constitution**, art. 1, § 8, which confers upon Congress exclusive power "to regulate commerce with foreign Nations and among the several States."

(Providence—Decided January 7, 1888.)

ON constitutional questions certified to the Supreme Court under R. I. Pub. Stat. chap. 220, §§ 1-9.

The case is stated in the opinion.

Mr. Clarence A. Aldrich, *Asst. Atty.-Gen.*, for the state.

Mr. Hugh J. Carroll, for defendant.

Durfee, Ch. J., delivered the opinion of the court:

This case comes before us from the District Court of the Tenth Judicial District, by certificate, on a constitutional question. It is a complaint under Public Laws R. I. chap. 596, of May 27, 1886, and chap. 634, of May 4, 1887, against the defendant, for keeping without lawful authority intoxicating liquors "for the purpose of sale," in violation of chap. 634, § 1, in amendment of chap. 596, INTER S.

§ 1, charging the offense substantially in the language of the statute. In the district court the defendant made the following motion, to wit:

"The defendant moves that the above entitled complaint be dismissed, because it is brought under § 1 of chapter 634, of the Public Statutes, which attempts to prohibit the keeping, for the purpose of sale, of any of the liquors enumerated in said section, without making any distinction as to whether the sale is to be within or without this State; and he claims that he has a right to keep the same for the purpose of sale without this State. U. S. Const. art. 1, § 8."

The district court overruled the motion, and, having found the defendant guilty, has certified the question involved in it to this court for decision.

Chap. 634, § 1, so far as it is necessary to recite it for the purposes of the question, is as follows, to wit:

"No person shall manufacture or sell, or suffer to be manufactured or sold, or keep, or suffer to be kept, on his premises or possessions, or under his charge for the purpose of sale, any ale, wine, rum, or other strong or malt or intoxicating liquors, a part of which is ale, wine, rum, or other strong or malt or intoxicating liquors, unless as herein-after provided."

The corresponding sections in earlier statutes, whether license or prohibitory, contained the words "within this State" after the words "for the purpose of sale," thus making the keeping illegal only when it was for the pur-

published March 31. This basis will continue in existence until the Interstate Commission have definitely determined the question of the long and short haul clause. You are, of course, aware that the S. R'y & S. S. classification makes coal oil, car loads, sixth class."

The noticeable thing about this letter is that it refers to the classification of the Southern Railway & Steamship Association with an evident purpose to have complainant understand that this defendant recognized and accepted it. The proof shows that such was not the fact. Defendant, though it accepted it in part and circulated it with its rate sheets, repudiated it so far as concerned this traffic and some others, and its rates were materially different from what they should have been had that classification governed them. The repudiation of it, however, was only notified to the public by the making of special rate sheets which were not in conformity to it; obviously a very imperfect mode of giving the information.

May 28 complainant writes:

"Please state if oil in tank cars and barrels is under same classification, and also what rate per barrel you ask on barreled oil, also in bulk, per tank car, and how many gallons you allow to a barrel in bulk per tank car."

May 4 the general freight agent replies:

"As stated in my last communication, the classification of coal oil in barrels in car load lots is sixth class. I regret that I am not yet in position to quote through rates on coal oil in tank cars to all points reached by connecting lines, not having yet received the necessary information from them.

"I am not able to answer your inquiry as to how many gallons will be allowed to the barrel, but beg to assure you that every consignment will be waybilled upon an actual weight basis."

Here is repeated the erroneous information about the classification.

May 4 complainant writes:

"Do you take tank cars of oil at actual weight—that is to say, do you weigh each and every car? At what rate per barrel do you now take barreled oil; also bulk oil per barrel, and how many gallons of bulk oil do you allow to a barrel; also what charges for return of empty tank cars? In my letter of April 18 I asked you if you were now giving any lower rates to other parties from shipping points outside of Cincinnati on coal oil to the various points and places named to me per your letter of April 18. To this question you have not as yet answered. I would be much obliged if you would answer promptly."

This was not answered promptly, and on May 7 complainant writes complaining of the neglect, and also of discrimination between shipments in barrels and in tanks supposed to have been agreed upon at a meeting in Chicago.

May 9 the general freight agent replies:

"Rates on coal oil. Referring to your two favors of the 4th and 7th instant I regret that my frequent and enforced absences from Cincinnati have at times prevented as prompt replies being given to your communications as I would have wished.

"I beg to inform you that this company was not represented at any meeting held in Chi-

cago on March 11, and also that upon all shipments of coal oil in barrels we propose charging upon an actual weight basis.

"As you are aware, the classification of the Southern Railway & Steamship Association makes the rate on coal oil in barrels, car load lots, sixth class. You are also aware that by special authority of the National Railway Commissioners the lines of the Southern Railway & Steamship Association have renewed their former rates, and I take pleasure in forwarding you by this mail a copy of our latest tariff from Cincinnati.

"I think it hardly necessary for me to say that above rates will be charged to all shippers alike."

Here the mistake about the classification is again repeated. The reference to the National Railway Commissioners—by which this Commission was intended—was misleading, to say the least. The Commission never investigated coal oil rates, or gave "special authority" for their renewal; it never sanctioned any difference in the rates as between tank car and barrel shipments, and had never up to the date of this letter had its attention called to them in any way. What it did was to relieve the carriers represented in the association temporarily from the strict rule of the fourth section of the Act to Regulate Commerce, with a restriction that in the mean time the disparities existing under their tariffs should not be increased.

May 11 complainant writes, and what he says regarding the classification of the Southern Railroad & Steamship Association is altogether natural under the circumstances:

"Yes; I am aware that the classification of the Southern Railroad & Steamship Association makes rate on coal oil in barrels sixth class (same as tank cars), but what does such issuance of a rate amount to when not lived up to by you and other lines? Mr. Gault wrote me and called my attention particularly to a printed circular issued by Virgil Powers, Commissioner, dated November 1, 1886, in which barreled and tank car oil is both made sixth class. Your tariff sheet No. 11, dated November, 1886, just received, makes barreled oil fifth class and tank oil sixth class. How do you reconcile this? But this difference is trivial compared to other more gross outrages practiced by your lines and others in carrying tank car oil by the lump (regardless of weight) at about one fourth of that charged on barreled oil, pound for pound.

"You say that upon all shipments of coal oil in barrels we propose charging upon an actual weight basis. Does this apply to tank car shipments of bulk oil; and, if so, do you actually and without a question weigh each and every tank car of oil that goes over your line, and charge full weight thereon?

"Please name me rates on oil in tank cars and barrels to Lexington, Chattanooga, Atlanta, Birmingham, Jackson, Mississippi; Meridian and Vicksburg, Mississippi; Knoxville and Huntsville, Tennessee; Shreveport, Louisiana, and Montgomery, Alabama. I trust and hope that you will give me these rates promptly.

"Please state if any charge for return of empty tank cars. Can you not prorate with

the C. W. & B. so as to give me through rates from here to above points?"

The reply May 14 is as follows:

"In my letter of the 28th *ultimo*, which you refer to, I advised you that we had renewed rates to all points south of the Ohio and east of the Mississippi River, the same as were in effect on March 31. I have already sent you copy of our tariff No. 11, which indicates rates now in effect and which have been in effect from the time we received from the National Commissioners the exemption from the fourth clause of the Interstate Commerce Law. I note your request to be furnished with rates to Lexington, Chattanooga, Atlanta, Birmingham, Jackson, Meridian, Vicksburg, Knoxville, Huntsville, Shreveport, and Montgomery, and will endeavor to obtain the necessary information from connecting lines, and advise you further as early as possible.

"I regret that we cannot prorate with the C., W. & B. road, and our rates will consequently apply from Cincinnati."

The inquiry as to a charge for the return of the tank cars, it will be seen, is not responded to.

May 16 complainant writes to get rates and adds:

"Please inform me why you cannot prorate with the C., W. & B. on the through rate on the oil from here. You certainly must prorate with her on other business from other points, or from east and west."

The answer May 20 was that "All shipments of coal oil pay our rates from Cincinnati, and we are not prorating on this traffic from any point whatever."

Some other letters near this time are omitted, as not being important to this controversy.

May 28 the general freight agent writes:

"Referring to recent correspondence and quoting rates to the points named in your letter of the 11th instant, I beg to inform you that the following rates on coal oil are obtainable from Cincinnati to points named:

In car tanks.	Per 100 lbs. Car loads in barrels.
Lexington.....	\$ 28 00
Chattanooga.....	50 00
Atlanta.....	61 80
Birmingham.....	60 00
Meridian.....	60 00
Vicksburg.....	60 00
Knoxville.....	50 00
Huntsville.....	87 c. per 100 lbs.
Shreveport.....	118 00
Montgomery.....	118 00
	18 cents.
	88 "
	46 "
	47 "
	45 "
	84 "
	33 "
	64 "
	47 "

As bearing upon this table a list of shipments was given, some of the figures in which require notice. The rate—barrel rate—to Lexington was soon reduced to ten cents per 100 pounds, the tank rate remaining the same. The average shipment in tank cars to that point seems to have been of 31,228 pounds weight, which would make the rate on tank car shipments about 8.82 per 100 pounds, and the barrel rate about 20 per cent higher. The only shipper to this point in either mode was the Standard Oil Company of Kentucky. In contrast to these the shipments from Cincinnati to Chattanooga were in tank cars varying from 25,000 to 43,815 pounds. The barrel rate was thirty-three cents per 100 pounds. The tank rate was \$50 per car. At thirty-

three cents per 100 pounds the rate carried in the smallest car would \$82.50; on that carried in the largest have been \$144.50. On an average it would have been \$113.54. This makes the rate on barrel shipment in excess of the rate on tank instead of 20 per cent excess as at I

A similar vast discrepancy was shown rates from Cincinnati to Meridian. rate was \$80, which, if the tanks averaged 1000, would make the rate per hundred twenty-five cents; or, if they averaged twenty cents; but while this charge the rate on barrel shipments was raised six cents per 100 pounds—probably than 175 per cent excess over the rate.

May 30 complainant sent the following:

"Please name rate on oil, tank cars, car lots, to Mobile and New Orleans:
Also:

"Yours 28th, enclosing rates, final after several applications. These prohibitory on my shipments, as full well; and the device or method tank car shipment in bulk is purged against me (who ship entirely in order that I cannot compete with the Oil Company in the sale of my product.

"By these rates thus given me to different points in the South you discount against my shipments not less than cent and as high as 213 per cent, with—Huntsville, Ala.—you make the same per 100 pounds for both barrels that in tank cars. I will here show I arrive at this comparison:

"All the bulk oil carried in tank the Pennsylvania oil regions to they pay the same amount for 50 gallons as for 50 gallons (including the bare empty barrel is carried extra to cover for the return of the empty tank cars not bring back freight as against that can. I maintain and assert the cars of the Standard Oil Company by 100 barrels of 50 gallons (or 5,000 each), on an average, while some of over 6,500 gallons (or 130 barrels), fair and equitable basis I will call, and herewith give you the true amount of discrimination you dare on me in the face and eyes of the Act: (See table on next page.)

"Do you really think that under state Act you can boldly go on and criminate against my shipments, to tion of my business, which you do willing to hazard in the interest of Standard Oil Company so long as they force or compensate you for all damage accrue for such gross violations of the

"I desire to call your attention to of the Interstate Act as a further from one who wants to ship his oil over your line, and to give you not every tank car load of oil, as well as smaller lot, L. C. L., that you have since the Interstate Act has taken all such from this time forth the rates or has discriminated against

the Act to Regulate Commerce which were enacted to establish uniformity, equality and publicity.

It is proper to say on behalf of these two defendants that after the filing of the complaint their rates were revised and made much more reasonable and just. It is also proper to give them the benefit of the protest made by the general agent of the first named company against being supposed to have intentionally carried the very large tanks with knowledge of the actual capacity. If the officer was misled, as he claims to have been, the blame should fall upon the party deceiving him. We cannot say in this case that there was anything more than an honest misapprehension, and are inclined to think that such was the fact; but one of the difficulties attending cases of this nature is that while the Law imposes severe penalties on the carrier and its agents for acts on their part designed or calculated to create discrimination as between shippers, it imposes none on shippers themselves who by artifice, misrepresentation, false billing, or other deception of the carrier, secure advantages to themselves which it would be illegal and punishable for the carrier voluntarily to grant. If, therefore, the agent of the Standard Oil Company had purposely misled the defendant's officer in the matter referred to, and thereby obtained an unfair advantage, the complainant would be without redress, unless on the ground of negligence defendant could be held responsible for acting upon the false information.

The Illinois Central Railroad Company we find to have discriminated unjustly against complainant by making some of the barrel rates excessively high, as compared to those on tank car shipments, and also by shipping at car rates, irrespective of quantity, while leading complainant to understand that if the capacity exceeded a specified minimum the excess would be charged for.

From the evidence it appears that during the period in controversy tank car shipments were made over the road of defendant to New Orleans only. To points to which no tank car shipments were made this defendant did what was also done by the Louisville & Nashville Railroad Company in some cases—made the same rates by the 100 pounds, whether shipments were in tanks or barrels. If these equal rates were offered to the public in good faith, defendant ought to be compelled to give the like uniform rates to points to which tanks were sent; and if they were not offered in good faith, the defendant ought to be held estopped by its own rate sheets from disputing the justice of this uniform rule.

But in this case we find, as we have so often found in others, that parties applying for tank car rates are misled into supposing they are graded by quantity, when in fact they are uniform by the tank car.

May 3, 1887, the general freight agent of defendant wrote complainant as follows:

"Yours without date. I replied to your previous letter promptly, stating that the rate on oil from Cairo (according to the tariff sent you) when in full car loads would take fourth class, released, whether in tanks or barrels, which will give the information desired."

May 4 he wrote again:

"Yours of the 30th *ultimo*. Our rates on oil in car loads, released, 20,000 pounds and over, Cairo to Jackson, Mississippi, 50 barrels and over, \$1.65 per barrel; in tank cars, 24,000 pounds and over, forty-seven cents per 100 pounds; Cairo to New Orleans, in barrels or tank, car loads, 24,000 pounds and over, twenty-four cents per 100 pounds.

"We have no rates at present in effect from Cleveland, but would refer you to H. Coope, Ga., O. & W. Railroad, Cincinnati, Ohio, for rates from that point to N. O. and Jackson, Miss., via Odin."

What is noticeable in these letters is that the rate given is the same on shipments in the two modes, and that a minimum car load rate is mentioned. The agent explains in oral testimony before the Commission that the rates here specified were the old rates temporarily restored, and that there was a complete revision of rates afterwards.

May 31 the agent writes complainant:

"Rates on oil.—I have your much appreciated favor of the 28th instant. We charge for actual weights on oil, whether in tanks or barrels; and, as previously advised, our rates are to all shippers alike.

"Tanks which are hauled one way loaded are at present returned without extra charge in the same manner as other foreign cars are handled.

"The Mississippi Valley joint classification makes coal oil in car loads, whether in wood or in tanks, fourth class, which rates we charge to points taking Mississippi Valley joint classification."

The agent says of this letter in his oral evidence:

"That refers to oil to local stations. It does not refer to New Orleans, as Mr. Rice had been repeatedly advised what the rate was there."

To put this in plain English it is this: Defendant proposed to charge for actual weight on oil in tanks to the points *only* to which no shipments in tanks were made. The offer of equal rates to the shippers in barrels was therefore illusory.

September 30 complainant wrote the general freight agent—

"I desire and propose to build twenty tank cars immediately to run over your lines, provided you will assure or guaranty me as low net rates as you accord to any other shipper, regardless of quantity shipped; also that you will carry oil for me in tank cars from any point or station on your line to points on and beyond your lines at the same proportionate (or division of a through rate) that you receive or get out of the most favored shipper.

"Please state how large capacity of tank cars you would allow to run over your road and how large tank cars have been used on your road; please answer promptly."

The answer, November 2, is as follows:

"Rate on oil from Cairo—Upon returning to my office, after an absence of several weeks out on the line, I find your favor of September 30 and October 13.

"Coal oil or its products in barrels is now third class; if released, sixth class; actual weight to be charged for each case, but not less than 24,000 pounds per car load. I trust this heavy reduction in our local rates will enable

just and unreasonable, but without avail. They asked the general freight agent of the said railroad on October 12, 1887, if the said rate or charge for the said service was not raised from twenty-five cents per barrel to thirty-four cents per barrel at the request and dictation of the Standard Oil Company. The answer to said question was, in substance and effect, that the rate or charge for said service was so raised and increased at the request and dictation of the Standard Oil Company; that said Standard Oil Company was a large shipper of freight over their road and branches and that they (meaning the railroad management) felt obliged to comply with the wishes of the said Standard Oil Company in these matters and obey its behests, as a failure to comply and obey would, it was feared, result in a loss of business from said Standard Oil Company to said road.

X. The Standard Oil Company is a corporation engaged in the same business as petitioners and is a rival of petitioners in said business. Petitioners charge that the said Standard Oil Company has for years past and still does exert its influence with and over said railroad, its management and officials to compel them to exact unjust, unreasonable and extortionate rates and charges and conditions of shipment from petitioners, and other refiners and shippers of oil in Western Pennsylvania, in order to injure, embarrass, cripple, and if possible, ruin their business. That the efforts of the said Standard Oil Company in this direction are unceasing and have heretofore and do now prevail with said railroad management and officials as well as with the other railroad companies operating in said region. That the rate or charge of twenty-five cents per barrel for said service prior to April 5, 1887, instead of twelve cents per barrel, was due to the interference and dictation of the said Standard Oil Company with a view to injure the business of petitioners, and others.

XI. Petitioners shipped from Titusville to Buffalo aforesaid over the said railroad since April 5, 1887, to the 14th day of February A. D. 1888, 12,293 barrels of refined oil in 183 cars. Owing to lack of information petitioners are unable to state when said Receivership ceased, and are therefore unable to give the precise number of barrels shipped during said receivership, and the number shipped during the time that the Western New York & Pennsylvania Railway Company has had control of said road. Petitioners request the privilege of stating the number of barrels carried by each when the information shall be furnished them.

XII. Petitioners have sustained and suffered loss and damage by reason of the unjust and unreasonable toll, rates and charges herein complained of and the unjust and unreasonable conditions of shipment imposed upon their traffic as aforesaid, and the discrimination practiced by said Receiver and the said Western New York & Pennsylvania Railway Company against the said City of Buffalo and the traffic of petitioners as aforesaid since April 5, 1887, the sum of \$2,886.46 and that the interest thereon to the 14th of February A. D. 1888, amounts to about \$74, which is also claimed. And petitioners are continuing to sustain loss and damage each time a shipment is made. Petitioners request that they be allowed to state

amount of loss and damage sustained by them during the time of said receivership, and since, when the facts are known in order to charge each respondent with his or its proper amount.

Petitioners pray that the said G. Clinton Gardner, Receiver, and the said Western New York & Pennsylvania Railway Company, be cited to appear and answer this petition; and that they be required to make discovery of the number of barrels of oil carried by each since April 5, 1887, for petitioners between Titusville and Buffalo; and that the grievances hereinbefore set forth be investigated; and that on final hearing petitioners be awarded such damages as shall be just and proper by way of reparation; and that the said Western New York & Pennsylvania Railway Company be notified and ordered to cease and desist from the violations of said Act complained of; and the said Receiver and said last mentioned Railway Company be ordered to make such other and further reparation as shall be just and proper, and that such further orders be made and proceedings be had as shall fully protect petitioners.

William H. HEARD

v.

GEORGIA R. R. CO.

(No. 46.)

- *1. **Passengers** paying the same fare upon the same railroad train, whether white or colored, are entitled to equality of transportation, in respect to the character of the cars in which they travel, and the comforts and conveniences supplied.
2. **Separation of white and colored passengers** paying the same fare is not unlawful, if cars and accommodations equal in all respects are furnished to both, and the same care and protection of passengers observed.
3. By requiring the petitioner who had paid a first class fare to ride in a half car set apart for colored passengers, with accommodations and comforts inferior to the car for white passengers in the same train who paid the same fare, and without the protection against annoyance furnished to white passengers, the Georgia Railroad Company subjected him to undue and unreasonable prejudice and disadvantage, in violation of the third section of the Act to Regulate Commerce.

(Heard Dec. 15, 1887; Decided Feb. 15, 1888.)

COMPLAINT based upon the exclusion of a colored passenger from a first class car. See pleadings, *ante*, 493.

Messrs. J. W. Cromwell and W. C. Martin, for petitioner.

Mr. Joseph B. Cumming, for defendant.

REPORT AND OPINION OF THE COMMISSION.

Schoonmaker, Commissioner:

The issue presented by the pleadings in this

*Headnotes by COOLEY, *Chairman*.

upon barrel shipments varied from 20 per cent to two hundred or more. Neither greater risks, greater expense, competition by water transportation, or any other fact or circumstance brought forward in defense, or all combined, can account for these differences. The conclusion is irresistible that the rate sheets were not considerably made with a view to relative justice.

We have thus, with as much brevity as was practicable, in view of the great bulk of evidence, reviewed the cases and expressed our conclusions. It remains only to direct what orders shall be entered in the cases, respectively.

In the case against the Louisville & Nashville Railroad Company order will be entered that the defendant do forthwith cease and henceforward abstain from the unjust discrimination found to exist in its charges for the transportation of petroleum oils as between shipments in barrels and in tanks, and from making any higher charges by the hundred pounds for the transportation of the oils in barrels, including the barrels, than it makes or shall make, contemporaneously, for the transportation of the like weight of the oils in tanks.

It will be further ordered in the same case that the said defendant do forthwith cease and hereafter abstain from making uniform rates for the transportation of petroleum oils by the tank car instead of by weight or quantity when the capacity of the tank cars in use on the lines of road is not uniform or nearly so; the necessary effect of such uniform rates by the tank being to establish unjust discriminations and to give the shippers of oils in tanks undue and unreasonable preference and advantage.

In the case against the St. Louis, Iron Mountain & Southern Railway Company order will be entered that the defendant do forthwith cease and henceforward abstain from the unjust discrimination found to exist in its charges for transportation of petroleum oils as between shipments in barrels and in tanks, and from making any higher charges by the hundred pounds for the transportation of the oils in barrels, including the barrels, than it makes or shall make contemporaneously, for the transportation of the like weight of the oils in tanks.

In the case against the Cincinnati, New Orleans & Texas Pacific Railway Company order will be entered in the same terms as the order above directed to be entered against the Louisville & Nashville Railroad Company.

In the case against the Cincinnati, New Orleans & Texas Pacific Railway Company and the Alabama Great Southern Railroad Company order will be entered in the same terms as the order above directed to be entered against the Louisville & Nashville Railroad Company.

In the case against the Newport News & Mississippi Valley Company and the Louisville, New Orleans & Texas Railroad Company order will be entered in the same terms as the order above directed to be entered against the Louisville & Nashville Railroad Company.

In the case against the Newport News & Mississippi Valley Company and the Illinois Central Railroad Company order will be entered in the same terms as the order above directed to

be entered against the Louisville & Nashville Railroad Company.

In the case against the Illinois Central Railroad Company order will be entered in the same terms as the order above directed to be entered against the Louisville & Nashville Railroad Company.

In the case in which the Illinois Central Railroad Company is sole defendant it is unnecessary to enter any order at this time. In so far as discriminations have arisen from rates on tank shipments they will be directed by this company if the order made against it in the case last above mentioned is observed. As to the further controversy which this case presents, what is said in the cases against the Mobile & Ohio and the Mississippi & Tennessee Railroad Companies is directly in point.

In each of the cases in which an order is to be made, as above stated, a report and finding of facts and conclusions is entered herewith and is to be considered a part hereof.

BOSTON CHAMBER OF COMMERCE.

v.

LAKE SHORE & MICHIGAN SOUTHERN R. CO., New York Central & Hudson River R. Co., and Boston & Albany R. Co.

SAME

v.

LAKE SHORE & MICHIGAN SOUTHERN R. CO.

SAME

v.

NEW YORK CENTRAL & HUDSON RIVER R. CO.

(Nos. 61-63.)

1. *The relative reasonableness of rates on shipments from western points to cities on the Atlantic seaboard is to be determined by all the circumstances and conditions that affect the traffic to the respective points between which the rates are questioned, and not solely by one standard of comparison.
2. The length and character of the haul, the cost of service, the volume of business, the conditions of competition, the storage capacity and the geographical situation of the different terminal points are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation.
3. The fact that the export rates through Boston, and the rates on merchandise intended for coast wise points east of Portland, and the west bound rates from Boston have been made by the carriers the same as corresponding New York rates in order to put Boston on an equality with New York and other seaboard cities wherever Boston is a competitor with those cities is not con-

* Head Notes by COOLY, Chairman.

ville consisted, went on to say: "It consists in according to other points, notably Richmond and Lynchburg, in the rehandling of provisions spoken of, a better rate and facilities than it accords to Danville for the same services." And he proceeds with specification as follows: "Provisions shipped from points north of the Ohio River and reshipped at Lynchburg and Richmond are carried through to points in North and South Carolina at rates considerably lower than if the same goods were shipped to Danville and reshipped from Danville to the same points South."

The witness, Samuel P. Wimblish, in answer to the question whether defendant, since the fifth of April last, had discriminated in matter of freight rates to Danville and other points and against Danville and its people, said: "To the best of my knowledge and belief it has. For example, defendant, before the fifth of April and since, had its freight charges so arranged as that said charges from Richmond and Lynchburg to Greensboro,' Charlotte, and other points were and are now far lower, relatively speaking, than between any of said towns and Danville."

Witnesses John W. Caton and B. S. Crews give similar evidence, and it seems to stand in contradistinction to that of the officers of the road, who testify positively that no advantage in rates is accorded to either Richmond or Lynchburg, and that the same charges in proportion to distance are made from them as from Danville to other towns on defendant's line. The supposed discrimination is, however, explained by tabulated statements which the witness, in support of the petition, files and from which we may see exactly what the discrimination consists in.

These tabulated statements show what the charges are which are made by defendant upon consignments of grain and of meats from Richmond and Danville, respectively, to other towns on defendant's line, and also the charges made from Richmond to Danville, the purpose being to show that, in competing for the trade of local points on defendant's road, Danville is placed at a disadvantage. The statement, so far as it relates to charges for the transportation of grain is here given.

From Richmond to Reidsville, N. C., 164 miles, charge eighteen cents per cwt.; from Richmond to Danville, 140 miles, fifteen cents; thence to Reidsville, twenty-four miles, eight cents; total, twenty-three cents.

From Richmond to Greensboro,' 218 miles, twenty cents; from Danville to Greensboro,' forty-nine miles, ten cents; added to rate to Danville, twenty-five cents.

From Richmond to Durham, 280 miles, twenty-one cents; from Danville to Durham, eighty miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to Charlotte, 281 miles, twenty-one cents; from Danville to Charlotte, 141 miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to Asheville, 360 miles, twenty-eight cents; from Danville to Asheville, 220 miles, twenty-seven cents; added to rate to Danville, forty-two cents.

From Richmond to Salisbury, 230 miles, twenty-one cents; from Danville to Salisbury,

ninety miles, fifteen cents; added to rate to Danville, thirty cents.

From Richmond to High Point, 248 miles, twenty-one cents; from Danville to High Point, seventy-eight miles, nineteen cents; added to rate to Danville, thirty-six cents.

The showing in respect to meats is similar to this, and another statement of shipments from Chicago or other western point to Richmond and to Danville, respectively, would, when reshipments were made to the other points named, result in like discrepancies. The discrimination the petitioners complain of is that defendant's rates are so made that the Danville merchant cannot deliver his goods at Reidsville, Greensboro,' and other towns named at which he may sell them at rates for transportation as low as are accorded to Richmond.

The most casual inspection of this statement, however, will make plain to the mind that the difference in rates which it shows in favor of Richmond results from the fact that from Richmond the property is supposed to be taken directly to the several points named, while the Danville shipments are first made from Richmond to Danville and then from Danville to the ultimate destination. The difference is, therefore, a difference between the charge for one transportation covering a definite distance and that for two transportations which aggregate the same distance. The petitioners think that upon such goods bought in Richmond, as they sell at Reidsville or other points named, they should be charged in the aggregate only the rates which are charged when the consignment is directly from Richmond through to the same point. Defendant assents to this when the Danville merchant ships directly from Richmond to the place of sale, but declines to allow it when the shipment is first to Danville and then to the ultimate destination. It is the denial of this privilege of having the two shipments count as one which constitutes the discrimination complained of.

The concession here claimed bears resemblance to an attempt to compel the railroad company to establish the system which in some parts of the country is known as "milling in transit"—a favor in transportation most often, perhaps, allowed to manufacturers of flour, but which is known in other industries also. In proceedings before the Commission where this system has incidentally been spoken of it has been said to have had its origin in the desire of carriers which received wheat for delivery to millers on their line to control the transportation of the manufactured article and keep it from passing to the hands of competitors. It is not likely that this is the sole reason for the practice, and we mention it only as one that has been named. The control of the carriage would be assured by giving to the consignor of wheat a through rate from the point of reception to the point at which he expected to market his flour, but with the privilege of converting the wheat into flour at an intermediate point. The advantage of such a privilege to the consignor may be shown by a supposed case. Let it be assumed that the rate on wheat from Chicago to New York is twenty-five cents per hundred

first named respondents also form a through railroad line from Chicago to New York, and the said lines, respectively, have established joint tariffs of rates, fares and charges for such continuous lines, and each of said companies operates its own road.

Before and since the Act to Regulate Commerce took effect the first two respondent railroads have been largely engaged in transporting from Chicago to New York, by continuous carriage and under a joint arrangement as to through rates, the issuance of bills of lading, and the interchange of cars, large quantities and varieties of merchandise, which have, since the Act to Regulate Commerce took effect, been divided into six different classes in the traffic tariffs.

The length of the entire haul from Chicago to New York is, for purposes of division, taken at 984 miles, made up as follows:

L. S. & M. S., Chicago to Buffalo.....	538 miles.
N. Y. C. & H. R., to New York.....	446 "
Actual distance from Chicago to N. Y.....	984 "
L. S. & M. S., Chicago to Buffalo.....	540 "
N. Y. C. & H. R., Buffalo to East Albany.....	299 "
N. Y. C. & H. R., East Albany to New York.....	143 "

The haul from Chicago to New York, via the Pennsylvania Company's line, for purposes of division, is 920 miles to Jersey City.

During the same period the three respondent railroads have also been largely engaged in transporting from Chicago to Boston, by continuous carriage and under a joint arrangement as to rates, issuance of bills of lading, and interchange of cars, the same several classes of merchandise.

The entire haul from Chicago to Boston is 1,040 miles, for purposes of division made up as follows:

L. S. & M. S., Chicago to Buffalo.....	538 miles.
N. Y. C. & H. R., Buffalo to East Albany.....	301 "
Boston & Albany, East Albany to Boston.....	201 "
Actual haul Chicago to Boston.....	1,040 "
L. S. & M. S., Chicago to Buffalo.....	540 "
N. Y. C. & H. R., Buffalo to East Albany.....	299 "
Boston & Albany, East Albany to Boston.....	201 "

In the tariff classification flour and grain in car load lots are in the sixth class; in less than car load lots in the fifth class; provisions such as salted meats, pork products, etc., in car load lots in the fifth class; in less than car load lots in the fourth class; butter and eggs in the second class, and cheese in the third class.

The joint rates and charges fixed whereby the respondents under the arrangements between them for the through transportation per hundred pounds for the several classes of merchandise from Chicago to New York and from Chicago to Boston, respectively, are as follows:

Class.	To	To
	New York.	Boston.
1st.....	75	85
2d.....	65	75
3d.....	50	55
4th.....	35	40
5th.....	30	35
6th.....	25	30

These rates when extended to car load lots of flour and grain (sixth class), averaging 80,000 pounds per car, result as follows:

Freight per car Chicago to New York.....	\$75 00
Freight per car Chicago to Boston.....	90 00

The additional transportation charged to Boston of ten cents per hundred pounds for the first two classes and of five cents per hundred pounds for the four other classes over the New York rates for like kinds of merchandise is an extra fixed charge or arbitrary which has for many years been added to the New York rate in fixing the Boston rate, irrespective of the amount of the New York rate.

The term *arbitrary* is a technical term, expressing a difference which does not change with the through rate; and similar arbitrary differences have for years prevailed at Montreal, Philadelphia, and Baltimore, of two cents at the first two cities and three cents at the last named less than the New York rate.

For west bound freight no additional charge for transportation from Boston to Chicago over the rate from New York to Chicago has for several years been made, but the rates from both cities have been the same; and since the Act to Regulate Commerce took effect the rates for west bound freight, both from Boston and New York, have been the same as the east bound rates from Chicago to New York for the different classes.

The through rates which under the agreement between the roads are charged for the transportation of the different classes of merchandise from Chicago to New York and to Boston, respectively, are collected from the shipper or consignee, as the case may be, in a lump sum; and the moneys so collected are distributed among the roads according to certain percentages or divisions fixed upon between them, based upon the distances taken for that purpose, before stated, and not upon the actual mileage of the respective roads. These percentages or divisions of the through rates are shown in detail by the testimony, but are not deemed material, and are therefore omitted from these findings.

The distances by the Pennsylvania Railroad and its connections to the points reached by it are as follows:

Chicago to Philadelphia.....	320 miles.
Chicago to New York.....	230 "
Chicago to Boston.....	1,252 "

The rates by the Pennsylvania lines to Philadelphia from Chicago are two cents less per hundred pounds, or \$6 per car load of 80,000 pounds, than to New York; and the rates by these lines to New York City and to Boston, respectively, are the same as by the respondents' lines.

The merchandise intended for New York and the merchandise intended for Boston are in their transportation from Chicago to East Albany carried over the same lines and the same distances.

Since the Act to Regulate Commerce went into effect the three respondent carriers have also, under through bills of lading from Chicago to Liverpool and other foreign ports, been largely engaged (under a joint arrangement for rates between themselves and steamship companies or vessels performing ocean carriage from Boston) in transporting the various classes of merchandise, but more especially flour and grain, over their respective roads from Chicago to East Boston, where the merchandise has been transferred to vessels or steamships.

others we may regret the fact, but we cannot under any authority the law has conferred upon us interpose to change it.

The conclusion is that the Commission cannot adjudge the defendant guilty of unjust discrimination in the particular mentioned. Neither can it find upon the evidence that any advantage which is obtained by Richmond or any other locality by means of low rates given by connecting roads is chargeable as a wrong done by defendant. The naming of a through rate by the defendant to or from any distant point and the receiving of the freight moneys on a consignment do not of themselves charge the defendant with any responsibility in respect to the rates beyond its own line. There is no wrong on its part in giving to its customers information respecting such rates nor in receiving payment for both itself and its connections. On the contrary, it is a great business convenience, and any carrier which should refuse to give through bills when it could do so or to name through rates which are made up by adding its own to the rates made by its connections would be justly liable to very severe censure. Through bills are among the most important and valuable of transportation facilities, and it is not only important that the consignor should know before he forwards the goods what the charges upon them for the whole distance are to be, but it commonly saves him much trouble and avoids mistakes

if he can procure the information from the local agent of the receiving company instead of being compelled to apply to two or more agents at a distance. The receiving carrier ought, therefore, to keep informed respecting rates over connecting lines, whether it joins in making them or not, and it ought also to give through bills when they are desired if it can arrange with its connections to do so. It will not perform its full duty to the public unless it does so.

The result of our investigation of this case may be summarized very briefly. The defendant has been guilty of some overcharges which the parties paying them are entitled to have refunded if the refunding has not already taken place. The proofs show, also, that in the spring and summer of 1887 the defendant made rates which were greater on its road to Danville than to Richmond through Danville, but its tariffs have since been so changed that such greater rates are no longer charged. No application is made for the refunding of moneys paid on such rates, and the question whether there should be any is not before us. The Commission has no authority to require the defendant to concede the privilege sought for, corresponding to that of "milling in transit," and the evidence offered to show that the rates of the defendant are excessive and unjust is too inconclusive to justify any finding to that effect.

SUPREME COURT OF RHODE ISLAND.

STATE of Rhode Island

v.

William FITZPATRICK.

The provision of **R. I. Pub. Stat. chap. 634**, of May 4, 1887, § 1, which prohibits any person from **keeping any intoxicating liquors** "for the purpose of sale," is not, for the reason that it may incidentally interfere with foreign or interstate commerce, **obnoxious to the Federal Constitution**, art. 1, § 8, which confers upon Congress exclusive power "to regulate commerce with foreign Nations and among the several States."

(Providence—Decided January 7, 1888.)

ON constitutional questions certified to the Supreme Court under R. I. Pub. Stat. chap. 220, §§ 1-9.

The case is stated in the opinion.

Mr. Clarence A. Aldrich, Asst. Atty.-Gen., for the state.

Mr. Hugh J. Carroll, for defendant.

Durfee, Ch. J., delivered the opinion of the court:

This case comes before us from the District Court of the Tenth Judicial District, by certificate, on a constitutional question. It is a complaint under Public Laws R. I. chap. 596, of May 27, 1886, and chap. 634, of May 4, 1887, against the defendant, for keeping without lawful authority intoxicating liquors "for the purpose of sale," in violation of chap. 634, § 1, in amendment of chap. 596,

INTER 5.

§ 1, charging the offense substantially in the language of the statute. In the district court the defendant made the following motion, to wit:

"The defendant moves that the above entitled complaint be dismissed, because it is brought under § 1 of chapter 634, of the Public Statutes, which attempts to prohibit the keeping, for the purpose of sale, of any of the liquors enumerated in said section, without making any distinction as to whether the sale is to be within or without this State; and he claims that he has a right to keep the same for the purpose of sale without this State. U. S. Const. art. 1, § 8."

The district court overruled the motion, and, having found the defendant guilty, has certified the question involved in it to this court for decision.

Chap. 634, § 1, so far as it is necessary to recite it for the purposes of the question, is as follows, to wit:

"No person shall manufacture or sell, or suffer to be manufactured or sold, or keep, or suffer to be kept, on his premises or possessions, or under his charge for the purpose of sale, any ale, wine, rum, or other strong or malt or intoxicating liquors, a part of which is ale, wine, rum, or other strong or malt or intoxicating liquors, unless as herein-after provided."

The corresponding sections in earlier statutes, whether license or prohibitory, contained the words "within this State" after the words "for the purpose of sale," thus making the keeping illegal only when it was for the pur-

Lake Shore, on bacon, 28,000 pounds, to New York	45 92
Lake Shore, on bacon, 28,000 pounds, to New York harbor	41 33
Lake Shore, on bacon, 28,000 pounds, to Albany, local	50 38
New York Central, on corn and flour, to New York	23 04
New York Central, on corn and flour, to New York harbor	20 28
New York Central, on corn and flour, to Albany, local	25 78
New York Central, on bacon, 28,000 pounds, to New York	25 81
New York Central, on bacon, 28,000 pounds, to New York harbor	23 23
New York Central, on bacon, 28,000 pounds, to Albany, local	28 06

The earnings of the three carriers, respondents, on shipments from Chicago to Boston in like car loads, after deducting lighterage and wharfage, are as follows:

Lake Shore, on corn to Boston	\$46 56
" " East Boston, export	36 71
" " wheat to Boston	35 02
" " East Boston, export	48 56
" " flour to Boston	36 79
" " East Boston, export	35 20
" " " " " "	48 56
" " " " " "	38 06
" " " " " "	33 92
" " " " " "	50 70
" " " " " "	42 63
" " " " " "	39 06
" " " " " "	28 06
New York Central, on corn to Boston	20 54
export	19 59
New York Central, on " " " "	26 06
export	21 30
New York Central, on flour to Boston	18 98
export	28 36
New York Central, on " " " "	23 36
export	21 87
New York Central, on bacon to East Boston	17 40
Boston and Albany, on corn to Boston	15 08
export	14 38
Boston and Albany, on corn to East Boston	17 40
export	15 11
Boston and Albany " " East Boston	14 46
export	17 40
Boston and Albany, on flour to Boston	15 64
export	18 94
Boston and Albany on flour to East Boston	18 94
export	17 51
Boston and Albany, on bacon to East Boston	16 06
export	

The difference in the divisions of the export rates through East Boston is occasioned by the difference in the charges for lighterage and wharfage, deducted before division.

The rates charged by the defendant carriers are as low as the rates by any other all rail route from Chicago to Boston.

The cost of service from Chicago to Boston exceeds the cost of service to New York more than is accounted for by the increase in distance by reason of the fact that the grades on the Boston & Albany Railroad are heavy, while there are practically no grades between Albany and New York, and the further facts that the cost of coal is greater to the Boston & Albany Railroad Company than to the New York Central & Hudson River Railroad Company; and more is consumed and more engines

and train crews are used in handling an equal number of cars. Trains destined for Boston and New England points are also broken up at Albany and hauled over the Albany bridge by a switch engine to East Albany and made up into trains on the Boston & Albany Road.

Merchandise sent by rail from Boston to Chicago and other western points mentioned in the petition is sold by merchants and manufacturers of Boston and New England in competition with similar merchandise sent from New York by merchants and manufacturers there, and with similar merchandise sent from other eastern cities, ports of entry, and States.

Chicago and the other western points aforesaid are common markets in which merchants and manufacturers of all eastern cities, ports of entry; and States engage in competition. Various lines of ocean steamers and other vessels ply between Boston and foreign ports. Boston is the second port of entry in importance in the United States, and the value of its imports for the year 1886 was \$58,430,707.

Much of the merchandise imported into the United States seeks a western market, and to accord equality of competition receives as low a rate from Boston to that market as prevails at New York.

Much of the merchandise imported consists of raw material used in the manufactures of New England and there manufactured and sent west for sale. These manufactures are some of them situated at points along the line of the Boston & Albany Railroad and its connections, many of which points are also reached by the transportation routes leading from New York.

The receipts of grain and flour at New York during a period of seven months, from April 1 to October 31, in the years 1886 and 1887, were as follows:

1886. Grain	65,958,283 bushels
" Flour	3,208,008 "
1887. Grain	65,492,255 "
" Flour	3,373,630 "

The proportions of the grain so received that came by rail and by water transportation were as follows:

1886. By rail	29,088,708 bushels
" water	36,919,555 "
1887. " rail	27,721,233 "
" water	37,772,000 "

The present rates on first and sixth class merchandise from Chicago and some other western cities to New York and Boston, and also what the rates to Boston by different routes would be if computed on the rate per mile charged by the Pennsylvania short line, are as follows:

From Chicago (distance via Pennsylvania Railroad, 920 miles to New York; 1,253 to Boston):

Present rate to New York	1st class, 75; 6th class, 35
" " Boston	85; " 30
To Boston, computed via Boston & Albany Railroad	" 85; " 30
To Boston, computed via Pennsylvania Railroad	" 102; " 34

From Cincinnati (distance via Pennsylvania Railroad, 765 miles to New York; 1,097 to Boston):

Present rate to New York, 1st class, 65; 6th class, 21 1/4	
Boston.....	75; " 20 1/4
To Boston, computed via Boston & Albany railroad.....	" 78; " 26
To Boston, computed via Pennsylvania Railroad,	" 96; " 31

From East St. Louis (distance via Pennsylvania Railroad, 1,071 miles to New York; 1,408 to Boston):

Present rate to New York...1st class, 87; 6th class, 29	
Boston.....	97; " 34
To Boston, computed via Boston & Albany Railroad	" 100; " 38
To Boston, computed via Pennsylvania Railroad.....	" 114; " 38

From Louisville (distance via Pennsylvania Railroad to New York, 875 miles; 1,038 to Boston):

Present rate to New York...1st class, 75; 6th class, 25	
Boston.....	85; " 30
To Boston, computed via Boston & Albany Railroad	" 89; " 30
To Boston, computed via Pennsylvania Railroad.....	" 104; " 35

The total receipts of grain and flour expressed in bushels received at the five Atlantic Cities of New York, Philadelphia, Baltimore, Boston and Montreal during the year 1886 were 249,062,989 bushels, the amount exported 160,888,499 bushels, and the percentages of the amounts so received and exported were as follows:

New York received 52.5; exported 47.4.	
Philadelphia " 8.7; " 6.7.	
Baltimore " 15.6; " 21.4.	
Boston " 14.4; " 10.5.	
Montreal " 8.8; " 13.7.	

The amount of grain only received at the same cities during the same time was 187,263,718 bushels, the amount exported 110,795,038 bushels, and the percentages of the respective amounts received and exported by the several cities were as follows:

New York received 55.7; exported 49.8.	
Philadelphia " 8.7; " 7.4.	
Baltimore " 16.1; " 22.2.	
Boston " 10.4; " 5.8.	
Montreal " 9.1; " 14.8.	

These percentages have not been uniform in different years, but have fluctuated somewhat during the last ten years, and have decreased more at Philadelphia than elsewhere. The number of steamers sailing monthly from New York and plying between that city and various foreign ports is 115, with a total carrying capacity of 263,200 tons, aggregating for a year 1,890 steamers and 8,178,400 tons capacity, to which it is claimed may safely be added 10 per cent of tonnage for coast lines, tramp vessels, etc. The number of steamers sailing from Boston to foreign ports for the year ending September 30, 1887, was 235, and to provincial ports 357; total, 792. The tonnage was not shown.

The rates from Chicago to New York on wheat and corn by lake and canal from May 2 to October 23, 1887, averaged on wheat about nine cents per bushel, including elevation, and on corn a little less. The rates by lake and rail were nearly uniform, at twelve cents per bushel on wheat and 11 1/2 on corn, while at the same time the rates by all rail on wheat were fifteen cents a bushel and fourteen cents on corn.

ENTER 8.

There are fourteen lines or routes of transportation from southern and western points through Chicago to New York, including one water line by way of the lakes, Erie Canal, and Hudson River. An equal number of lines or routes reach Boston, all of them rail routes east of Buffalo.

The foreign commerce of the port of New York for the fiscal year ending June 30, 1886, was \$802,535,015, and the foreign commerce of all the other ports of the United States for the same time was \$1,426,018,032.

The value of the domestic exports from the City of New York for the fiscal year ending June 30, 1886, was \$346,412,339.

The value of the domestic exports from the City of Boston for the same time was \$53,429,513.

The values of the domestic exports from all the ports of the United States, except New York, for the same time were \$371,476,307.

The tonnage of the Erie Canal, arriving at tide water, for the year 1886 was as follows:

Tonnage from Western States.....	1,525,901 tons.
Tonnage from New York State.....	924,130 "
Total by Erie Canal.....	2,450,031 "

And the estimated value of the property transported on the Erie Canal for the same year was \$163,726,849.

The through rate from Chicago to Boston is a little less than six mills per ton per mile, and all other rates to the points north and west of Boston on the main line by which they reach Boston are the same as Boston rates.

Opinion and Conclusions.

The facts recited sufficiently indicate the differences in rates between New York and Boston of which complaint is made and the reasons for the differences that have weight with the railroad carriers. Other facts also appeared in evidence to which passing reference may be made. The complaint relates solely to the east bound rates from Chicago and some other western points to Boston proper.

For export business through Boston, and for shipments to points east of Portland, and for all west bound business, the Boston rates are on an equality with New York rates; and no ground of complaint exists that Boston is discriminated against in respect to those rates. The general fact is thus apparent that for the business in which Boston is a competitor with New York, both export and west bound, the rail rates for both cities are equal; and in that respect neither city has any advantage over the other. Except in the particulars mentioned Boston is upon a substantial equality of rates with all the cities that are its competitors on the Atlantic seaboard.

Complaint is not made that the Boston export rates and the coastwise rates to points east of Portland are unlawful under the fourth section of the Act, and they are conceded on the part of the petitioners to be necessary to enable Boston to participate in the foreign and coastwise trade; but the fact of such lower rates and the lower west bound rates is pressed as a strong argument that the east bound Boston local rates are unjust and should be reduced to the export rates.

The export and coastwise rates through Boston not being assailed in this proceeding, the question of their lawfulness is not now before the Commission. The complainants in their brief disclaim any desire to disturb the export rates in these words: "The petitioner wishes, however, it distinctly understood that while it appeals to the facts connected with the Boston export trade as proving that the Boston local arbitrary is unreasonable it does not wish in any way, directly or indirectly, injuriously to affect the foreign commerce of the Port of Boston; and it therefore does not ask an order enjoining the continuance of such export rate or of the export rebate system; its only desire in this regard is that the local rate shall at all events be made as low as the export rate, as it is in all other Atlantic seaboard cities save Portland."

After such an explicit withdrawal of any question affecting the lawfulness of the export rates and rebates the Commission is not required to pass upon them in this case. It is obvious that an adjudication upon those rates requires additional parties to the record and an opportunity to be heard on the part of the various business interests likely to be affected by any determination reached. Although incidental reference is made to these rates no decision is rendered upon them and no opinion relating to them is intended to be expressed.

The sole question for determination is whether the east bound rates to Boston, which are ten cents per hundred weight higher on the first and second classes of merchandise and five cents per hundred weight higher on the third, fourth, fifth and sixth classes, are unjust and unreasonable, and therefore unjustly discriminate against Boston.

The claim of the petitioners is that the Boston local rates shall be made as low as the export rates; in other words, that they shall be on equality with the New York rates. A claim of this character, if made as matter of right and not of favor, should be founded upon a corresponding equality or substantial similarity of circumstances and conditions that control the making of rates by carriers, and to some extent their effect upon the business of localities.

If differences in the conditions of the traffic to two or more points exist which materially affect the cost or the value of the service it would scarcely be reasonable to require a carrier to disregard those differences and make good to every community disadvantages of situation or other disadvantages. As has been well said, "Different localities are more or less favored, in regard to transportation facilities either by nature or the enterprise of man. It cannot be maintained that it is the duty of the common carrier to equalize these existing inequalities at his own expense. All that is required of him is not to create them himself arbitrarily. He must treat all alike that are situated alike, but he cannot be bound to wipe out existing differences. He may be obliged to carry freight at a lower rate to some localities than to others, but this in itself does not constitute an injustice or injury to the shipper in a less favored locality, so long as the charges are reasonable in themselves and alike to all in the same situation." With the qualification indicated in the case of *The Boards of Trade Union of Farmington v. Chicago etc. R.*

Co. ante, 608, 1 *Inters. Com. Com. Rep.* 215, that rates should be relatively reasonable when the same carrier transports over different branches of its road to a common market, these principles may be accepted as correctly stated.

The contention of the petitioners for equality of rates with New York is not supported by equality of distance, of cost of service, or by other considerations, such as volume of business, competition of rail and water ways, ocean service, terminal facilities, and storage capacity—all elements of more or less importance in the determination of rates, and some of them of controlling influence.

The argument of the petitioners is based almost entirely upon the distances hauled and the assumed parity of cost of service; and elaborate calculations founded on distances by various lines have been produced showing the through rates to different seaboard cities from initial western points, the divisions of through rates among connecting carriers, the lighterage expenses at New York, and other incidental matters. It appears from these statistics that the Lake Shore & Michigan Southern Road and the New York Central to Albany receive each a slightly higher amount of the through Boston local rate than of the through rate to New York; but, as the contention is with the through rate to Boston as a unit, the divisions of that rate and the proportions received by the respective carriers forming the line are unimportant for the purposes of this case. The lighterage charges at New York are also irrelevant to the question to be determined. They are part of the rate paid by the shipper to that city, and, when necessary upon a portion of the merchandise handled there, are borne by the carriers as an element of transportation expenses. They are not separable from the aggregate rate for the purpose of any question involved in this decision. The total charge for transportation is all that concerns the shipper, and not the percentages allotted by agreement to one or more of the connecting carriers in a through line. Carriers voluntarily enter into agreements for through shipments over connecting roads, and the division of the through rate is part of their mutual agreement which the parties to the arrangement adjust for themselves, and the adjustment of which does not affect the shipper. Such adjustments may not be on the exact basis of cost of service in any case, and many other considerations may influence the parties in making them. The fact may be, therefore, that the Lake Shore Road and the New York Central Road may each receive more in amount of the through rate to Boston from Chicago than to New York for the respective hauls to Albany, although the service to that point is identical; but the through rates are charged for the entire haul to the final destination, and are not governed by the service to some intermediate point in the line or where the line diverges to different destinations.

The element of cost of service which may at one period have been recognized as controlling in fixing rates has long ceased to be regarded as the sole or the most important factor for that purpose. The value of the service with respect to the articles carried, the volume of business, and the conditions and force of compe-

the coastwise rates east of Portland and the west bound rates from Boston have been equalized with the New York rates is not controlling nor even important upon the question of the reasonableness of the Boston local rates.

The character of the east bound and the west bound traffic differs so materially that there is much force in the argument that the west bound traffic can be carried at lower rates without serious disproportion in the aggregate earnings for the carriage of the same number of tons in the two directions. The testimony shows that over 70 per cent of the east bound traffic consists of the two lower classes of merchandise upon which the lowest rates are made, viz.: thirty-five cents and thirty cents, respectively, per hundred weight. About half of the west bound traffic from Boston and New England points is of the first, second, and third classes, upon which the rates are, respectively, seventy-five cents, sixty-five cents, and fifty cents per hundred weight to Chicago, and on that basis to other western points. During the year 1887, until October 1, 85 per cent of the traffic carried west by the Boston & Albany Road was of the first class.

The export, coastwise, and west bound rates have long been conceded to Boston, by the carriers competing for east bound business, not because the conditions of transportation are equal, but, under the demands of the laws of trade, to put Boston on an equality with competitors at Baltimore, Philadelphia, New York, Montreal and Portland in reaching common markets abroad and at the West. That Boston has been very largely benefited by the concession of equality with New York in these respects cannot be doubted. The large export and import business and the heavy shipments to the West of imported merchandise from Boston and of manufacturers of various kinds from different points in New England along the line of the Boston & Albany Road, and its connections show the great advantages to Boston of these liberal arrangements.

But like concessions were not made to the Boston local rates from the West. The merchandise shipped to Boston at the higher rates is for local consumption. There is no competition in that business from other localities. It is enjoyed exclusively by the Boston merchants and traders, and there is no reason to believe that the consumption would be larger or the prices to consumers materially less if the rates were on a par with those to New York. It was said in argument, and some testimony was given to support it, that the sales by Boston merchants to certain points north of Boston on the Massachusetts coast had fallen off to a considerable extent since the Act to Regulate Commerce took effect, and that grain from New York is carried to those points by water and sold at less than the Boston dealer can afford after paying local rates from Boston to those localities.

This is the only evidence in the case tending to show that Boston is in any way injured by the existing rates, and, as there was opposing evidence that the shipments of flour and wheat to Boston from the first of April to the last of October, 1887, was in excess of the like shipments during the corresponding months in 1886, the inference that the falling off in ship-

ments of corn and oats is due to the rates is scarcely warranted; and a doubtful inference, without evidence of a more positive character, is not sufficient to justify a finding of prejudice to Boston in comparison with New York justly attributable to the rates. This testimony, therefore, does not establish the unreasonableness of the rates to Boston.

The refusal of the Boston & Maine Railroad to join in shipments from Boston to those places on the basis of the Boston rate makes necessary an additional local charge over that road, and the grain carried to those towns by water from New York is presumably grain borne at low rates over the Erie Canal, for which the rail carriers are in no way responsible.

The average earnings of the line of the defendant carriers per ton per mile from Chicago to Boston for merchandise of the sixth class at the Boston local rate of thirty cents per hundred weight, is 5½ mills. This is as low as the rate of any other rail carrier between the same points and as low as has ever been charged in the absence of rate wars. The average per ton per mile earnings of the line of the Lake Shore and New York Central Roads for the same class of merchandise from Chicago to New York at the rate of twenty-five cents per hundred weight is 5.11½ mills, being the difference of about $\frac{1}{16}$ of a mill. In view of the difference in the circumstances and conditions of the traffic to the two cities, this discrepancy does not appear to be unreasonable or unjust.

The point is made that the differences in the New York and Boston rates are fixed sums—usually called arbitraries—of ten cents per hundred weight for the first two classes and five cents per hundred weight for the four other classes, and that these are not founded on an exact mathematical basis and do not change in amount if rates rise or fall. It is not perceived that there is any importance in this circumstance. The term "arbitrary" applied to rates in railroad phraseology implies no alarming significance. It is used to designate some rate not founded on a combination of other rates or upon a percentage theory of some general rate. It may be and frequently is lower than a rate established on a different basis. It is quite as likely, therefore, to indicate a favorable as an unfavorable rate. Mathematical precision in the adjustment of rates is not always attainable nor necessary, and if the differences are not in fact unreasonable it cannot be material whether they are arrived at by one mode or another, and while the custom of arbitraries or fixed differences may not be an ideal method, it is simpler than fluctuating percentages, and so long as it is fair and equitable it is amenable to no valid objection. The differences between New York and other competing cities are also fixed sums or arbitraries: at Philadelphia and Montreal two cents per hundred weight lower on all classes, and at Baltimore three cents per hundred weight lower on all classes. The fact of a fixed difference in rates to the seaboard cities is not peculiar, therefore, to New York and Boston.

The existence of two depots for the Boston & Albany Road at its eastern terminus, one for Boston local business and the other for export business at East Boston, with a haul six miles

longer than to the local depot, is not entitled to prominence upon the questions under consideration. Both are for the same road and for the same city, and for the better accommodation of the business for which they are designed, like the three or four depots of the New York Central Road at New York City, some of which are nearly as far apart as those at Boston. As the East Boston depot is reached by a branch from the main stem of the road, it may be regarded in some respects as a different line; or, in view of the haul from Chicago and the circumstances of the case, it may with reason fall under the maxim "*De minimis non curat lex.*"

The existing rates from Chicago and other western points to the seaboard cities have not been established capriciously nor reached by gentle and harmonious methods. They are the result of many years of contention and struggle, involving ruinous rate wars between the different lines and repeated and protracted negotiations, in which concessions were necessary to arrive at an adjustment, finally culminating in the creation of a board or tribunal in which all the lines were represented for the settlement of disputes and the maintenance of peace and stability. The history of these contentions and their effects upon the roads and upon business is one of the most interesting chapters in the record of railroad development in this country. Beginning with eager rivalry and each line making rates independently, and always with the view of securing the largest possible amount of business for itself, the differences to Baltimore and Philadelphia against New York were so great that wars were inevitable; and after most serious losses had been sustained and transportation demoralized, self-preservation, as well as the general public interests, required that destructive hostilities should cease and agreements be brought about on some basis of common justice and comparative equity. After several unsuccessful experiments the present basis of rates to the seaboard cities was established.

While by these adjustments the rate from Chicago to New York forms the basis with relation to which the whole system is arranged, that rate is in fact the one accepted by the shortest line, which is the line by the Pennsylvania Road and its connections, and the other lines must conform to it in order to share in the business. It thus results that all the lines to New York carry at the same rates; and by an extension of the same principle all lines to Boston carry at the same Boston rates. The seaboard rates are, therefore, all parts of a large and complicated system; and their relations and interrelations are such that any material change in one rate involves numberless other changes. It was stated in the testimony that a reduction of the east bound Boston local rate to the level of the New York tariff would require corresponding changes at several thousand other points in New England and at the West, and that the New England towns not on the direct line of the Boston & Albany Road, but reached by its connections and now sharing the Boston rates might lose their present advantages. The necessity for other changes in respect to related rates is not in itself an adequate reason for declining to correct any specific

rate if it is in fact wrong; but changes would follow which are serious to other localities they are considered with reference to the that might be produced by the process, especially when a reasonable doubt exists.

In 1883, when substantial differences in rates to the seaboard were in force and shortly after a disinterested commission gentlemen was chosen by the different lines to consider and arbitrate the differences at the principal seaboard points. Much testimony and giving attention to the subject the commission elaborated a report, discussing at length different principles urged as found differentials, viz.: distance or service, and competition, concluding that the principle of distance must be regarded as the only equitable principle on which the differences should be fairly adjusted and that no reason existed for changing the differences then existing.

It is proper to say that Boston was not represented upon the hearings before the commission, and the Boston differential, therefore, directly involved, although principles discussed applied equally to the other points.

The preceding discussion has been limited to the relation of the rates to transportation in question. The interests of the carriers and the shippers have not been heard; but a question of rate has broader aspects than the duties of the railroad carriers. The interests of the City of New York, to fair consideration, and those of the State, should not be disregarded in passing upon questions in which that city is so deeply concerned.

The geographical situation of New York, with its unrivaled harbor, with many miles of water front and wharves, its position and variety of business, its superior ocean service, its location as a center of water transportation from all parts of the world, and the fact that it has many great competing railroads, its capacity for storage and its terminal facilities, acknowledged commercial pre-eminence, and its undoubted advantages to that city, are all partly the result of State expenditure, to which it is equitably entitled and which it is indefensible wrong to attempt to neutralize.

No invidious comparison with other cities is intended, but undeniable facts are ignored when a question of rights of competing localities is under consideration.

In view of the relative situation of the transportation facilities, and the commercial advantages of the two cities, it seems unnatural and repugnant that the carriers delivering property to New York, respectively, should be compelled to charge both an equality of rates.

The conclusion of the Commission is that the petitioners have not, upon the grounds of rate making, maintained a valid claim for equality of rates with

east bound local shipments to Boston, and that the existing rates, of which complaint is made, have not been shown to be unjust or unreasonable in themselves or relatively, and the petitioners have not shown unjust discrimination against Boston and in favor of New York by reason of those rates.

The several complaints must, therefore, be dismissed.

Walker & Morrison, Commissioners:

Agreeing in general with the foregoing opinion and concurring in the result, we are unwilling to be considered as assenting to the views above expressed in respect to the use of an "arbitrary" in fixing the Boston rate.

It appears from the agreed statement of facts that "the extra charge of ten cents per hundred pounds in the case of the first two classes and of five cents per hundred in the other classes of merchandise for transportation from Chicago to Boston over the charges for the transportation of the same merchandise from Chicago to New York is an extra fixed charge or 'arbitrary' which has for many years been added to the New York rate in fixing the Boston rate without reference to what the rate to New York might be; so that, for illustration, when in past times the through rate for the transportation of flour and grain from Chicago to New York was fifty cents, and, again, when it was only fifteen cents, the through rate to Boston for the same class of goods at the same time was in each case just five cents more—i. e., fifty-five cents and twenty cents, respectively."

An arbitrary of five cents per hundred is 10 per cent of a fifty cent rate and 20 per cent of a twenty-five cent rate. The same proof which might show that this arbitrary was just when the New York sixth class rate was fifty cents would demonstrate that it is unjust now. No facts have been shown which would justify a doubled disparity at one time as compared with another.

It further appears that the Chicago arbitrages of ten cents on the two upper classes and five cents upon the remainder are enforced on business consigned to Boston from all points west of Buffalo, while at Buffalo the amount of the addition is summarily reduced one half.

The propriety of somewhat higher rates from the West to Boston than to New York cannot properly be questioned, but the method pursued by the carriers in ascertaining the amount of difference is crude and unsatisfactory. The result is well named an "arbitrary."

The difference originally established seems to have been, at the time, an advance of about 10 per cent in the rates to Boston over the rates to New York, both from Chicago and from Buffalo. The facts fairly warranted a difference represented by that relative proportion, and it is hard to find substantial reasons for any greater distinction than that. No subsequent events have occurred which are claimed to have changed the situation to the prejudice of Boston. The proofs, however, fail to show the precise class rates which were in force at the time when the arbitrary was adopted.

An attempt was then made to ascertain a just measure of disparity from natural or other causes, and to apply the same to rates which were expected to fluctuate in the future. A percentage basis would have been and would

now be a much more satisfactory and trustworthy method, than the one which was adopted. Such a basis is easy of calculation; it could be applied without difficulty and with apparent justice at Chicago and all other trunk line western points, from which the rate to New York is now a stated percentage of the rate from Chicago to New York; and it would in great measure efface the elements of injustice which the complainants perceive in the workings of the present system.

W. B. FARRAR & CO.

v.

EAST TENNESSEE, VIRGINIA & GEORGIA R. CO., and Norfolk & Western R. R. Co.
(No. 84.)

- *1. The local rates from Dalton to Knoxville, Johnson City and Bristol on lumber are not shown to be unreasonable.
2. The joint rates on lumber from Dalton to Roanoke and Lynchburgh are shown to be unreasonable, upon the grounds and for the reasons set forth in the report and opinion of the Commission.
3. As a rule in the transportation of freight by railroads while the aggregate charge is continually increasing the further the freight is carried, the rate per ton per mile is constantly growing less all the time, making the aggregate charge less in proportion every hundred miles after the first, arising out of the character and nature of the service performed and the cost of the service; and thus staple commodities and merchandise are enabled to bear the charges of this mode of transportation from and to the most distant portions of the country. The Act to Regulate Commerce so far from throwing hampering restrictions or obstacles in the way of the operation of this salutary rule, gives it all the aid of its sanction and safeguards by providing that the carrier shall be entitled to receive a reasonable compensation for the service performed upon open published rates, against which no competitor can take advantage by allowing shippers secret rebates and drawbacks in order to get the business.
4. In the nature of things joint rates on long hauls usually are, and as a rule should be, lower in proportion to distance than local rates on short hauls of the same commodity.

(Heard Jan. 11, Decided Feb. 15, 1888.)

COMPLAINT in relation to rates on lumber.

No counsel appeared for petitioners.

Mr. W. M. Baxter, for defendants.

REPORT AND OPINION OF THE COMMISSION.

Bragg, Commissioner:

The complaint in this proceeding is against

*Head notes by COOLEY, Chairman.

the reasonableness and justice of the lumber rates of the East Tennessee, Virginia & Georgia Railway Company from Dalton, in the State of Georgia, to Knoxville, in the State of Tennessee, and from Dalton to Johnson City and Bristol, which last two named points are in the State of Tennessee, and from Dalton to Roanoke and Lynchburg, which last two named points are in the State of Virginia.

The complaint avers that petitioners reside at Dalton and are largely interested in the lumber and building business, and have been for the last twenty years, and are obliged to use the East Tennessee, Virginia & Georgia Railway and the Norfolk & Western Railroad to market their products. The complaint states that the rates now charged by these railroads for transporting the lumber of petitioners from Dalton to Knoxville, Bristol, Roanoke and Lynchburg are as follows:

To Knoxville, 7 cents per 100 pounds.
To Bristol, 11 cents per 100 pounds.
To Roanoke, 22 cents per 100 pounds.
To Lynchburg, 22 cents per 100 pounds.

The complaint states, in effect, that prior to the enactment of the Act to Regulate Commerce, approved February 4, 1887, these rates were as follows from Dalton:

To Knoxville, 6 cents per 100 pounds.
To Johnson City, 11½ cents per 100 pounds.
To Bristol, 11 cents per 100 pounds.
To Roanoke, 18 cents per 100 pounds.
To Lynchburg, 18 cents per 100 pounds.

The complaint alleges that the rates now charged them on lumber, as above set forth, are unreasonable, excessive and unjust, and have the effect of driving them out of these markets and greatly injuring their business.

The answer of the East Tennessee, Virginia & Georgia Railway Company to the complaint states that prior to the passage of the Act to Regulate Commerce its rates were as follows:

From Dalton, Georgia, to Knoxville, Tenn., per 100 pounds, seven (7) cents local, six (6) cents special.

From Dalton, Ga., to Bristol, Tenn., per 100 pounds, eleven (11) cents local, ten (10) cents special.

From Dalton, Ga., to Roanoke, Va., per 100 pounds, twenty-two (22) cents.

From Dalton, Ga., to Lynchburg, Va., per 100 pounds, seventeen (17) cents.

That since the passage of the Act to regulate commerce its rates have been as follows:

From Dalton, Ga., to Knoxville, Tenn., per 100 pounds, seven (7) cents.

From Dalton, Ga., to Bristol, Tenn., per 100 pounds, eleven (11) cents.

From Dalton, Ga., to Roanoke, Va., per 100 pounds, twenty-two (22) cents.

From Dalton, Ga., to Lynchburg, Va., per 100 pounds, twenty-two (22) cents.

That both prior to the enactment of the Act to Regulate Commerce and since its enactment the rates from Dalton, Ga., to Roanoke and Lynchburg, Va., have been joint rates between the East Tennessee, Virginia & Georgia Railway Company and the Norfolk & Western Railroad Company; that the only changes the respondent has made in its rates since the enactment of the Act to Regulate Commerce have been that it has abolished the special rates that

were given from Dalton, Ga., to K. Bristol, Tenn., and that so far as the between respondent and the Norfolk & Western Railroad are concerned it has perburg, Va., upon the same basis Va., the rate now being 22 cents pounds on lumber to each of these Dalton, Ga.; that as the former joint Dalton, Ga., to Lynchburg, Va., with the provisions of the Act to Regulate Commerce respondent, in obedience to the provisions of that Law, together with the Western Railroad, increased the rate from Dalton, Ga., to Lynchburg, Va., so that it not be less than the rate from Dalton, Ga., to Roanoke, Va., that prior to the enactment of the Act to Regulate Commerce Lynchburg, Va., was forced upon the Norfolk & Western Railroad to allow its patrons to compete in the lumber market with lumber coming from sections of Virginia and North Carolina and the rate to Lynchburg from Dalton, Ga., made with a view of developing the lumber product along the line of respondent that the Act to Regulate Commerce made any such purpose unlawful, and in obedience to the provisions of the Act respondent drew said rate of seventeen cents pounds on lumber from Dalton, Ga., to Lynchburg, Va., that its own rates and the rates between the Norfolk & Western Railroad and itself are reasonable and just, as petitioners have no just ground of complaint in none of its rates, either separate or joint, larger for the shorter than for the longer distance over the same line, the shorter distance being included in the longer distance; and these statements, the respondent denies any other material allegation in the petition which has not hereinbefore stated.

The answer of the Norfolk & Western Railroad Company states that the freight rates from Dalton, Ga., to points on and beyond the Norfolk & Western Railroad are by agreement between the East Tennessee, Virginia & Georgia Railway and the Norfolk & Western Railroad made, are quoted by and under the authority of the East Tennessee, Virginia & Georgia Railway Company as the initial line at interest in regard for the requirements of the Act to Regulate Commerce with the Act to Regulate Commerce necessitated a revision of rates for stations on the East Tennessee, Virginia & Georgia Railway in the vicinity of Chattanooga, of which Dalton is one, immediately after the Law became a part and in said revisions advances in rates to Virginia points became a part among which rates those on lumber from Dalton, Ga., to Lynchburg or Roanoke are low Dalton is in some cases true; but the Norfolk & Western Railroad or and not the maker of the rates are in no case greater for the shorter than the longer haul over the same line direction, because the business done is on its line, and it is a fact that

coming from North Carolina points moves over the Norfolk & Western Railroad in different directions from that coming from Dalton and under dissimilar conditions, and that the competition of markets to which your complainant objects is a commercial condition not within the province of the Norfolk & Western Railroad to judge of or to remedy, being the delivering line at interest in the transportation, and concerning itself primarily in the matter of the rates employed by either of the initial lines at interest to see that, as the traffic is interstate business, conformity is had with the Law, which it respectfully submits and hereby certifies to, is to its knowledge and belief fully done.

Upon due notice thereof to the respective parties this case was set down to be heard by the Commission on the 11th day of January, 1888, at its office, in the City of Washington. On that day the defendant railroad companies appeared before the Commission by their counsel, William M. Baxter, Esq., of Knoxville, and Augustus Pope, Esq., General Freight Agent of the Norfolk & Western Railroad Company; but the petitioners failed to appear, either by themselves or counsel, while still insisting on their complaint.

The controversy being one relating to the reasonableness and justice of the rates charged upon a standard article of freight of general and necessary consumption in all parts of the country arising upon the face of the tariffs of the defendant railroad companies, after the examination of these it occurred to the Commission that, with the aid obtained from an informal conference with the counsel and general freight agent then present, this contention might at that time be disposed of without further delay and expense to the parties. Accordingly this informal conference was then had, and after hearing and considering all the statements, suggestions and arguments of counsel and the general freight agent, the Commission suggested to them that in its opinion the rate upon lumber to Roanoke, Va., from Dalton, Ga., over the line of the East Tennessee, Virginia & Georgia Railway and the Norfolk & Western Railroad ought not to exceed eighteen cents per hundred pounds.

The Commission was then requested by the said counsel and general freight agent to suspend any further action and announcement in this matter for a period of two weeks, until T. S. Davant, General Freight Agent of the East Tennessee, Virginia & Georgia Railway Company at Knoxville, Tenn., could prepare and furnish to the Commission a statement of facts and figures in opposition to the complaint. A month having elapsed without hearing from Mr. Davant, the Commission deems it proper to now dispose of this case without further delay.

The Commission finds the material facts involved in this controversy, from the petition and answers and the tariffs and joint contracts of said railroad companies on file with us, to be in substance as follows:

The East Tennessee, Virginia & Georgia Railway Company embraces in its system several valuable and important railroad lines in the States of Tennessee, Georgia, and Alabama, with its chief terminal points at Bristol,

Tenn., Memphis, Tenn., Meridian, Miss., and Brunswick, Ga., Dalton, Ga., Knoxville, Johnson City, and Bristol, each in Tennessee, are situated upon its line. Roanoke and Lynchburg, each in Virginia, are situated on the line of the Norfolk & Western Railroad.

The present local tariff rates of the East Tennessee, Virginia & Georgia Railway Company in force on lumber from Dalton to Knoxville, a distance of 110 miles, are 7 cents per hundred pounds; from Dalton to Johnson City, 216 miles, are 10½ cents per hundred pounds, and from Dalton to Bristol, 241 miles, are 11 cents per hundred pounds. From Dalton to Roanoke, a distance of 391½ miles, the joint rates of the East Tennessee, Virginia & Georgia Railway and the Norfolk & Western Railroad are 22 cents per hundred pounds, and from Dalton to Lynchburg, 445 miles, the joint rates are 22 cents per hundred pounds.

Prior to the enactment of the Act to Regulate Commerce the rates of the East Tennessee, Virginia & Georgia Railway Company on lumber from Dalton to Knoxville were 7 cents local and 6 cents per hundred pounds special, and from Dalton to Bristol per hundred pounds were 10 cents special and 11 cents local. The joint rates of the East Tennessee, Virginia & Georgia Railway Company and the Norfolk & Western Railroad Company on lumber from Dalton to Roanoke were 22 cents per hundred pounds, and from Dalton to Lynchburg were 17 cents per hundred pounds.

The changes made in the lumber rates of these two railroads since the enactment of the Act to Regulate Commerce consist in abolishing the above special rates and in increasing the rate from Dalton to Lynchburg from 17 cents to 22 cents per hundred pounds, in order that it might not be less for the greater distance, and thus violate the statute. The previous rate of 17 cents per hundred pounds on lumber from Dalton to Lynchburg had been given with a view of developing the lumber products along the line of the East Tennessee, Virginia & Georgia Railway, and was also forced by the competition of lumber coming by other lines of railroad into the Lynchburg market from North Carolina and Virginia. Lynchburg and even Roanoke are nearer to the lumber producing region of North Carolina than is Dalton.

The East Tennessee, Virginia & Georgia Railway and the Norfolk & Western Railroad are operated under joint contracts, dated September 27, 1881, and March 16, 1885, which are on file with us pursuant to law and which provide for close running arrangements and joint rates over these lines. Under these the Norfolk & Western Railroad does not make the rates on lumber from Dalton to Roanoke and Lynchburg, but these rates are made by the East Tennessee, Virginia & Georgia Railway Company; and the Norfolk & Western Railroad Company only accepts its share of the joint rate.

A careful examination and consideration of all the matters involved in this complaint have brought us to the conclusions hereinafter stated.

The rates now in force on lumber from Dalton to Knoxville, Johnson City, and Bristol by the East Tennessee, Virginia & Georgia Rail-

oil in tanks for the Standard Oil Company and everybody else the same is not and never has been weighed, but the quantity contained in the tanks is estimated at a certain number of pounds, and it may be true that in some shipments for the Standard Oil Company that estimates were below the actual weight, but the same quantity of oil could have been shipped in the same manner at the same price by complainant.

"5. Defendant denies that about May 1, 1887, it transported or contracted to transport a car load containing 66 barrels of oil and weighing 24,750 pounds, or any other weight, from Louisville, Kentucky, to Huntsville, Alabama, for the Standard Oil Company, for \$68.07, or twenty-seven and one half cents per 100 pounds; at least no record of such shipment can be found on defendant's books."

For answer to the third charge made in complainant's bill and the specifications thereunder, defendant—

"1. Denies that in its rates charged by it for services rendered or to be rendered by it for the transportation of said oils for complainant and the said Standard Oil Company from Cincinnati, Ohio, to points or any point reached by defendant's line of railroads in States other than Ohio and Kentucky it has, since April 5, 1887, uniformly or at all made or given undue or unreasonable preferences or advantages to said Standard Oil Company or to certain or any localities on its lines of railroad; nor has it subjected complainant or certain or any localities on its lines of railroad to undue or unreasonable prejudices or disadvantages.

"2. Defendant says, in reference to the difference in rates to complainant and Standard Oil company, respectively, appearing in specifications No. 1 and No. 2, under the second charge in complainant's bill of complaint, it denies that said differences are not measured, but avers that they are, by the differences in circumstances surrounding these shipments, respectively; and defendant denies that the difference to it in the cost and expense and convenience of transportation of such oils for complainant and the Standard Oil Company, respectively, or that the difference between the circumstances under which complainant and said company, respectively, ship their oils do not, but it avers that they do, justify the difference in rates made to said parties, respectively, and it denies that they are either small or insignificant in comparison with the differences in the rates so charged; and defendant says that said rates so made for the shipment of the oils for the Standard Oil Company were made for shipment of oil to be made in large and regular shipments in iron tank cars, which tank cars were to be furnished and the cars kept in repair by said Standard Oil Company free of expense to defendant, which oil was never on defendant's premises and there at its risk, and by which cars defendant was furnished with return loads, while the rates thus made to complainant were made in reference to the shipment of oil in barrel packages, in small quantities and irregular shipment, to be received and loaded by defendant at its expense, and held at its risk while on its premises, and the cars used for

barrel shipments were thus greatly injured and rendered of less value to defendant for general purposes and were returned usually empty, so that, as this defendant believes and charges, the circumstances and conditions under which the shipments of oil for the Standard Oil Company were made so dissimilar from the circumstances and conditions under which the oil for complainant was shipped as to justify and authorize the difference in rates to said Standard Oil Company and to complainant made so as aforesaid.

"3. Defendant says it is not true and it denies that it owns or ever did own any tank cars, or that it ever furnished to said Standard Oil Company such cars, or that it refuses or ever refused to furnish such cars to complainant, or that he ever applied for such; but defendant says if complainant had applied for such cars he would have been refused for the reason that defendant did not and does not own or have such cars.

"4. Defendant admits that it has, since April 5, 1887, in its freight rates charged a higher rate per 100 pounds for transportation of oil in barrels than for oil in tanks, except when the competition with water lines and railroads or competition between markets or products has forced a reduction in rates on oil in barrels to the same or nearly the same rates charged upon oil in tank cars; but it is not true and defendant denies that the difference between the cost, expense and convenience of transportation of oil by the two methods, has been out of proportion to the difference between the rates by the two methods, and denies that said difference in expense, cost and convenience is slight or insignificant, but, on the contrary, defendant avers that they were so great as to justify, as it believes, the difference in rates charged.

"5. Defendant admits that complainant ships in barrels all the oils he ships over this defendant's lines of railroad; but it is not true and it denies that the Standard Oil Company ships in tank cars almost all the oil which it ships over defendant's lines of railroad. Defendant says that said Standard Oil Company, since April 5, 1887, has shipped over its lines of railroad in barrel packages, car load shipments, a much greater quantity of oil than complainant has, and at the same prices from and to the same points; and it has shipped over its lines of railroad during that period about twice as much oil in barrels as it has shipped in tank cars.

"6. Defendant admits that the rate of transportation of oil from Louisville to the following destinations are the same whether the oil is carried in barrel packages or in tank cars, to wit: Mobile, Alabama; Meridian, Mississippi; Jackson, Tennessee; New Orleans, Louisiana; Jackson, Mississippi; Vicksburg, Mississippi, and that the rates are the same for shipments from Cincinnati to Nashville, Tennessee, and Mobile, Alabama, and such is true, not as a matter of choice of this defendant, but because the competition with water lines, directly and indirectly, at said points, or competition with railroad lines or between markets or products reduced the rates for shipment of oil to those points to the regular rates of shipment of oil in tank cars.

- (a) That pearline being competitive with common soap, the relative difference between the class rate of pearline and this "special rate" on common soap is too great, and that **pearline must be placed in fifth class freight** on shipments from New York to Atlanta by the defendant company, with a rate of sixty cents per hundred pounds, and also in the fifth class in the classification of the Southern Railway & Steamship Association; and further, that the relative difference in the rates on pearline and common soap in such shipments must not exceed the difference of sixty cents per hundred pounds on pearline and thirty-three cents on common soap.
- (b) *Held further*, that on shipments of **pearline and common soap**, all rail, in the territory to which the classifications of the Southern Railway & Steamship Association applies, the following **rates of this Association** must be maintained by the defendant company, namely:

Per 100 lbs.	Soap Powder.	Common Soap.
100 miles.....	32 cents.	20 cents.
500 ".....	49 "	38 "

- (c) *Held*, that the **discrimination** made by the "special rate" of the Southern Railway & Steamship Association between pearline and common soap, to the extent now existing on the shipments to which it refers, is **unjust and must be discontinued**; and while common soap is in its sixth class, pearline must be placed in its fifth class.
2. A statement of the **grounds of differences in the classification of articles of freight** by railroad companies, and a discussion of those by which the conclusions of the Commission are reached in the classification of pearline when transported all rail on the one hand, or on the other partly by water and partly by rail, as compared with the transportation of common soap by either mode.

(Heard Dec. 8, 1887; Decided Feb. 15, 1888.)

COMPLAINT charging improper classification of "pearline." See abstract of complaint, *ante*, 600.

REPORT AND OPINION OF THE COMMISSION.

Bragg, Commissioner:

The complaint in this proceeding involves the justice and reasonableness of the freight rate classification made by the East Tennessee, Virginia & Georgia Railway Company upon a certain powder manufactured by the plaintiffs, commonly known as "pearline."

It is claimed in the complaint that this article is ruled to come under the head of "powders and washing compounds," etc., in the classification of freight of this railway company to all points and cities from which the classification of freight as made by the Southern Railway & Steamship Association is held

to apply, and that it is rated by this company as "soap powder" in the classification of freight to all other points reached by the line of that railway, but which are not situated within the territory in which the classification of the Southern Railway & Steamship Association is held to apply. An example stated in the complaint is, to Knoxville, Tennessee, Atlanta, Georgia, Chattanooga, Tennessee, as being points to which the Southern Railway & Steamship Association's classifications apply; and to trans-Mississippi points, such as Shreveport, Louisiana, Dallas, Texas, Little Rock, Arkansas, to which the rate classification of the Southern Railway & Steamship Association does not apply.

The complaint alleges that by putting this article under the rating "powders and washing compounds," etc., this company thereby charges a freight rate of over 100 per cent (exact, 121.81 per cent) more than it charges for a similar article, so far as freight purposes are concerned, namely: common soap, to the points above named. To Knoxville, Tennessee, Atlanta, Georgia, and Chattanooga, Tennessee, the averment of the complaint is that the rate is seventy-three cents per hundred pounds, while that on common soap is thirty-three cents per hundred pounds. The complaint claims that this article should be granted the same freight rate as common soap upon the following stated grounds, namely: "It is not an article of different character, only differing in being in powder form. It is of similar bulk, packed in boxes similar to soap. It is no more liable to damage or injury and no more trouble to handle or forward. It is used for the very same purpose in the laundry and for house cleaning, not in connection with soap, but in place of soap, and so competitive with soap; that, being competitive with common soap, it must be and is sold at a price that will admit of its use, and soap powders approximate very closely in the average price to that of common soaps of the same character. The same freight rate as that given common soap is granted our goods—(i. e., pearline) by every railroad and their connections, so far as we have any knowledge, and our knowledge extends to every part of our country, excepting only those that adhere to the tariff of the Southern Railway & Steamship Association in their own prescribed territory. The East Tennessee, Virginia & Georgia Railway itself and others freely grant us the same freight rate as common soap to all points outside of the territory put under the classification of the Southern Railway & Steamship Association—for instance, under the head of soap, to the points named above, namely: Shreveport, Louisiana, Dallas, Texas, Little Rock, Arkansas, and Fort Smith, Arkansas." The complaint claims that this is an unjust and undue discrimination, under the guise of a different classification, and forbidden by the Act to Regulate Commerce.

The answer of the defendant railway company to this complaint states that common soap is classed by it as sixth class, and is worth on an average about five cents a pound. It avers that "soap powders and washing compounds," which cover plaintiff's article, are classed as fourth class in the tariffs of the

The answer meets the charges with a full and specific denial.

The petition against the Cincinnati, New Orleans & Texas Pacific Railway Company, joined with the Alabama Great Southern Railroad Company, charges a violation of the said Act to Regulate Commerce:

I. By making charges for services to be rendered in the transportation of petroleum oil in themselves unjust and unreasonably high.

II. By having in the rates charged for services rendered and to be rendered in the transportation of petroleum oil for complainant and the Standard Oil Company of Kentucky, respectively, uniformly made and given undue and unreasonable preference and advantage to said Standard Oil Company and subjected complainant to undue and unreasonable prejudice and disadvantage.

III. By having charged for the transportation of petroleum oil from Cincinnati to points reached by defendants' roads a greater compensation in the aggregate for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, and the transportation being under substantially the same circumstances and conditions.

Defendants meet the first and second charges by denial, and they also deny that since the expiration of the order of relief made on their behalf on the 19th of April, 1887, they have made the greater charge for the shorter haul of the same property in the same direction, the shorter being included in the greater distance.

The petition against the Mississippi & Tennessee Railroad Company charges violation of the Act to Regulate Commerce by making charges for the transportation of petroleum oils from Memphis, Tennessee, to Grenada, Mississippi, which are in themselves unreasonably high.

The answer justifies the charges.

The petition against the Newport News & Mississippi Valley Company and the Louisville, New Orleans & Texas Railway Company charges violation of the Act to Regulate Commerce:

I. In making charges for services rendered and to be rendered by defendants in the transportation of petroleum oils from Louisville Kentucky, to Vicksburg, New Orleans, and other points which in themselves are unjust and unreasonably high.

II. By having uniformly, since April 5, 1887, made and given undue and unreasonable preference and advantage to the Standard Oil Company of Kentucky, and subjected complainant to undue and unreasonable preference and disadvantage.

The defendants answer separately with specific denial.

The petition against the Newport News & Mississippi Valley Company and the Illinois Central Railroad Company charges a violation of the Act to Regulate Commerce:

I. By making charges for services rendered and to be rendered by defendants in the transportation of petroleum oil from Louisville, Kentucky, and points on their lines in other States, which were in themselves unjust and unreasonably high.

II. By having in the rates charged by them for services rendered and to be rendered for complainant and for the Standard Oil Company of Kentucky uniformly made and given undue and unreasonable preference and advantage to said Standard Oil Company and subjected the complainant to undue and unreasonable prejudice and disadvantage.

The charges are fully met and denied by the answers.

The petition against the Illinois Central Railroad Company charges a violation of said Act to Regulate Commerce:

I. By making charges for services to be rendered in the transportation of petroleum oils from Cairo, in the State of Illinois, to points on its line of railroad in other States, which were in themselves unjust and unreasonably high.

II. By having, since July 9, 1887, charged and received for the transportation of petroleum oils from Cairo, Illinois, to points reached by defendant's line of railroad in other States a greater compensation in the aggregate for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, and the transportation being under substantially the same circumstances and conditions.

The answer denies the first charge, and denies that the greater charges made for shorter than for longer hauls over the same line in the same direction are made under substantially similar circumstances and conditions.

Such were the issues made in the several cases.

The testimony upon which the cases have been submitted was taken in the main on oral examination of witnesses at the public sessions of the Commission, and the fullest opportunity was given for bringing out all the facts. The officers of the defendant companies connected with the freight departments of their roads, respectively, were examined, and the workings of the roads, so far as concerns this particular article of traffic, were fully gone into, with the purpose on the part of the Commission to ascertain, if possible, not only whether any of the defendants had been guilty of unlawful discrimination against the complainant in the particulars charged, but also whether the general course of the defendants in respect to the transportation of oil was relatively fair and just as between different shippers, and also as between the defendants and the general public.

The case of two of the defendants was, however, so different as to make them stand altogether apart from the main contest which was made by the others and to which the evidence was directed. It will, therefore, be most convenient to say, in respect to them, in this place all that we think there is occasion to say at this time, and afterwards to dispose of the others together.

In the case of the Mobile & Ohio Railroad Company counsel for the respective parties have signed and filed the following paper:

"It is hereby understood and agreed by and between George Rice, complainant, and the Mobile & Ohio Railroad Company, defendant, in the above entitled cause, that the complainant makes no objection to the rates of the de-

Soap powder and Common Soap per 100 pounds.

	L. C. L.	C. L.
To Memphis via Louisville	50 cents.	44 cents.
Little Rock via St. Louis	75 " "	60 " "
Fort Smith " "	90 " "	79 " "

The rates on soap powder and articles of the same class under the Trunk Line Association's classification are as follows, per 100 pounds:

	L. C. L.	C. L.
For 100 miles.....	16 cents.	15 cents.
500 "	25 " "	21 " "
600 "	27 " "	23 " "

The rates and classification via the Sunset route (Southern Pacific) are as follows:

From New York to Little Rock, to which the trunk line classification applies, the same as that classification, viz.: per 100 pounds.

Common soap and soap powder, rate, L. C. L. 60 cts.
C. L. 45 "

To Dallas, Texas, and Shreveport, Louisiana, the Texas classification applies, viz.: by which pearline, common soap, and soap powder are shown to be in the same class, viz.: L. C. L., 4th, C. L. A., and the rates from New York are per 100 pounds:

To Shreveport, L. C. L.....	70 cents.
" C. L.....	64 "
Dallas, L. C. L.....	102 "
" C. L.....	93 "

The rates for distances of 100 and 500 miles in the territory to which the Texas classification applies are for common soap and pearline per 100 pounds:

100 miles, L. C. L.....	47 cents.
" C. L.....	43 "
500 " L. C. L.....	69 "
" C. L.....	62 "

The rates for distances of 100 miles and 500 miles, in the territory to which the Southern Railway & Steamship Association's classification applies, in any quantity, are as follows:

	Soap Powder.	Common Soap.
100 miles	32 cents.	20 cents.
500 "	49 " "	38 " "

A computation of the number of articles and number of classification of articles as found in the different classes, and then the number of classes in each of the different systems, shows the following results:

Classification.	No. of articles.	No. of classifications.	No. of classes.
Trunk Line	1,614	4,364	6
So. R'y & S. S. Ass'n	874	1,602	13
Texas	891	1,591	9

The method by which the results stated in the table last above mentioned is arrived at is as follows: by counting the different articles mentioned and then to count the different classifications of such articles; for example, acids are classed in nine different ways, according to how shipped. In the count of articles acid is counted as one article, and in the number of classifications as nine.

No complaint has ever been made by any other manufacturer of soap powders and

washing compounds against the classification or rates of the Southern Railway & Steamship Association, as the evidence adduced on the part of the railway company in this case shows, except the manufacturers of pearline, and this has been true for the last thirteen years. No evidence was offered of any instance in which any company which has adopted the classifications and rates of the Southern Railway & Steamship Association has ever sustained any loss on account of pearline or soap powders by accident, collision, or otherwise.

Upon this state of facts we perform the duty of stating our conclusions:

The method of classification, which consists of grouping a large number of articles into each of several different classes with different rates for the transportation of each class, has long existed in the operation of railroads. In making up a class by this method articles of the same kind are usually grouped together in the same class as far as this can be done; but as the articles in each class are so very numerous there is a very great diversity of such articles, and it results that there are generally but few things of the same kind that can be placed in one class. This is unavoidable, because the articles are so numerous while the classes are but few. All articles embraced in a class are usually charged the rate of that class, whatever it may be. To carrier and shipper alike it indicates the amount of the rate charged.

One of the many embarrassments connected with the transportation of freight by railroads consists in the fact that there is such a lack of uniformity in the classifications of freight found in the different portions of the country. The three associations mentioned in evidence in this case are not all that there are of this description in the United States; yet each of them has different classifications, and, having different classifications, in this way charge different rates for what in many cases is a substantially similar service. The Trunk Line Association, for instance, with 1,614 articles and 4,364 classifications, has all these grouped into six different classes. The Texas Association, with 891 different articles, classified under 1,591 different names, has these all grouped into nine different classes. The Southern Railway & Steamship Association, with 847 articles and 1,602 classifications of these articles, has them all grouped into thirteen different classes.

This mode of making rate by classification is intended to be for the convenience of the railroad company and also for the accommodation of the shippers, and long experience has shown that it is the best and most practical way yet devised for dealing with the subject. To demonstrate that there are occasional inequalities of rate upon some of the articles thus grouped together in one class as compared with others in that class is not to prove that the whole system is wrong, but simply that there is or may be some slight or occasional difference in the rate charged upon some one article in proportion to its value, bulk, or weight, when compared with another, that inflicts no substantial wrong upon anyone, and is one of the mere incidents of the service by this method of

are owned by the Standard Oil Company of Kentucky, so that they are not offered for use to shippers in general.

In the rate sheets which are published by the defendant, rates are named for the transportation of oil in barrels and oil in tanks; the latter, however, not to all points, but in general only to the points at which preparations have been made by a shipper to receive and store the oil shipped by that method. In some cases rates are named to points where no such preparations are made, the reason for which, if there is any, has not been very clearly explained to us. Generally, the rate when the transportation is in tanks is by the car; but where it is in barrels it is by the barrel, in car load lots, or by the hundred pounds. None of the rate sheets of the defendant which were put in evidence notified the shipper that the carrier was not prepared to furnish rolling stock for transporting the oil in either mode; a reasonable inference from the rate sheet not otherwise explained would be that it was. Thus the Newport News & Mississippi Valley Company, by tariff D 377, gives rates as follows: Louisville, Kentucky, to Memphis, Tennessee, coal oil, car load, in barrels, forty-five cents; coal oil in tanks, per tank car, \$25.

If, however, the owner of oil at Louisville should desire to send a consignment of oil in tanks to Memphis, and should apply to have cars furnished him for the purpose, he would be told at once that the company did not supply tank cars to its customers; that if they desire to avail themselves of that method of transportation they must not only pay the rate prescribed, but they must also furnish the company with the cars. This is obviously a most important qualification of the rate itself; and if the shipper must furnish the car at his own expense, the actual cost to him of the transportation will very much exceed the published rate. This, however, does not seem to be generally expected; on the contrary, there seems to be a general, although not a universal, understanding among railroad companies in the southwest, including the defendants, that the party furnishing a tank car shall be paid trackage for its use at the rate customary among railroad companies, namely: three fourths of a cent a mile going and returning, with the privilege on the part of the railroad company of loading the car with return freight when any is offered, or is procurable.

One difficulty with this understanding is that it does not appear in the rate sheets. The sixth section of the Act to Regulate Commerce provides "That every common carrier subject to the provisions of this Act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established, and which are in force at the time upon its railroad, as defined by the first section of this Act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges, and any rules or regulations which in any wise change, affect, or determine

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any part or the aggregate of such aforesaid rates and fares and charges."

The purpose of this provision is very manifest and is well understood. It intends that every person desiring to avail himself of the facilities afforded by the railroads of the country should be enabled to tell for himself, without being under the necessity of calling in the aid of any railroad agent or other person, what charges he must pay for the transportation of his person or his property, and also have in the published rate sheets an accurate test of the correctness of any exaction. The rate sheets introduced by the defendants in these cases can hardly be said to give this information. They omit to give a rule, regulation or understanding which has a very important bearing on the rates, and they wholly omit to notify the owner of oil that the carriers making them do not furnish him with cars for one of the methods of transportation which in terms they offer to him. The rate sheets, therefore, require to be supplemented by other information; and it is from this fact that some part of the controversy between these parties have arisen.

It was said on the argument that the railroad companies were under obligation to furnish tanks no more than they were to furnish barrels; that tanks and barrels were only different kinds of caskets for holding the property which was to be conveyed, and it was matter of course that the shipper should furnish them for himself. This might be quite true if the tank, like the barrel, was received from the consignor and taken for delivery to the consignee, as packages usually are; but it is not. It is, on the other hand, a part of the car itself, as much as are the sides to an ordinary box car; it is provided only to hold the oil for transportation, while the barrel holds it both before and after shipment, as an article of merchandise, and is bought and sold with it. The shipper in barrels, it is quite true, is expected to deliver his merchandise in that form of package, and the rate bill informs him what he must pay upon it. The party proposing to ship in tanks does not receive from the rate sheets equivalent information; and if outside the rate sheets he learns that he must furnish the tank cars, he is still unapprised upon what terms this is to be done, and must seek the information from the officers or agents of the carrier.

But when he seeks this information he learns immediately that the matter is or may be the subject of private negotiation, and perhaps of different terms in different cases. Thus the evils at which this provision of the Statute was aimed make their appearance immediately. He is not informed by the rate sheets what he will be charged for the service to be rendered him, and when he seeks the information he finds the terms are to be the subject of bargain; but a bargain implies a difference in terms in different cases. We are not to be understood as finding or as intimating an opinion that all of these defendants have made different terms in different cases. The evidence as to the most of them has no tendency to establish against them such a charge. We say only that as they have not by their rate sheets bound themselves to any particular terms, the

tion and relatively with other rates. The mere method of arriving at what is a reasonable rate is a matter of far less consequence than that the rate itself should be reasonable and relatively just.

We have carefully considered the classifications and rates of the other associations in evidence for the purpose of comparison. The trunk line classification makes no difference whatever between soap powder and common soap, and this is true of the Texas classification, the classification of the Sunset route, and the western classification. But while this is deserving of much consideration, and such it has received at our hands, yet it does not satisfy us, upon the grounds above stated, as shown in the evidence in this case, that there is not such a difference between the two that warrants the rate we have named. We have had occasion to observe heretofore, and again repeat, that the conditions of transportation are in some respects very different in different parts of the country. According to the evidence this freight reaching Atlanta from the seaboard is transported from New York by far the greater portion of the distance by sea, and while this is to that extent a cheaper route from New York to Savannah or from New York to Charleston, yet the liability of a powder like pearline to injury on that part of the route from exposure to water or damp in case of accident might well be greater than if the transportation was by all rail. Besides, there is more of extra handling and additional risk from that cause. To cover that kind of transportation the classification and freight rates of the Southern Railway & Steamship Association from New York to Savannah are largely made. We are obliged to know, and do know, that most of the freight from New York transported over the East Tennessee, Virginia & Georgia Railway comes by way of the ocean to Norfolk, and is taken from there south and west by rail; so that as to this the same considerations could well apply which we have named in the case of the Southern Railway & Steamship Association. This is true also of transportation from New York by the Sunset or Southern Pacific route, which is by sea to New Orleans. In the transportation covered by these classifications there is as to a powder, like pearline, united in greater degree the risks incident to collision, water and dampness, and extra handling than if the transportation was all rail. On the other hand, the transportation of the trunk lines proper is all rail. The transportation of the Western Association is also all rail. These involve different conditions of transportation, and when comparison is attempted to be made of these respective classifications and rates these different conditions cannot be ignored. By the trunk line classification the rate is lower on soap and pearline than it is by the classification of the Southern Railway & Steamship Association; while the rate by the Texas classification is considerably higher than either. These results are defined and explained by the defendant as arising upon the different circumstances under which the service is rendered, being in the case of the trunk lines through a much more populous territory and having a greater volume of freight as accounting for the cheaper

rates, and through a more sparsely settled country and having less volume of business, in the case of the Southern Railway & Steamship Association, and the Texas classification as accounting for their higher rates. Without now going into an extended examination of these differences of conditions as they exist in the case of these different associations, which is unnecessary, in the view we take of this case, we recognize that there is quite a sufficient difference in their conditions to make any attempted comparison between their rates of very little value in this particular case upon the grounds we have named. If the transportation from New York to Atlanta was all rail, then we should say that the relative difference between the rate on pearline and common soap ought not to be more than about 50 per cent, as we have above shown is the case by the classifications of the Southern Railway & Steamship Association on distances of from 1 to 500 miles, which evidently refers to shipments by all rail, but the extra risks and handling to pearline of its coming a great portion of the way by sea may, we think, justify the increased relative difference in rate.

The defendant relies upon the fact that it has been sustained in its classifications as to pearline and common soap by the honorable railroad commissions of Georgia and Alabama. We have given a very high and respectful consideration to the action of these honorable and respected tribunals when offered in evidence before us; but, as in the case of Reed and Evans against the Oregon Railway & Navigation Company, in manuscript, where a recommendation of the honorable railroad commission of Oregon was relied upon by the petitioners as sustaining their view of the case, we said that we did not know what was the evidence before that tribunal which induced it to arrive at the result it did, and were constrained to be governed by the evidence before us, under the statute, in a matter relating to interstate commerce. So also we have to be influenced by the same considerations in the case now before us; besides, we feel satisfied from the evidence before us that the difference between this "special rate" and the class rates was not before either of those tribunals. At least, the evidence does not show that it was.

The defendant is not responsible for the rates made at Shreveport, Little Rock and Fort Smith; for, as we have already shown, each of these points is beyond its terminus, and the rates made there are made by the Trunk Line Association, the Texas Association, and the Western Association.

The order of the Commission is that the defendant must cease to charge a rate of seventy-three cents per hundred pounds on pearline from New York to Atlanta, and that said rate must not exceed sixty cents per hundred pounds for said service, and that the difference in the rate upon pearline and common soap must not exceed the difference between the relative amounts of sixty cents per hundred pounds for pearline and thirty-three cents per hundred pounds for common soap when transported over its line, coming from New York and going to Atlanta. As to these articles when transported over its line as and

between other points involving interstate traffic, and at points where the classifications of the Southern Railway & Steamship Association apply, the relative differences between the rates upon them as above stated for distances of from 100 to 500 miles by the classification of the Southern Railway & Steamship Association, all rail, must be maintained, namely: per 100 pounds:

	Soap powder.	Common soap.
100 miles.....	32 cents.	20 cents.
500 ".....	49 "	35 "

The discrimination made by "the special rate" of the Southern Railway & Steamship Association between pearlins and common soap to the extent herein indicated is unjust and must be discontinued; and, while common soap is in its sixth class, pearlins must be placed in its fifth class.

RIDDLE, DEAN & CO.

PITTSBURGH & LAKE ERIE R. R. CO.

(No. 88.)

***1. Rule stated in reference to applications for rehearings:**

(a) The Commission will promptly and carefully examine an application for a rehearing with a view to the immediate correction of any error of law or fact found to exist, but will not direct a rehearing involving the expense to parties of appearing before the Commission for a reargument, unless satisfied that such reargument might have the effect of changing the result of what the Commission has already done.

(b) The statute is construed as dealing with the substance of things, and as contemplating, as far as this is possible, methods of procedure that are speedy and which come at once to the very right of questions arising in the transportation of persons and freight.

2. Where the relation of any carrier to the matter complained of is such that it is in whole, or in part, materially responsible for the alleged grievance, and has direct interest in any investigation of the subject matter involved, and the merits of the controversy cannot be investigated and determined in the absence of such carrier as a party, then that carrier should be made a party to the proceeding, and if not a party, no relief can be had against it.

3. The report and findings of the Commission upon the evidence relate only to the ascertainment and presentation of all the material facts necessary to fairly and justly present the merits of the controversy, and the Commission does not report evidence which is only cumulative, or which is immaterial or irrelevant, or mere details of evidence already embraced in substantial facts stated, upon which the findings and conclusions of the Commission are made.

(Decided February 15, 1888.)

*Head notes by COOLEY, Chairman.

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APPPLICATION by counsel for petitioners filed February 1, 1888, for a rehearing of case decided January 17, 1888, and reported ante, 688. *Denied.*

Mr. James L. Black, for petitioners, for the motion.

REPORT AND OPINION OF THE COMMISSION

The Commission:

We have carefully considered the application made in the brief of petitioners' counsel for a rehearing in this proceeding, and are constrained to deny it, on the ground that no argument of counsel upon the evidence could change the result announced in our previous report and opinion by which the petition was dismissed. We feel it to be due to candor as well as justice to say that a reargument by the counsel of the parties upon a rehearing would be a mere waste of time in addition to the unnecessary expense it would cause the parties and the useless labor it would entail upon their counsel. If, upon the whole evidence, we could see it was possible that any argument of counsel could change the result, we would unhesitatingly grant the application for a rehearing.

The main, controlling and general grounds upon which we decided to dismiss the petition as set forth in our report and opinion, are not controverted or questioned in the application for a rehearing, nor, indeed, do we see how they could be; but several particulars are mentioned in which it is claimed we were mistaken in our findings upon the evidence. Two of these we notice briefly, the others having been disposed of in our previous report and opinion in accordance with the weight of the evidence.

No coke, it is claimed, was shipped in vessels from Cleveland or Ashtabula; and this we think, is true upon a re-examination of the evidence. We were led to a contrary conclusion in our report and opinion by the following language of John Newell, President of the Pittsburgh & Lake Erie Railroad Company, on page 10 of his oral examination, before us: "There has been a large demand for coke for the Lake Superior region." Taking this language in connection with all else that was said on this subject by the same witness, and the other evidence in the proceedings, we are satisfied that in using it he really meant by it that there was a larger demand for coke for smelting ore, which was the product of the Lake Superior mines; but that is wholly immaterial. The important fact was the unusual demand for coke and its shipment over the line of the railroad, and this remained the same whether it was taken by vessels at Cleveland and Ashtabula to the Lake Superior mines or not. The evidence shows that this coke was required in greater quantities than ever before for smelting ore produced in the Lake Superior mines and that for this purpose it went not only to the mills and furnaces south, but also west of Cleveland, as well as at Cleveland itself; while the shipments of coal during the same period were quite as large, if not larger, than those of coke, and coal was shipped in immense quantities from Cleveland and Ashtabula in vessels.

In the second place, it is claimed in the ap

plication for rehearing that other shippers of coal besides petitioners were demanding cars for coal to Buffalo during the period of which they complain. All the evidence, when considered together, upon this point evidently refers to the cars of the Lake Shore & Michigan Southern Railway Company; and it shows that a few such were furnished at intervals, of which petitioners admit in their petition they received "forty cars," and this is more than the evidence shows that any other shippers received of these coal cars to Buffalo during that period. So that, upon the evidence, there was no unjust discrimination against petitioners in this respect, even by the Lake Shore & Michigan Southern Railway Company; but, as we have already stated, that company is not a party to this proceeding. The complaint is against the Pittsburgh & Lake Erie Railroad Company, and there is no evidence that its cars were going to Buffalo or were expected by shippers to go to Buffalo with coal during the period complained of. The evidence shows also that the owners of these mines were quite willing for their coal to go to Cleveland instead of Buffalo, and that they were satisfied when they could get their proportion of cars to Cleveland, and were not disposed to make any issue about not receiving cars to Buffalo. This is, therefore, wholly immaterial to the result we have reached in dismissing the petition, except so far as it tends to further show that petitioners are entitled to no relief upon the evidence before us.

A peculiarity of this case has been that while the complaint is made against the Pittsburgh & Lake Erie Railroad Company the evidence in support of it is mainly directed at the Lake Shore & Michigan Southern Railway Company in the use of its cars over the line of the Pittsburgh & Lake Erie Railroad. Regarding this it is unnecessary to repeat here what we have already said elsewhere; but it may not be improper for us to state that where a complaint is expected to be prosecuted against any carrier that carrier should be made a party to the complaint and thus have an opportunity to be heard in its defense. It is, however, sufficient for us to say that the evidence makes no case for relief against the Pittsburgh & Lake Erie Railroad Company.

As this is the first application we have had for a rehearing, it may also not be improper for us to state in this connection, as every one of our reports and opinions will show upon its face, that in every case before us our findings upon the evidence relate only to the ascertainment of all the material facts necessary to fairly and justly present the merits of the controversy, and that to such facts as arise from immaterial or irrelevant evidence we give them no place in our reports and opinions. To do otherwise would be to make a book out of a case like the present, which contains more than three hundred pages of printed evidence and equally as much of written manuscript, and would accomplish no useful or just purpose whatever.

Where the delinquency charged is in the nature of a fraud, as in the present case, under the rules of law a wide range is allowed in the evidence, that the complainants may, if they can, show the existence of the fraud, barri-

caded as it may be by devices, inventions, subterfuges or pretenses; and it is indispensable to truth and justice that such latitude should be allowed. The party accused must in fairness and justice be allowed a correspondingly wide latitude in the evidence to show innocence of the fraud imputed to him. A great mass of evidence is the result. Some of it is merely circumstantial; some of it is unavoidably cumulative; other portions of it would be wholly irrelevant if not inseparably connected with some fact that is relevant; much of it is immaterial; large portions of it are explanatory, and thus it is presented in oral examinations, depositions and documentary evidence.

Under such circumstances, when we have patiently and laboriously sifted out all the material facts necessary to fairly and justly present the merits of the controversy, with our conclusions thereon, we have done all that the statute authorizes or requires us to do. The statute deals with the substance of things, and contemplates, as far as this is possible, methods of procedure that are speedy and which come at once to the very right of questions arising in the transportation of persons and freight; and while in its administration we will always cheerfully and carefully examine and consider all applications for rehearings by a party to any proceeding decided by us who will point out any errors he may think we may have committed, either of law or fact, with a view to their prompt correction, if found to exist, yet we will not in any proceeding direct a rehearing involving the expense to parties of appearing before us for a reargument of the case and the further consumption of time on our part, which belongs to the public unless satisfied that such reargument might have the effect of changing the result of what we have already done.

The application of petitioners for a rehearing is denied.

MILWAUKEE CHAMBER OF COMMERCE

FLINT & PERE MARQUETTE R.R. Co. and
Detroit, Grand Haven & Milwaukee R. Co.

ABSTRACT of complaint filed February 21, 1888, charging unjust discrimination against Milwaukee in rates on flour, etc.

Defendants on or about February 1, 1888, reduced the rate on flour, grain and mill stuffs 2½ cents per 100 lbs. from Milwaukee to eastern markets, the same to apply on such freight shipped from Minneapolis. Defendants have refused such reduction on Milwaukee shipments. Said property is shipped from Minneapolis to Milwaukee as prepaid transit freight and thence at the reduction complained of. The rates being 28 and 28 cents per 100 lbs. to New York and Boston, respectively, on Minneapolis shipments, and 25½ and 30½ cents per 100 lbs. on same class of property shipped from Milwaukee to points named.

Defendants have no joint tariff from Minneapolis to Milwaukee, but the rate is a local one, not a percentage of a through rate; and property delivered at Milwaukee from Minne-

tomary means of transportation compels him to do so.

It was said on the argument that this compulsion was not the fault of the carriers, since it resulted from the man's own circumstances; and it was very justly remarked that it is not the business of carriers to relieve against inequalities in the pecuniary condition of those who give them business. This is perfectly true. If one man can pay the extra charge which is made for being transported in a palace car, and chooses to do so, the fact constitutes no ground for complaint on the part of another man who, by reason of want of means to pay for the like accommodation, is compelled to ride in the common car. When the carrier provides accommodations for all and offers them impartially, he stands blameless as to those whose circumstances preclude acceptance; but that is not the case we have before us. The carriers do not provide accommodations for the two methods of transportation; they provide them for one method only, and in doing so they fall short of what, in respect to all other kinds of traffic, is practically the universal custom. It is from this fact that the oppression complained of in these cases springs. The carriers offer no choice to their customers; they fail to provide for the general use of all who may desire it the rolling stock for transporting. In the way which they say is most profitable to themselves, this is very large traffic, but they give to the dealers who will perform this duty for them rates so favorable as to put those who adopt the only method the carriers provide at such disadvantage as to preclude successful competition.

It does not seem to us either just or plausible to say under such circumstances that the person whose oil is carried in barrels has voluntarily chosen that method, and has no concern with the charges imposed on his competitor who adopted the other. He is, on the contrary, vitally concerned with those charges; and, if his own are not to be gauged in some degree by them, he may be ruined in his business without redress, even though the charges he pays, when considered by themselves, may seem not unreasonable.

But it is further seen that the whole argument on this branch of the case is rested by counsel on the proposition that the charges made on transportation of oil in barrels are reasonable in and of themselves; if they are found not to be, the jurisdictional difficulty which is suggested need not further occupy our attention.

It is to be regretted that we are not more clearly shown in the argument presented on this point how we may determine when rates are, and when they are not, in and of themselves reasonable. When a limitation of power depends upon facts there ought to be no question what facts are to be considered, since otherwise the limitation is likely to be the subject of continual dispute, and may possibly be exceeded, even when the intention is to observe it with due care; and, especially when such a limitation depends upon a pecuniary charge being reasonable or the reverse, the tests of what is reasonable ought to be such as not only can be easily applied, but in themselves be open to no controversy.

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Counsel has defined the expression "reasonable in and of itself" to mean "a reasonable compensation for transporting the traffic in the mode for which the rate is charged;" but the definition throws little or no light upon the question how this reasonable compensation is to be measured and determined.

It is sometimes contended, although not by the carriers themselves, that we may measure the reasonableness of charges by the cost of transportation. These defendants will not contend that that is a proper test, for their whole practice is against measuring their charges by the cost. It may cost no more to carry a box of silk weighing 100 pounds than a ball of refuse rags of like weight; but the charge will, perhaps, be several times as great, and the carrier justifies the discrimination by showing that equal rates on both would put transportation of the less valuable article out of the question. Like discriminations are made everywhere; property is classified with a purpose, among other things, to make the most valuable kinds pay most largely for the service performed. This is a wise, if not a necessary, policy; and as the railroads adopt it universally they are fairly estopped from claiming that from cost alone it can be determined whether charges are in and of themselves reasonable.

A better test, it is sometimes said, may be found in the value of the service to the owner of the property carried. Some articles must be carried at low rates because the traffic will bear no higher, and therefore the low rates are all the service is worth. Other articles, though it may cost no more to carry them, may justly be charged much higher rates. The effect of transportation upon market value is taken into account by carriers in making rates, and it is insisted on their behalf that this is neither unreasonable nor unjust; but it is very obvious that if rates as to their reasonableness are to be measured by the standard of what the service is worth to the owner of the property, it is impossible, when considering the value of the service in transporting a particular kind of property by one method, to leave out of view the charges imposed for transporting the like property by another method, which for any reason is limited to a part only of the carrier's customers. Whether the service to the owner in carrying by one method shall be worth much, or be of no value whatever, may depend altogether on the charges which are made to others for carrying by the other method.

But the proposition that we may determine absolutely what rates are in and of themselves reasonable on a consideration exclusively of the particular traffic by itself, is antagonistic to the whole railroad practice of the country, and would not for a moment be accepted and acted upon by any committee of rate makers. Rates are never made in that way; but instead thereof property is classified, and the whole field is surveyed with a view to the establishment of such charges as shall be relatively proper and just as near as circumstances will admit of their being made so. There is not a railroad company in the country with a business of any considerable magnitude that could justify each of its rates by itself without tak-

of the Commission to entertain the complaint.

The other defendants, the Richmond & Danville Railroad Company and the Richmond & West Point Terminal & Warehouse Company, each for itself, make a general denial of all that is alleged against them or either of them in the complaint which on the hearing is, by consent of parties, dismissed as to the two defendants last named.

From the testimony of witnesses and the uncontroverted statements made in the complaint and answers thereto, the facts are found to be as follows:

The complainants, under the firm name of Heck & Petree, were, from January 1, 1886, to April 15, 1887, engaged in mining and selling coal in the Coal Creek field in Anderson and Campbell Counties, in the State of Tennessee, and in shipping coal from said coal field over the roads of defendants to markets and customers in North Carolina and other States. On and after April 15, 1887, said railroad companies refused to take or ship over their roads any coal of said firm.

The mine of said firm is one of several mines located on the line of the Coal Creek & New River Railroad Company's Road, and coal shipped from the mine of said firm to market, must be carried over said last named road to the Knoxville & Ohio Road, over it to its junction at Knoxville with the East Tennessee, Virginia & Georgia Road, over said last named road and its connections to the place of destination. The only outlet or means of reaching markets for coal mined in said Coal Creek coal field is over the line of the Knoxville & Ohio Railroad.

The Coal Creek & New River Railroad Company is a corporation chartered by the State of Tennessee. It owns a road or track three miles long but never owned cars or other rolling stock nor operated its road. The rolling stock used on its road was and is owned by the Knoxville & Ohio Railroad Company, which has done all the carrying done on said Coal Creek & New River Road from the time it was built in 1880-81 up to April 15, 1887, when carrying on it was refused for complainants but continued for other shippers.

A formal order was issued by the Knoxville & Ohio River Railroad Company discontinuing and forbidding further operations on the Coal Creek & New River Railroad on and after April 15, 1887; operations by said Knoxville & Ohio Railroad Company were soon thereafter renewed on that part of said road extending to the Excelsior coal mine and within one fourth of a mile of complainants' mine, and occasional transfers were made over the entire road; but all transportation was refused to complainants, who had orders for large quantities of coal, which they offered for shipment over defendants' roads.

The East Tennessee, Virginia & Georgia Railway Company and the Knoxville & Ohio Railroad Company are separate corporations, but their roads are part of the same system and are under substantially the same management. The former owns more than half of the capital stock of the latter and the latter owns nearly one half the capital stock, and (together with parties interested in its own road) owns a controlling interest in the capital

stock of the Coal Creek & New River Railroad Company. The three Companies were and are in accord and have acted in concert in the refusal to carry complainants' coal on the 15th day of April, 1887, and from then until now.

The Knoxville & Ohio Road extends from its junction with the East Tennessee, Virginia & Georgia Road at Knoxville northwardly to the Kentucky state line, and reaches said coal field at Coal Creek Station from which a "Y" shaped switch extends into said coal field and connects with said Coal Creek & New River Road. Said coal field is about eight miles in extent along the face of Cumberland mountain fronting to the southeast. A large and considerable tract in the northeast part of said coal field is and was, before said Coal Creek & New River Railroad was built, owned by John M. Heck, lessor of complainants, while another large tract further to the northeast was owned by said John M. Heck and the Knoxville & Ohio Railroad Company jointly. The southwest part of said coal field is owned by other proprietors, among them some of the officers and persons interested in the defendants' roads.

The "Y" switch from Coal Creek Station did not and does not so extend into said coal field as to reach the part owned by said John M. Heck, and the said Coal Creek & New River Road was built by the Knoxville & Ohio Railroad Company and said Heck from said switch to and along that part of said coal field owned by said John M. Heck; thence to and along the part owned jointly by him and the Knoxville & Ohio Railroad Company.

John M. Heck was president of the Coal Creek & New River Railroad Company from the time its road was built up to October, 1886, when he was succeeded by E. R. Chapman.

When Heck had been superseded it was claimed by the stockholders and others interested in the defendant companies that during his presidency he had used said road and allowed his lessees to use it without paying or causing to be paid anything to said company for such use of its road. The action taken by the defendants in respect of the refusal to transport the coal of said firm was taken to force said John M. Heck to a settlement with said company by hindering his lessees in their mining operations.

On these ascertained facts it is insisted on behalf of the Coal Creek & New River Railroad Company that it is not a common carrier and that its road is not any part of a line for continuous carriage from one State or Territory to another State or Territory.

This view is apparently based on the fact that the road of this company is wholly in the State of Tennessee, from which the Company derives its corporate existence; that it owns no engine or cars, has not operated and does not of itself operate its road.

It is true that coal taken over its road has been drawn by the engines and carried in the cars of the other defendants; but for all practical purposes the road of this defendant is as much a part of the continuous line over which coal from plaintiffs' mine goes to market as is the "Y" switch which connects this road with the roads of the other defendant companies. In the history of its construction and of its use

a large outlay in capital. His competitor in business can choose it, and it is for that reason that complainant is driven out of the market. He must blame his want of capital, it is said, and not the railroad companies, for his failure.

A statement of the situation differing a little from this will more nearly present the actual facts. The railroad company not having supplied itself with the necessary rolling stock to enable one branch of its traffic to be carried on in the way most advantageous to those who engage in it, suffers parties who have the capital which will enable them to supply the defect to put cars of their own upon the road, for the use of which it pays, and at the same time gives to such parties the exclusive use of what they supply, and also such preferential rates on the merchandise carried for them as will put successful competition quite out of the question. It is not the lack of capital to carry on the business that then proves fatal, but it is the lack of capital, in addition to what is needed in the business, to supply rolling stock to the railroad company for his use. It would be the height of injustice for the carrier to make such a lack a ground for discrimination in rates, and then to say that the party suffering from it has no reason for complaint since the rates which are named are offered to all. The offer is exclusive in fact, whatever it may be in terms or in theory.

If a carrier of passengers were to make a uniform rate of three cents a mile to all who rode in the cars it provided, but, being deficient in rolling stock, were to allow owners of private cars to fill them with passengers at two cents a mile and be paid for the use of the cars in addition, we should not expect any one to attempt a defense of the discrimination based upon the ground that the rates were equally open to all, and that if one, by reason of lack of capital to supply himself with a private car, was unable to take the benefit of the most favorable rate, he should blame his fortune for it, not the common carrier. The wrong in such a case would be as plain as it would be gross; but such a discrimination in the carriage of persons would be far less injurious than a similar discrimination in the transportation of property; the one would involve a small sum of money only; the other might be destructive to a business. We hold, therefore, that the fact that one consignor furnishes a car for hire to the railroad company for the transportation of his oil is no ground whatever for a discrimination in rates in his favor as against another consignor who must ship in the cars the carrier supplies. It may be a reason for limiting to himself the use of the car he furnishes, but the discrimination cannot justly or lawfully go any further.

II. The fact that transportation in barrels exposes the carrier to more risks than does transportation in tanks seems to be most relied upon to support the discrimination made in rates, and it was very strongly urged on the argument. The risks are, *first*, of accidental fires in consequence of leakage from barrels, and, *second*, of injury to other property arising from its being affected by petroleum odors. Considerable evidence was given to show that leakage from barrels was constant and in warm weather very great, and that trains and ware-

houses were specially exposed to accidental fires in consequence. On the other hand, there was evidence that the risks are greatest when the oil is transported in tanks; the greatest risk being from collisions, which might break up and empty the tanks and expose the whole vicinity, while barrels might for the most part or altogether escape breakage. Persons entitled to speak as experts differed very widely in their testimony on this point, but Mr. Brundred, the manager of the tank line which is operated on the Pennsylvania roads, and who testified to having kept careful statistics covering a considerable period of time, showed by these that the risks from either mode of transportation were small, but were least when the transportation was in barrels. Possibly his experience may have been somewhat exceptional; but we are not satisfied from the evidence that there is any such greater risk from fires when the oil is conveyed in barrels as can justify a difference in rates. The risk from injury to other property is something, but not serious. Oil in barrels is transported in cars which when not used for that purpose are employed in the transportation of live stock, lumber, iron ore, or other articles not subject to injury from the odors, and when taken in car load lots is loaded and unloaded by the shipper elsewhere than in the company's warehouses. With proper care, therefore, injury to other property ought very seldom to happen.

III. The greater probability of finding return loads for the tanks is much relied on. The return loads are either turpentine or cottonseed oil. The turpentine region is reached by some of the roads, but not by all; but on those same roads are lumber, iron, and other heavy articles to be transported in the direction opposite to that in which the oil is taken, and which would constitute very suitable loading for the cars in which oil in barrels is carried southward. It is a very pregnant fact as bearing on relative rates in this region that Mr. Virgil Powers, the Commissioner of the Southern Railway & Steamship Association, and Mr. Charles A. Sindall, the Secretary, both of whom have had long experience in those or similar capacities, agree in opinion that oil in barrels ought to be transported as cheaply as the same quantity in tanks. This opinion would not have been given without good reason; and without doubt the probability of return loads for the tanks was taken into account. In the southwest cotton seed oil mills may or may not be found at the points to which oil in tanks is taken. If they are not the tank must return empty or it must be sent elsewhere for a load. But we do not learn from any evidence given before us that the railroad company has any right, under its implied contract for the transportation of the petroleum oil, to send the tank car to any other point for a load when it does not find one at the place of delivery. If there is any such right it must arise from some special contract or arrangement; and if any such exists the terms and particular privileges given are not disclosed in these cases; but when thus sent elsewhere it may or may not be the case that there is any considerable advantage in it, such as would be derived from taking up a load at

COMMERCIAL EXCHANGE OF PHILADELPHIA

v.

UNION LINE, Pittsburgh, Cincinnati & St. Louis R. Co. and Pennsylvania R. R. Co.

SAME

v.

ERIE DESPATCH, Cincinnati, Indianapolis, St. Louis & Chicago R. Co. and Philadelphia & Reading R. R. Co.

SAME

v.

WHITE LINE, Cleveland, Columbus, Cincinnati & Indianapolis R. Co. and Philadelphia & Reading R. R. Co.

SAME

v.

NICKEL PLATE LINE, Traders' Dispatch, Indiana, Bloomington & Western R. Co. and Philadelphia & Reading R. R. Co.

(Nos. 122-125.)

A BSTRACT of complaints filed February 25, 1888, alleging unjust discrimination by means of "underbilling."

Messrs. John R. Read and Silas W. Pettit, for complainant:

The complainants in the above entitled cases are of the same general tenor, and they allege that the defendants, the Union Line, the Erie Dispatch, the White Line, the Nickel Plate Line and the Trader's Dispatch are unincorporated bodies in the nature of partnership, generally known as Fast Freight Lines, having and controlling cars contributed proportionately by the railroad corporations over whose lines they are intended to be run and operated for the joint profit and convenience of the several railroad companies therein interested respectively. That said fast freight lines and railroad companies owning and managing the same by changing the duly published joint tariff rates upon a less number of pounds of grain, feed or other freight than was actually transported from points in the States of Ohio, Indiana and Illinois to the City of Philadelphia did charge, demand, collect and receive from the persons paying the same a less compensation for the transportation thereof than was in said published tariffs or schedule of rates and charges specified, and that the same was so done for the purpose and with the intent to give undue and unreasonable preference and advantage to the particular persons trading in that grain or feed, and to subject all other persons trading in those commodities at Philadelphia and points adjacent thereto to undue and unreasonable prejudice and disadvantages, in violation of the Act to Regulate Commerce; and that such inequality of charges and discrimination has been largely practiced by defendants, and is well known to persons engaged in the grain and feed business at Philadelphia and points adjacent thereto under the name of "underbilling."

RIDDLE, DEAN & CO.

v.

BALTIMORE & OHIO R. R. Co.

(No. 87.)

*1. A statement of the evidence, from which it appears that it was the duty of the Yough Slope Mine, its owners and agents, to have inquired of the station agent of the railroad company near by the mine on the 30th day of August, 1887, and on the next day, by which they would have learned that the mine could have obtained cars for the shipment of coal to Arthur & Boylan at Cleveland, Ohio, and they having failed to do this, in consequence of which the Youghiogheny and Ashtabula Mines received nearly all these cars for this purpose, without any partiality or preference on the part of the railroad company. *Held*, upon these facts that a complaint of unjust discrimination against the Yough Slope Mine, and in favor of the Youghiogheny and Ashtabula Mines can not be sustained.

2. Where a complaint is made by a shipper that an unjust discrimination was perpetrated by a railroad company against him at a particular time named, in a case like the present, to rebut the inference arising from the circumstances, calling for explanation, among other evidence, the carrier may show that during a long course of business neither it nor any of its agents have ever shown any unfriendly spirit whatever toward the shipper; and that on the contrary its agents, immediately before the matter complained of, made extra exertions in good faith to serve the shipper in obtaining cars for him from the connecting line to whom the shipper had to look for such cars.

3. In the absence of some custom and rule of business placing such duty upon the carrier to notify the shipper, without inquiry on the part of the latter, of the fact that he can there obtain cars for the movement of his freight, it is the duty of the shipper, by reasonable inquiry made to the proper agent of the railroad company, to obtain this information for himself; but in a case like the present, if the carrier took upon itself the duty of actually notifying the Youghiogheny and Ashtabula Mines on the 30th of August, 1887, without waiting for any inquiry on their part, that they could get cars, then, in like manner, it was its duty to have notified the Yough Slope Mine at the same time that it could get cars. *Held*, that, tested by these rules, no case of preference or unjust discrimination is made out by the evidence in favor of the Youghiogheny and Ashtabula Mines, and against the Yough Slope Mine.

(Heard Feb. 1; Decided Feb. 24, 1888.)

*Head notes by COOLEY, Chairman.

COMPLAINT charging unjust discrimination in furnishing coal cars. *Dismissed.*
See decision on motion to amend complaint, ante, 701.

Mr. J. L. Black, for petitioner.

Messrs. John K. Cowen and H. L. Bond, for defendant.

REPORT AND OPINION OF THE COMMISSION.

Bragg, Commissioner:

The complaint in this proceeding charges that the Baltimore & Ohio Railroad Company does not give the mines represented by petitioners their proportion of cars each day, and that this Company unjustly discriminates against them in furnishing cars to others.

The complainants are sales agents of the Yough Slope Mine, situated near West Newton, on the Baltimore & Ohio Railroad. These unjust discriminations are charged to have been committed during the month of August and the early part of September, 1887, namely: commencing with the 10th of August and ending with the third day of September following, on cars that should have been furnished for shipments of coal from said mine to Arthur & Boylan at Cleveland, Ohio. Various exhibits are attached to the petition in the shape of correspondence relating to these alleged discriminations, and also lists of cars which it is claimed were furnished to the Yough Slope Mine and to other adjacent mines during the period to which the complaint refers.

The answer of the Baltimore & Ohio Railroad Company neither admits nor denies that the complainants were sales agents for the Yough Slope Mine or that on August 10, 1887, they received an order to ship five cars per day to Arthur & Boylan, of Cleveland, Ohio. It admits the receipt of memorandum, copy of which is filed with complaint, marked Exhibit No. 2, but states that in the distribution of coal cars to the mines along the line of its road it has necessarily to deal directly with the mines, and cannot recognize or notice the orders of third parties, the practice being that each mine makes out a daily requisition for such cars as it needs on blanks furnished by the Railroad Company for the purpose. It states that all the cars used for shipments of coal from mines on the lines of its road over the Pittsburgh & Western Railroad to Cleveland are owned by the Pittsburgh & Western Railroad Company or its leased lines, and that the Baltimore & Ohio Railroad Company in distributing those cars to the mines acts only as the agent of the Pittsburgh & Western Railroad Company and under its direction; that the route for coal from mines on the respondent's road to Cleveland for Pittsburgh & Western cars is by way of the respondent's road to Pittsburgh, the Pittsburgh Junction Road to Allegheny City, the Pittsburgh & Western Road to Akron, and the Valley Railway to Cleveland.

There is, however, direct delivery by the Baltimore & Ohio Railroad to the Pittsburgh & Western Railroad on the line of the Junction Road. The Pittsburgh & Western Railroad and the Valley Railway are distinct and independent roads, and in no way controlled by the Baltimore & Ohio Railroad Company. It states

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that on the 10th of August, 1887, it received an order, then in the Pittsburgh & Western Railroad, to allow no cars belonging to the Western Railroad Company to be loaded with coal for Cleveland; that on the 19th at the instance of the Yough Slope Mine, C. Bachelor, train master of the respondent, endeavored to have the standing order revoked as to the Yough Slope Mine for that purpose sent to J. T. Superintendent of the Pittsburgh & Western Railroad, a telegram in the following words:

"Can coal for Presley & Arthur & Boylan, Cleveland, go to Yough Slope? Answer quick."

To which telegram the following was received from Superintendent Johnson: "No, sir; I cannot take coal to Yough Slope. Arthur & Boylan unders. Do not allow any of our cars loaded with coal or slack unless immediate shipment for it."

That all of the respondent's disregard to the business between the road and Cleveland were carried on with the Pittsburgh & Western Railroad. It has no direct dealings with the Yough Slope Mine in regard to shipments of coal to Cleveland above made by the Pittsburgh & Western Railroad on its own motion or whether directed by the Valley Railway; and believes that such orders at least in part dictated by the Western Railroad Company. The order of August 10, 1887, in the telegram last quoted was revoked until August 30, when C. Bachelor received the following telegram from Superintendent Johnson:

"Please send along Arthur & Boylan will receive it."

It denies that it in any way intended to discriminate against the Yough Slope Mine in the distribution of shipments of coal to Arthur & Boylan or other consignees in Cleveland; but on the contrary, it did not discriminate to any mines on its road for making Cleveland shipments, and do so against the orders of the Western Railroad Company, the owner of the cars; that in regard to the comparison made in the petition between the cars furnished the Yough Slope Mine and those furnished the Yough Slope and Ashtabula Mines the respondent's comparison is unjust and made in the petition; that, as a petition itself, the Yough Slope Mine orders for but five cars a day to be the Pittsburgh & Western Railroad five cars were for Cleveland shipments to Yough Slope and Ashtabula. On the other hand, was a large shipment to Cleveland, where its consignees, Arthur & Boylan and Presley & Arthur to Fairport, a point on the Pittsburgh & Western Railroad system. Its orders for shipments to Pittsburgh & Western Railroad twenty-five cars a day or five times

Yough Slope Mine. The shipments made by the Youghiogheny and Ashtabula Mines as well as those by the Yough Slope Mines, consigned to Arthur & Boylan at Cleveland between August 20 and August 30, inclusive, were made despite the orders to the contrary issued by the respondent under the instructions issued by the Pittsburgh & Western Company. The cars so loaded were furnished with instructions that they should not be loaded for Cleveland, but both mines in question did load coal from their mines for Cleveland as shown by Exhibit No. 12, filed with the petition. The respondent took the cars so loaded and delivered them to the Pittsburgh & Western Railroad; but whether they were transported by that road respondent is unable to say. It admits that Exhibit No. 12, filed with the petition, is a correct statement of the number of cars shipped by the different mines consigned to Arthur & Boylan at Cleveland, with the exception that the number of cars loaded on September 3 for the Yough Slope Mine should be five instead of one. The number of Pittsburgh & Western route cars shipped by the Yough Slope Mine from August 20 to September 3 was twenty-three instead of sixteen, as appears by Exhibit No. 12.

It avers that the owners of the Yough Slope Mine do not have or claim to have any complaint or grievance against this respondent, in regard to the distribution of cars to that mine, and that said owners have no interest in nor do they approve of the present proceeding, as will appear by letter dated October 31, 1887, from R. H. Latimore, General Manager of the Yough Slope Mine, addressed to Mr. J. V. Patton, Superintendent of the Baltimore & Ohio Railroad, Pittsburgh, Pennsylvania, a copy of which is attached to respondent's answer as an exhibit.

It alleges that on the 10th of October, before the filing of this petition, the order of Arthur & Boylan for five cars per day referred to in the petition was revoked. The respondent therefore alleges that, having satisfied the owners of the Yough Slope Mine that there was and is no discrimination or intention to discriminate, as appears by the letter referred to, the present petition should be dismissed by this Commission and the petitioners be relegated to their remedy by suit at law, if any they have.

At the hearing it was agreed between the counsel of the parties that the grievances complained of should be confined to the period between the 30th of August and the 4th of September, 1887. This, of course, greatly narrowed the investigation. Evidence was permitted to be introduced as to the dealings of the parties from the middle of June, 1887, relating to the furnishing of cars by the respondent to the Yough Slope Mine and other mines along its line for whatever light, if any, this might throw upon what occurred during the period complained of. By the agreement of counsel above mentioned it was conceded that the respondent had satisfactorily explained to the petitioners all the alleged grievances mentioned in the complaint, except those averred to have occurred between the 30th of August and the 4th of September, 1887.

From the evidence before us we find the ma-

terial facts to be that the Yough Slope Mine is in the State of Pennsylvania, and is situated on the Pittsburgh Division of the Baltimore & Ohio Railroad, near West Newton, about thirty-three miles south of Pittsburgh. The Pittsburgh Division of the Baltimore & Ohio Railroad extends from Cumberland, in the State of Maryland, to Pittsburgh, in the State of Pennsylvania, a distance of 150 miles. Near the Yough Slope Mine are the Youghiogheny and Ashtabula Mines and numerous other mines situated upon the Pittsburgh Division of the Baltimore & Ohio Railroad, in the State of Pennsylvania.

The route by which coal is carried over respondent's railroad to Cleveland, in the State of Ohio, is by the Baltimore & Ohio Railroad to Pittsburgh, a distance of about thirty-three miles; by the Pittsburgh Junction Railroad to Allegheny City, a distance of 4.47 miles; by the Pittsburgh & Western Railroad from Allegheny City to Akron, Ohio, a distance of 135.3 miles, and by the Valley Railroad from Akron to Cleveland, a distance of thirty-five miles. The Pittsburgh Junction Railroad is a mere link of connection between the Baltimore & Ohio Railroad and the Pittsburgh & Western Railroad, and they pay to it \$2 for each loaded freight car received by or delivered to them over its line, which rate, it is provided by the contract, may be less if the earnings of the Pittsburgh Junction Railroad exceed a certain amount named in the contract. The Pittsburgh & Western Railroad Company and the Valley Railroad Company are each separate, distinct, and independent corporations. The Pittsburgh & Western Railroad extends from Allegheny City, in the State of Pennsylvania, to Orville, in the State of Ohio, a distance of 160 miles, and it has what it calls its Lake Division, extending from Niles, in Pennsylvania, to Painesville, in the State of Ohio—virtually at Fairport, on Lake Erie—a distance of fifty-one miles. The distance from Allegheny City to Niles on the Pittsburgh & Western Railroad is 85½ miles. The Pittsburgh & Western Railroad also has what is called its Northern Division, extending from Callery Junction, in Pennsylvania, to Mount Jewett, in the State of Pennsylvania. The Valley Railroad extends from Cleveland, Ohio, to Valley Junction, in the same State, a distance of seventy-five miles, and crosses the Pittsburgh & Western Railroad at Akron.

We find on file in our office the Baltimore & Ohio Railroad Company's through coal tariff No. 1, taking effect April 1, 1887, which embraces through rates on coal from the mines mentioned to Cleveland, Fairport, Cuyahoga Falls, Girard, Monroe Falls and a large number of other points east and west of these mines. We also find on file in our office a supplement No. 3 of the Baltimore & Ohio Railroad Company to the above through coal tariff No. 1, published April 25, 1887. These tariffs are still in force. We find no joint coal tariffs existing between the Baltimore & Ohio Railroad Company, the Pittsburgh & Western Railroad Company, or between either of these and the Valley Railroad Company; nor do we find joint tariffs or joint agreements of any kind between any of these three last named railroads, and the evidence shows

nothing of the kind, and although it may be probable that some arrangements of this character exists between them, yet, in the absence of evidence on the subject, we are not authorized to find such to be the fact.

This, however, was not the only route by which the mines mentioned in the complaint might have shipped coal to Cleveland during August and the early part of September, 1887, for they might have shipped by the Baltimore & Ohio and the Pittsburgh & Lake Erie Railroad and the New York, Pennsylvania & Ohio Railroad; but this would have involved extra switching charges.

The petitioners, Riddle, Dean & Co., reside at Pittsburgh, and during the summer and fall of 1887 were sales agents of the Yough Slope Mine in finding markets and purchasers for its coal. Through their efforts and negotiations, about the middle of June five car loads of coal from this mine were shipped to Arthur & Boylan, large coal dealers in Cleveland, as a sample lot. Under a contract or arrangement to this effect subsequent lots of coal from this mine were shipped to Arthur & Boylan, at Cleveland, at intervals during the period intervening between the first shipment and the 19th of August. On the 19th of August and for a short period prior thereto there had been a direct order in force to the Baltimore & Ohio Railroad from J. T. Johnson, Superintendent of the Pittsburgh & Western Railroad, not to allow any coal cars to go forward to Cleveland until further notice.

On the 19th of August D. C. Bachelor, train master of the Baltimore & Ohio Railroad Company, telegraphed J. T. Johnson, Superintendent of the Pittsburgh & Western Railroad Company:

"Can coal for Presley & Arthur and Arthur & Boylan, Cleveland, go forward from Yough Slope? Answer quick."

To this telegram on the same day Superintendent Johnson replied by telegram:

"No sir; I cannot take coal for Presley & Arthur or Arthur & Boylan until further notice. Do not allow any of our cars to be loaded with coal or slack unless you have immediate shipment for it."

Again, on the same day, a telegram was sent from the office of the Superintendent of the Pittsburgh & Western Railroad Company to Bachelor:

"Presley & Arthur and Arthur & Boylan have on hand at this writing twenty-seven cars of B. & O. coal; do not think it advisable to receive shipments for a few days; will advise you."

Under those orders and instructions coal did not go forward from the mines along the Baltimore & Ohio Railroad (the Yough Mine included) until the 31st of August.

On the 23d of August, 1887, petitioners wrote a letter to Arthur & Boylan, Cleveland, Ohio, in which they say:

"Owing to the B. & O. R. R. and Valley Railway refusing to receive any more coal for you we will ship you about twenty cars via N. Y., P. & O. route. We will pay switching on same. What is wrong? Are you blocked?"

To this Arthur & Boylan, by letter of date August 25, 1887, replies:

"Yours of the 23d received, and in reply

would say the Valley R. R. say they have not stopped any of our coal. Do not ship us any coal via N. Y., P. & O."

On the 30th of August a telegram was sent by Superintendent Johnson, of the Pittsburgh & Western Railroad Company, to D. C. Bachelor, Train Master of the Pittsburgh Division of the Baltimore & Ohio Railroad:

"Please send along Arthur & Boylan coal; Valley will receive it."

During the afternoon of the 30th of August the following telegram was sent by Bachelor to all the depot agents for all the mines along the Pittsburgh Division of the Baltimore & Ohio Railroad:

"Coal for Arthur & Boylan can now come forward."

Under date of August 30, 1887, at Allegheny, Superintendent Johnson wrote petitioners the following note:

"I received a message this A. M. from Superintendent Smith, of the Valley, after departure of your representative, saying they would receive coal for Arthur & Boylan, and immediately notified the Baltimore & Ohio to let it come forward."

This note was received that day by petitioners, and was immediately forwarded by them to R. H. Lattimore, general manager of the Yough Slope Mine, at West Newton, Pennsylvania.

Hearing of no coal shipped, as they would in the ordinary course of business, if any had been forwarded, at noon on the second of September, W. H. Riddle, of the firm of Riddle, Dean & Company, took a train from Pittsburgh to the Yough Slope Mine, which is only a short distance, and went there. After conferring with Lattimore and finding that the Yough Slope Mine had received no cars the two went together to the Youghiogheny and Ashtabula Mines, which are near by, and there found the sidings of the Youghiogheny and Ashtabula Mines filled with cars. At that time the Yough Slope Mine had only one car of the Pittsburgh & Western Railroad. The next day Riddle went to the way master's books, from which he obtained a statement of the cars shipped from the Yough Slope, Youghiogheny, and Ashtabula Mines, respectively, during the period between the 30th of August and the third of September. From this statement, which is in evidence before us, it appears that during that time the Yough Slope Mine, while ordering eighty five cars, received only six cars, and the Youghiogheny and Ashtabula Mines, ordering eighty western cars, received forty-eight.

The manner in which mine owners are furnished cars for the shipment of coal by the Pittsburgh Division of the Baltimore & Ohio Railroad is shown by the evidence. Each agent and each mine owner is furnished blanks, and at four o'clock each afternoon they fill in the blanks—the number of cars on hand loaded and ready for forwarding, the amount on hand for the morrow's haul, and how many cars they require. This information is telegraphed to the superintendent of the railroad, and the original order follows by mail to confirm the telegraphic request. This is condensed by the car distributor, and during the night the empty cars are distributed to the various mines, according to instructions.

It is an event of frequent occurrence for the mines to alternate in receiving cars during the season—that is, one mine for two or three days will have no cars and then the next succeeding several days it will have abundance of cars; and this method is said to be more economical for the miners and to be preferred by them. Another phase of this business is that mine owners frequently, when cars are scarce, call for twice as many cars as they really need in order, as they say, that they may be sure to get enough; and this was done often by the Yough Slope Mine during the month of August, 1887, as its general manager, Lattimore, who is also owner of a one fourth interest in the Yough Slope Mine, admits as a witness on the stand. He admits that while the Yough Slope Mine was calling on the Baltimore & Ohio Railroad Company for twenty and twenty-five cars a day from the 15th of August to the last of that month this mine did not really need and could not use more than one half that number. He also admits that he occasionally preferred not to have cars for two days at a time, because it was more economical for him to do so, and that this was so understood and agreed on between him and the authorities of the Baltimore & Ohio Railroad Company. While admitting all his fault-finding complaints to his agents, the petitioners, against the Baltimore & Ohio Railroad Company, as shown in evidence, he now says, as a witness on the stand, "that, take the season through we received as many cars as our neighbors," and again, "During the whole season we were treated very well. There is no complaint to make." Referring to what occurred between the 30th of August and the 4th of September this witness testifies:

"I do not consider we were discriminated against. I consider it an oversight that the agent did not notify me until the fourth morning the embargo was raised."

During the summer of 1887 the capacity of the Youghiogheny and Ashtabula Mines was about twice as great of that of the Yough Slope Mine. In the same period the shipments of coal from the Yough Slope Mine were largely to Cleveland, over a route in which there was very frequent trouble to obtain cars, while the shipments of coal from the Youghiogheny and Ashtabula Mines were chiefly to Fairport, over a route in which there was no trouble about a sufficiency of cars. The General Manager of the Yough Slope Mine, Lattimore, testifies that for this reason, Mr. Day, whom we suppose from the connection in which his name occurs was an officer connected with the Baltimore & Ohio Railroad Company, advised the witness to ship his coal to Fairport, where he could get plenty of cars and have no trouble; but Lattimore testifies that he was anxious to introduce his coal in the Cleveland trade.

To negative the idea of unjust discrimination during the period complained of, between the 30th of August and the 4th of September, as far as this might, if at all, the Baltimore & Ohio Railroad Company introduced in evidence statements of the cars it furnished during the period from the 15th of August to the third day of September, 1887, to these respective mines on east and west bound shipments.

From these it appears that of the total cars furnished during this last period the Youghiogheny and Ashtabula received 208 cars, and the Yough Slope Mine received 146, divided as follows:

West Bound Shipments.

Youghiogheny and Ashtabula.....	163 cars.
Yough Slope.....	57 "

East Bound Shipments.

Youghiogheny and Ashtabula.....	40 cars.
Yough Slope.....	39 "

On shipments of coal to Cleveland during this same period last referred to the cars furnished the mines were as follows:

Youghiogheny and Ashtabula.....	36 cars.
Yough Slope.....	33 "
Republic.....	40 "
West Newton.....	15 "
Amirville.....	8 "
Oseola.....	26 "
Eureka.....	1 "

To further negative any inference of unjust discrimination upon the facts, as far as this might do, if at all, the Baltimore & Ohio Railroad Company shows by the evidence that, during the month of August, 1887, and the period to which this complaint relates, owing to the amount of business it had to do upon its own line and the amount of its car equipment in use for that purpose on its Pittsburgh Division, it could not and did not permit its cars to go away from its own line to carry coal for any shippers, and that during that time coal from these mines to Cleveland had to be transported in the cars of the Pittsburgh & Western Railroad Company, which were used for that purpose, and that in distributing these cars among the mines along its Pittsburgh Division the respondent did so as the agent of the Pittsburgh & Western Railroad Company, and in making this distribution divided these cars among the mines ratably, fairly and without preference to any one mine over another. The cars of the Valley Railroad Company do not appear to have been used in this business during last season, though prior to that time they had been.

The question to which our conclusions must be directed upon this evidence is whether, in violation of the Act to Regulate Commerce, the Baltimore & Ohio Railroad Company was guilty of unjust discrimination in failing to furnish cars to the Yough Slope Mine between the 30th of August and the 4th of September, 1887, for shipments of coal to Arthur & Boylan, at Cleveland, Ohio, and during that period unjustly discriminated in favor of the Youghiogheny and Ashtabula Mines by furnishing cars to them. This is the only issue in the proceeding.

The cars to be furnished were the cars of the Pittsburgh & Western Railroad Company; and they were to be distributed to these mines by the Baltimore & Ohio Railroad Company. An embargo, as it is called by the witnesses, had been existing from August 19 to August 30, during which time no cars were furnished by the Pittsburgh & Western Railroad Company to the respondent for the shipment of coal from these mines to Cleveland, Ohio. The embargo itself is not now made a subject of complaint in this proceeding, and the agree-

would have been business like, and as clearly a matter of duty they owed the owners of the mines; but nothing of this kind appears to have been done. While carefully guarding their rights in all matters to which it relates, the Act to Regulate Commerce does not proceed upon the theory that shippers are absolved from all duty in looking after the delivery of their freight to railroads for carriage. It would require more credulity than discrimination to believe, upon the evidence before us, that the Yough Slope Mine was suffering for the want of cars during the period elapsing between the 30th of August and the 4th of September, 1887.

It is manifest from the evidence that neither the Pittsburgh & Western Railroad Company nor the respondent attempted to conceal from the Yough Slope Mine the fact that the embargo was raised; but, on the contrary, Johnson, the Superintendent of the Pittsburgh & Western, informed the petitioners, who were the agents of that mine, of the fact on the 30th of August; and on the same day it was telegraphed by Bachelor to all the station agents of the Pittsburgh Division of the Baltimore & Ohio Railroad Company along its line. Other facts in evidence tend to negative the idea of any unjust discrimination. On the 19th of August, Bachelor, the Master of Trains of the Pittsburgh Division of the Baltimore & Ohio Railroad Company, sent an urgent telegram to Johnson, the Superintendent of the Pittsburgh & Western, to know if coal from the Yough Slope Mine could not go forward to Arthur & Boylan, at Cleveland, Ohio. Taking the period from the 15th of August to the 4th of September, 1887, when the greatest trouble for cars existed, and it shows that the Yough Slope Mine received considerably more

cars in proportion to its need for them than did the Youghiogheny and Ashtabula Mines, and this, too, while the shipments of the latter were chiefly to Fairport, upon a line where there was no trouble about a sufficiency of cars, and the former was shipping in large part to Cleveland, Girard, Monroe Falls and Cuyahoga Falls, over a line where there was great trouble about a sufficiency of cars. Not a single instance is shown by the evidence where the respondent or any of its officers or agents have ever manifested any unfriendly spirit toward the Yough Slope Mine, in its business or otherwise. The General Manager of the Yough Slope Mine, who owns a one fourth interest in that mine, while admitting as a witness on the stand that he had frequently been dissatisfied and had complained during last August because he did not get all the cars he needed at all times, yet stated that during the entire season his mine had been treated as well in the matter of cars as any of its neighbors, and utterly repudiated the idea that there had been any unjust or unfair discrimination by the respondent against the Yough Slope Mine.

After a careful consideration of all the evidence adduced by the parties in this proceeding we are of the opinion and so find that it fails to show that the Baltimore & Ohio Railroad Company was guilty of unjust discrimination under the Act to Regulate Commerce in failing to furnish cars to the Yough Slope Mine for shipment of coal to Arthur & Boylan, at Cleveland, Ohio, between the 30th of August and the 4th of September, in the year 1887.

The order of the Commission is that this petition be, and the same is hereby, dismissed.

SUPREME COURT OF PENNSYLVANIA.

G. B. LIST, *Plff. in Err.*,

v.

COMMONWEALTH of Pennsylvania.

(From the Central Reporter.)

1. The Legislature of the State has power to prescribe the conditions under which a foreign corporation shall transact business in the State, and the manner in which its agents shall be qualified before entering on their duties.
2. The issuing of a policy of insurance is not a transaction of commerce within the meaning of article I, section 8, clause 4, of the Constitution of the United States, even though the parties are domiciled in different States, but is a simple contract of indemnity against loss.

(Argued Nov. 2, 1887, Decided Jan. 3, 1888.)

OCTOBER Term, 1887, No. 166, W. D., before Gordon, Ch. J., Paxson, Sterrett, Green and Williams, JJ.

Error to the Quarter Sessions of Allegheny County, to review a judgment on an indictment for violating the insurance laws of the Commonwealth. *Affirmed.*

G. B. List was indicted for "unlawfully transacting business within this Common-

wealth, as the agent of an insurance company of another State, to wit: as the agent of the Mutual Fire Insurance Company of Baltimore in the State of Maryland, without having first procured a certificate of authority so to act from the Insurance Commissioner of the Commonwealth, contrary to the form of the Act" of April 4, 1873, * and of May 1, 1876.

Defendant demurred to the indictment. The demurrer was overruled. [1]

A motion to quash the indictment was subsequently made, and was refused by the court. [2]

The jury rendered a verdict of guilty, and found specially the following facts:

"G. B. List, the defendant, is and was at the time of the alleged offense a citizen and resident of Baltimore, Maryland, and was engaged in representing the Mutual Fire Insurance Company of Baltimore, Md., in the capacity of

* The Act of April 4, 1873, provided:
Section 10. "No person shall act as agent or solicitor in this State, or of any insurance company of another State, or foreign government, in any manner whatever relating to risks, until the provisions of this Act have been complied with, on the part of the company or association, and there has been granted to said company or association, by the commissioner, a certificate of authority, showing that the company or association is authorized to transact business in this State; and it shall be the duty

know what the rates were; and anyone who was contemplating even the possibility of making use of them had special right to ask for them. Complainant had a *legal right* to know whether, when the charge was to be made by the 100 pounds, it would be on an actual weighing or on an estimate.

He had an equal right to be informed that instead of being charged for the return of the empty car he would be paid for its use.

The published rate sheets, so far as they related to rates on the lines of these defendants, ought to have given the information on both these points; and if they were blind or ambiguous it should have been supplied on request.

The Newport News & Mississippi Valley Company, and the Louisville, New Orleans and Texas Railroad Company, we find to have been guilty of discrimination against complainant in taking tank cars irrespective of capacity, on an assumption that the average capacity was eighty-five barrels, and charging therefor a rate which, as compared with the rate on barrel shipments, would have been relatively too low had the capacity been as was assumed, and which was relatively very much too low in view of the actual capacity.

On the hearing it was insisted, on behalf of the first named of these two defendants, that the assumption on which its rate was estimated was made in good faith, and upon information given by an agent of the Standard Oil Company of Kentucky, which was believed to be correct, but which proved not to be so. The agent who gave the information was before the Commission and admitted giving it, but insisted that it was given after the shipments in question were made, and that, as he understood the question put to him, it related to another line of cars, and not to the line in use on defendant's road. It is, perhaps, not very important now whether defendant's officer was or was not in fact misled. The mischief, so far as concerned the business of complainant, was done by giving tank car rates instead of rates by the weight or quantity; and this wrong, which was one of policy on the part of this defendant, was made more prominent and perhaps damaging by a misstatement in the correspondence.

Complainant had expressed a purpose to obtain tank cars for his own business, and was desirous to know whether he was to be charged by the car irrespective of the capacity. This, we have seen, was the practice on the road of this defendant; but in reply he was told that the tank car was estimated at 20,000 pounds, and if the weight was more, the excess would be charged for. To make sure on this point he wrote the general freight agent, and the reply June 1, 1887, was: "A tank car is supposed to weigh 20,000 pounds; if it weighs more, then we will charge for it." In point of fact the assumption was that the weight was very much greater: 85 barrels at 325 pounds each would be 27,625 pounds, and defendant did not make any additional charge when the weight reached 35,000 pounds, as it sometimes did. If this statement was made in good faith, it is difficult to account for it, and it is not accounted for. If it was the result of mere carelessness, it was not the less misleading to complainant. The necessary tendency was to discourage him from

entering into competition in this mode of shipment if he had a purpose to do so, as he professed to have. Had he provided himself with cars for tank shipments and been charged as he was told he would be, the discrimination against him would have put success in the traffic out of question.

It appears that this company had no rule or settled practice as to paying trackage for the use of tank cars, and considered itself at liberty to deal with that subject by special contract. The facts were brought out by questions put by members of the Commission as follows:

Q. Do you pay car service on the tank cars?

A. On some cars only. We have an arrangement by which we do not pay.

Q. On which do you not pay?

A. We have an arrangement with M. K. Fairbanks & Co. I do not think we pay anything on those cars, but we haul them empty free.

Q. Well, on the other cars do you pay car service the same way?

A. We are compelled to pay the same as our competitors, or we could not get the cars to handle that business. It is three fourths of a cent a mile.

Q. What do you mean by 'that so far as this company is concerned we do not pay mileage in either direction or haul any empty cars free?'

A. That letter was written in April. At that time the matter was being discussed between the lines that refused to pay mileage on any cars, and because they spoke of its being abrogated by all lines.

Q. Then your statement there that you do not pay mileage was based on the belief that the conference resulted in their refusing to pay?

A. Yes sir; refusing to pay mileage on all empty cars. But I told Mr. Rice, in person, that we would allow him the same as anybody else.

Q. Is your tank car mileage the same as it is on any other cars?

A. Yes sir; three fourths of a cent.

Q. That is the regular mileage paid on cars?

A. Yes sir.

Q. Can you specify the shippers to whom you pay mileage and those you do not?

A. That is an account not kept in my office, but I know that with some we have an arrangement not to pay mileage.

Q. You have no uniform rule on that subject?

A. That depends on the kind of agreement made on the business.

Q. As far as you know, M. K. Fairbanks & Co. is the only concern to which you do not pay mileage; is that it?

A. I cannot say that.

Q. You have stated that it is the only concern you know of?

A. No sir; I am not prepared to say it is. I do not know it to be so, because I think possibly others are not paid mileage by us.

Q. How is it with reference to the Union Tank Line cars?

A. I think it very possible, but we do not keep that account in my office.

Here it is obvious as or may be present all the mischiefs that attend the giving of special rates and rebates. The railroad manager who supposes this to be admissible has not fully grasped the significance of those features of

method of transportation being by boat down the Ohio River. In 1887 the water in the river was low for an unusual period, so that the transportation of coal by that method was interrupted from June to about January 1, 1888. The supply of coal at Cincinnati became short, and the price at that point rose until it became an object to make shipments by rail. Such a condition of affairs has previously occurred, but not often.

About November first the complainants obtained an order from Cincinnati for a considerable amount of coal and placed it with the owners of the Federal Springs Mines. These mines are situated upon the Pittsburgh, Chartiers & Youghiogheny Railroad, a short line which connects with the Pittsburgh & Lake Erie Railroad at Chartiers, about six miles northwest from Pittsburgh. From Chartiers the Pittsburgh & Lake Erie Railroad further extends in a northwesterly direction about sixty-two miles to Youngstown, Ohio, at which point it connects with the New York, Pennsylvania & Ohio Railroad, which is operated by the New York, Lake Erie & Western Railroad Company as lessee. The New York, Pennsylvania & Ohio Railroad extends from Salamanca, New York, to Dayton, Ohio, with various branches, one of which crosses said main line at Leavittsburg and forms a direct line from Youngstown to Cleveland, Ohio. At Dayton said New York, Pennsylvania & Ohio Railroad connects with the road of the Cleveland, Columbus, Cincinnati & Indianapolis Railway Company, (hereinafter called the Columbus Company), over which it reaches Cincinnati fifty-six miles beyond Dayton.

By an agreement in writing, dated September 15, 1885, a copy of which is on file with the Commission, the terms upon which business from the New York, Lake Erie & Western Railroad (hereinafter called the Erie Company) is taken to Cincinnati are very precisely regulated. Said agreement is referred to as part of this statement of facts and need not be recited here further than to say that it places the Erie Company substantially on an equal footing with the Columbus Company for the transaction of business at Cincinnati. Under said agreement the Erie Company is considered an initial road at Cincinnati, with the right to make rates on its own responsibility. The "joint depot master" at Cincinnati represents both companies without preference to either, and the Erie Company, as to all business to and from points beyond Dayton, including Cincinnati, is guaranteed uniform facilities in every respect with the Columbus Company, the owner of the road. Under this agreement the locomotives and train hands of the Erie Company do not run beyond Dayton.

There is also an agreement in writing, a copy of which is on file with the Commission, and which is likewise referred to, bearing date October 20, 1877, which regulates the interchange of business at Youngstown between the Pittsburgh & Lake Erie Railroad Company (hereinafter called the Pittsburgh Company) and the aforesaid Erie Company. This agreement gives the latter company control over the rates upon business to and from its line over the line of the Pittsburgh Company, and has been treated by both companies as entitling the

Erie Company to designate the points for which its cars shall be loaded when on the line of the Pittsburgh Company and the character of business in which they shall be used.

On March 25, 1887, the Erie Company, as lessee of the New York, Pennsylvania & Ohio Railroad, notified the Pittsburgh Company by letter that all existing rates to points off its line were withdrawn, excepting as follows:

"Points on the New York, Lake Erie & Western Railway proper, east of Salamanca, will be considered as on our own line, as will also the points on the Cleveland, Cincinnati, Columbus & Indianapolis Railway, between Dayton and Cincinnati, including the latter point."

On April 1, 1887, the Erie Company, as such lessee, issued its freight tariff No. 1, from Youngstown to all points on its line and on the Cleveland, Cincinnati, Columbus & Indianapolis Railway between Dayton and Cincinnati, including Cincinnati, which provided that in the absence of a special tariff coal would take the sixth class tariff rate. The matter of a special coal tariff from points in the vicinity of Pittsburgh to points on the line of the Erie Company, lessee as aforesaid, was made the subject of considerable correspondence during the summer of 1887, particularly with reference to the divisions of the aggregate rates which would be allowed for bringing the coal upon the line of the Pittsburgh Company at various points. This resulted in the issuing of a joint coal tariff by the Pittsburgh and Erie Companies, taking effect September 26, 1887, from mines on various roads, including the Pittsburgh, Chartiers & Youghiogheny Railroad, "to points on the New York, Lake Erie & Western Railroad, lessee of the New York, Pennsylvania & Ohio Railroad," including Cincinnati, to which point the rate was fixed at \$1.70 per ton of 2,000 pounds.

The equipment of the New York, Pennsylvania & Ohio Railroad Company, leased by the Erie Company as aforesaid, included at this time 8,445 gondola coal cars, which were very largely used between Pittsburgh and Cleveland, carrying coal towards Cleveland and ore towards Pittsburgh. In this traffic said cars were loaded in both directions, the ore being distributed to the furnaces in the vicinity of Pittsburgh and the cars then moved to the various coal mines in that region, where return loads were obtained for points on the line of the Erie Company, and especially for Cleveland. In October and November, 1887, this traffic was exceedingly active and demanded more cars than said Company was able to put into the service. Said gondola cars were also used to some extent for other business, such as limestone, iron pipe, etc., under instructions from the Erie Company regulating the extent of such use.

There was practically no coal traffic by rail from Pittsburgh to Cincinnati, for the reason above stated, and very little to points on the Erie Road west of Akron, Ohio, except occasional shipments for gas purposes to Urbana, Springfield, Dayton, etc. Anthracite coal was taken in box cars over the Erie Road to Cincinnati from points in Eastern Pennsylvania.

The mines on the line of the Pittsburgh,

Chartiers & Youghiogheny Railroad were supplied with cars by the Pittsburgh Company upon requisitions made by the dispatcher of the former road at Chartiers, who was accustomed to ascertain the number of cars needed on his line daily and order them in bulk from the Pittsburgh Company, the destination of the cars not being known by the latter Company until they were received loaded at Chartiers.

Said joint tariff, naming a rate of \$1.70 per ton on coal from points on the line of the Pittsburgh, Chartiers & Youghiogheny Railroad to Cincinnati, was in force on November 8, 1887, at which time one of the complainant firm, together with the owner of said Federal Springs Mines, called on the General Freight Agent of said Pittsburgh Company, at Pittsburgh, for the purpose of making arrangements for the transportation of said coal which they had arranged to sell at Cincinnati. They inquired if coal could be shipped from said mines to Cincinnati, and he replied that he had no instructions to the contrary and knew of nothing in the way. They thereupon ordered cars for said purpose from the dispatcher of the Pittsburgh, Chartiers & Youghiogheny Railroad, and several cars were furnished, loaded, and sent forward, consigned to Cincinnati. Ten of these cars went through and the freight at the tariff rate was paid at Cincinnati by the consignees.

About this time other shippers also desired to forward coal to Cincinnati and applied for cars for that purpose. Their application was referred to the Erie Company, which, on November 4, replied, declining to allow cars to be loaded with coal for Cincinnati. At this time all other classes of merchandise were going forward from Pittsburgh to Cincinnati over this route as tendered. The Erie Company presently became aware of the coal shipments passing over its line from the Federal Springs Mines to Cincinnati, and at once issued orders to stop all cars so consigned, wherever they might be upon the route, and to load no more cars with coal for Cincinnati. Several cars so loaded and on the way were stopped at various points under this order, and not allowed to go through, the coal upon them being otherwise disposed of.

On November 8, complainants, by letter, applied to the Erie Company for cars, stating that the Pittsburgh Company had refused to load cars for Cincinnati, and requested ten cars a day. To this the Erie Company, on the 10th, replied that it had referred the matter to the General Freight Agent of the Pittsburgh Road. Meanwhile, on the 9th, the same officer of the Erie Company had telegraphed the General Freight Agent of the Pittsburgh Company as follows:

"The Cleveland, Cincinnati, Columbus & Indianapolis being blocked with bulk freight and that for delivery in Cincinnati yard they have declined receiving any more from us. Please see that no coal or other freight for yard delivery in Cincinnati is taken until notice;"

which was followed, on November 10, by the following telegram to the same officer:

"Please give the necessary ten days' notice

INTER 8.

at once withdrawing all rates or on our line west of Akron."

This request was repeated by afternoon and more urgently; and on the same day a print issued by the Pittsburgh Company effected that on and after November rates on coal to all points on or Erie Company west of Akron joint coal tariff would be withdrawn; same day complainants exhibited of the Pittsburgh Company a consignee at Cincinnati containing the following:

"We have our own switches over our stock from our own tracks; over fifty cars. I have seen Cincinnati, Columbus & Indians and have arranged with them to consign to us come forward. We will unload cars promptly; you can ship at present; will we shut off as soon as the water comes."

Complainants also continued officers of both companies for 11th complainants, observing that withdrawing said coal tariff to Akron did not take effect until tendered coal for shipment until the ten days should expire; however, were furnished for the no further shipments were in member 11 the General Freight Erie Company wrote the Pittsburgh as follows:

"Referring to my notice to 3 days' notice and withdraw all effect to points west of Akron after this time we will not accept present sixth class per hundred of which I enclose you, from the points west of Akron on our you are at liberty, if you see fit tariff upon this basis; but this construed as giving you the privilege our cars for these points; but made for shipments based upon we will take up the question of box cars can be furnished; but circumstances could we furnish goods."

On November 12 he notified Road by telegraph as follows:

"Shipments of bulk freight Cincinnati yard delivery can now but this must not be construed you can forward coal in gondola Cincinnati delivery."

Complainants afterwards a Pittsburgh Company for information what rate would be charged on Cincinnati. Inquiry made by said Erie Company was answered on by the following telegram from Erie Company:

"I see no necessity for your regard to the rate on coal for Cincinnati have full advice as to just what this business."

Whereupon the Pittsburgh notified the Federal Springs Mines, 17, as follows:

"Best rate I can procure from

posed \$2.70 rate, and that his refusal to recognize his tariff was causing considerable pecuniary loss to the complainants, who were thus deprived of an unexpected opportunity of profit to be made by the delivery of coal at an unusual market during the period of low water in the river. He went so far as to stop freight in transit which had been regularly billed and accepted for transportation over his line. He criticised his associates in the Pittsburgh Company for letting the coal go out at all under their joint tariff, and at the same time he referred complainants for information to the same parties. He seems to have regarded the joint tariff as established for ornamental purposes only. The very proper effort of the Pittsburgh Company to carry the traffic during the period limited for the termination of the rate was repudiated. The block in the yard at Cincinnati from November 9 to 12 was no more an excuse for refusing coal shipments than for refusing shipments of other merchandise after the difficulty had been removed. The Erie Company has no right to refuse transportation of coal from the Pittsburgh region to one part of its line, while encouraging the same traffic in every way from the same region to another part of its line. In like manner it has no right to accept and solicit traffic of every other nature from Pittsburgh to Cincinnati and at the same time refuse to carry coal between the same points.

The conduct of the Erie Company in this matter operated directly to give an undue and unreasonable preference to the shippers whose coal was carried during the period in question, and to subject the complainants at the same time to undue and unreasonable prejudice and disadvantage, in contravention of the provisions of section 8 of the Act to Regulate Commerce.

It is obvious that an unremunerative and undesirable traffic can be put an end to by announcing a prohibitory rate as effectually as by refusing to accept the business.

It is also obvious that, by reason of distance, proximity of other producers of the same article, necessary expense of transportation, available competing water routes, or other causes, it may often be true that a perfectly just and reasonable rate will be too high to permit the profitable movement of a commodity over a given railroad line; and therefore the fact that the article cannot be shipped at the rate named is by no means conclusive evidence that the rate is unreasonable.

As the opportunity for shipping coal to Cincinnati has passed, no useful order can now be made in respect to the future. No examination has been entered upon concerning the reasonableness of the tariff now in force and no opinion is expressed upon that question.

The Commission has repeatedly held that it can make no award of damages in a case like the present, for the reason that the defendants are entitled to have the amount assessed by a jury.

An order will be entered declaring and adjudging that the defendants have violated the provisions of the Act to Regulate Commerce in refusing to furnish complainants a fair proportion of cars and to transport the coal tend-

ered for carriage from the Federal Springs Mines to Cincinnati, at the tariff rate of \$1.70 per ton up to November 20, 1887.

Reuben L. RICE *et al.*, Partners as Rice, Robinson & Witherop,

v.

WESTERN NEW YORK & PENNSYLVANIA R. CO., *et al.*

(No. 119.)

A BSTRACT of additional complaint filed March 10, 1888, alleging further unjust discrimination on the part of defendants. See original complaint, *ante*, 717.

Complainants allege that since the filing of their original complaint defendant has in retaliation raised the rate on petroleum oil in car loads from Titusville, Pennsylvania, to Buffalo, New York, two cents per barrel, or, by weight, one half cent per 100 pounds; that defendant excuses such action by saying that oil in car loads is now in its fifth class, and this class of freight has been raised one half cent per 100 pounds; that defendant in its through traffic does not put oil in car loads in said fifth class but transports it under a "special oil tariff." On this statement complainants aver that defendant makes an unlawful and oppressive discrimination between shipments of oil destined for Buffalo, New York, and those for points more distant. Complainants also state that they have been threatened by defendant's officers and agents that through rates to Perth Amboy, New Jersey, will be raised, cars will be denied them, and in other particulars, if they do not withdraw their complaint herein.

MILWAUKEE CHAMBER OF COMMERCE

v.

FLINT & PERE MARQUETTE R. R. CO. and Detroit, Grand Haven & Milwaukee R. Co.

(No. 120.)

A BSTRACT of Joint Answer filed March 15, 1888. See complaint, *ante*, 774.

Messrs. W. L. Webber and E. W. Meddaugh, attorneys for defendants.

Defendants deny that they reduced the rates on flour, grain and mill stuff 2½ cents per 100 pounds from Milwaukee to eastern markets, to apply on property shipped from Minneapolis, and say that twenty-three cents to New York and twenty-eight cents to Boston from Milwaukee were accepted by them and their eastern connections as their proportion of the through rates from Minneapolis; that said through rates were made by roads between Minneapolis and Milwaukee; that while it is true that the local Milwaukee eastern rate is 2½ cents higher than said proportionate rates, as defendants did not make said rates of twenty-three and twenty-eight cents to New York and Boston respectively, they are not guilty of any violation of the Interstate Commerce Act.

trolling in determining the reasonableness of east bound local rates in a traffic in which there is no competition by other cities.

4. In view of the longer haul to **Boston** than to **New York**, the greater cost of transportation to Boston, the very much greater volume of business to and from New York, the competition by water transportation by the Lakes, Erie Canal and Hudson River, and also by several rival railroad lines, and the geographical and commercial advantages of New York, the differentials on **Boston local rates** of ten cents per hundred pounds on the first and second classes of merchandise and of five cents per hundred pounds on the four other classes between New York and Boston on traffic originating west of Buffalo have not been shown to be unjust and unreasonable or to constitute **unjust discrimination against Boston**.

(Heard Oct. 27, 28, Nov. 1, 17, 1887; Briefs submitted Dec. 1887; Decided Feb. 15, 1888.)

COMPLAINT charging discrimination against Boston and in favor of New York, in rates from Chicago. See petition, *ante*, 391.

Messrs. William Gaston, and C. L. B. Whitney for petitioners.

Mr. George C. Greene, for Lake Shore & Michigan Southern R. R. Co.

Mr. Frank Loomis, for New York Central & Hudson River R. R. Co.

Mr. Samuel Hoar, for Boston & Albany R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

Schoonmaker, Commissioner:

These three cases, although against separate carriers, involve one ground of complaint relating to joint through rates; and the petitions and answers being substantially alike the issues are properly disposed of in a single trial and decision.

The general complaint presented by the petitions is that the joint through rates of the defendant carriers from Chicago and some other western points to Boston are disproportionately higher than the joint through rates of the two first named carriers to New York City, and higher than the export rates made by the three carriers over the same line to East Boston, and that by reason of such higher Boston rates the defendants have violated the first, second and third sections of the Act to Regulate Commerce.

The specific complaint is that the rates from Chicago from Elkhart, Indiana, from Toledo, Cleveland, Painesville, and Ashtabula, Ohio, and from Girard, Penn., on the first and second classes of merchandise to Boston are ten cents a hundred pounds higher than to New York; and on the third, fourth, fifth, and sixth classes of merchandise are five cents a hundred pounds higher from the same points to Boston than to New York; and that the export rates through East Boston and the coastwise rates to points east of Portland, Maine, are also less than the Boston rates, being the

same as New York rates. The petitions charge that these differences in rates are not founded upon nor warranted by the difference in distance nor the actual cost of transportation, and are, therefore, unreasonable and unjust, and are an unjust discrimination against Boston and give undue preference and advantage to New York.

The answers do not contest the differences in the rates specified, but controvert the allegations that the Boston rates are unreasonable and unjust or that they unjustly discriminate against Boston or give undue preference and advantage to New York, and justify the differences on the ground of competition with water carriers and other carriers at New York, by which rates are fixed to which the defendants must conform, and allege that these rates as well as the export rates through East Boston and the coastwise rates to points east of Portland are for the transportation of merchandise under circumstances and conditions dissimilar to the transportation terminating at Boston.

The testimony adduced, a large part of which consists of agreed statements and illustrations, has taken a wide range, showing the various competing carriers from Chicago to points on the Atlantic coast and to Boston and their rates, the division of through rates among the defendants, the business of Boston and New York, respectively, and the circumstances that are claimed to affect the rates of transportation.

The facts proven and admitted are too voluminous to be set forth in full, but those deemed material for a disposition of the questions involved are as follows:

Facts Found.

The petitioner is one of several societies in the City of Boston, having a membership of about 829 merchants, engaged in the flour, grain, provision, and other business in that city. The Society has authority to bring this proceeding and its members are interested in the business which is the subject matter of the controversy.

The Lake Shore & Michigan Southern Railway Company owns and operates a line of road extending from its western terminus, at Chicago, through the States of Illinois, Indiana, Michigan, Ohio, Pennsylvania and New York, to Buffalo, its eastern terminus. The New York Central & Hudson River Railroad Company owns and operates a line of road which runs from Buffalo, its western terminus, where it connects with the road of the first named company, to Albany, on the Hudson River, and thence by way of East Albany, on the opposite side of the river, and connected with Albany by a bridge over which the line is operated, southerly along the Hudson River to its southern terminus, at the City of New York.

The Boston & Albany Railroad Company owns and operates a line of road which runs through New York and Massachusetts from its western terminus at East Albany, where it connects with the road of the last above named company, to its eastern terminus, at Boston.

The three respondent railroads thus form by connection with each other a through railroad line from Chicago to Boston, and the two

City of Chicago a distance of sixty to eighty miles; that they are connected with the City of Chicago by the Chicago & Alton, the Chicago, Santa Fe & California, the Chicago & Rock Island, and the Chicago, Burlington & Quincy Railroad Companies; that most of the carriage from such coal fields to the City of Chicago has been done by the Chicago & Alton Railroad Company; that the Wilmington coal fields include the Cities or Villages of Braceville, Braidwood, Coal City, Gardner and others.

Your petitioner further represents that there are other coal fields than those herein mentioned at Spring Valley, in the County of LaSalle, which are connected with the main line of the Chicago & Northwestern Railway, which runs in Illinois from Chicago to the Mississippi River, and said mines at Spring Valley are owned or controlled by corporations, the stock in which is owned or controlled by the persons who are large stockholders or interested in the Chicago & Northwestern Railway Company.

Your petitioner further represents that prior to February 1, 1888, the Chicago & Northwestern Railway Company caused to be issued and put in force to take effect on the first day of February, 1888, two tariffs on soft coal in car loads from Chicago, which are hereto attached and marked respectively Exhibits A and B; that Exhibit A purports to be the tariff for coal in car loads from Chicago, Milwaukee, Racine, Kenosha, Spring Valley and other points to points in the States of Iowa, and Minnesota and the Territory of Dakota; and Exhibit B purports to be the tariff of the Chicago & Northwestern Railway Company and the Chicago & Alton Railroad Company from Braceville, Braidwood and Coal City, Illinois, to many of the same stations on the Chicago & Northwestern Railway as those mentioned in Exhibit A in the States and Territory last named; that an examination and comparison of the said tariffs, which are made a part hereof, will show, and your petitioner charges, that the rates to the several points which are identical upon said tariffs, are the same from Chicago as from Braceville, Braidwood and Coal City.

Your petitioner further charges upon information and belief that prior to the issuance of said tariffs, it was agreed between the Chicago & Northwestern Railway Company and the said Chicago & Alton Railroad Company that said latter company should receive for the carriage from the mines at Braceville, Braidwood or Coal City to Chicago out of the rates collected under said tariffs, the sum or price of forty cents per ton, and that such rate of forty cents per ton has been allowed and paid to said Chicago & Alton Railroad Company upon all coal which has been so carried to points on said Chicago & Northwestern Railway Company from Braceville, Braidwood or Coal City since said tariffs went into effect.

Your petitioner further represents that prior to said February 1, 1888, said Chicago & Northwestern Railway Company, in co-operation with the Chicago, St. Paul, Minneapolis & Omaha Railway Company, issued and put in force another tariff called "Joint tariff on soft coal in car loads from Chicago, Milwaukee,

Racine, Racine Junction, Kenosha, or Spring Valley, Illinois, to stations on the Chicago, St. Paul, Minneapolis & Omaha Railway," purporting to establish rates from said points to various places in the States of Minnesota, Iowa and Wisconsin and the Territory of Dakota; that at or about the same time said Chicago & Northwestern Railway Company, acting in conjunction with said Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Chicago & Alton Railroad Company, issued and put in force another so called "Joint tariff on soft coal in car loads from Braceville, Braidwood, Gardner and Coal City to St. Paul, Minneapolis, Braceville and stations on the Chicago, St. Paul, Minneapolis & Omaha Railway" and purporting to establish rates from Braceville, Braidwood, Gardner and Coal City to the same points as in said last mentioned tariff in Minnesota, Iowa and Wisconsin and the Territory of Dakota; that said last mentioned tariffs are hereto annexed, marked Exhibits C and D and made a part hereof and that an inspection of the same will show that the rates so established are the same from Chicago as from Braceville, Braidwood, Gardner and Coal City.

Your petitioner charges upon information and belief that before the issuance of said tariffs called Exhibits C and D said Chicago & Northwestern Railway Company entered into an agreement with the Chicago & Alton Railroad Company by which the latter was to receive for the carriage of coal from Braceville, Braidwood, Gardner or Coal City to Chicago which should be shipped under said tariffs to points on the Chicago & Northwestern Railway forty cents per ton, and that said rate has since the first day of February, 1888, been paid on all coal so shipped.

Your petitioner further represents that all of the tariffs, aforesaid, called Exhibits A, B, C, and D have been since the first day of February, 1888, and are now in force; that by reason of the operation of the same the cost of carriage from Chicago to points on said Chicago & Northwestern Railway of soft coal in car loads which has been brought to Chicago from other points than so called Wilmington Coal Fields, is forty cents greater than the coal brought as aforesaid from said Wilmington Coal Fields; that thereby a discrimination has been made and is being made in favor of coal mined and shipped from said Wilmington Coal Fields and over said Chicago & Alton Railroad, which discrimination is contrary to and in derogation of the Act to Regulate Commerce, commonly styled the Interstate Commerce Law; that said tariffs and the action of said Chicago & Northwestern Railway Company thereunder have operated, and unless modified will continue to operate to the great injury of your petitioner, in that your petitioner has been placed at a disadvantage in shipping coal to points on the Chicago & Northwestern Railway north and west of Chicago as related to the owners of mines in said Wilmington Coal Fields, and rendered unable to compete with the same except at serious loss, and that if said tariff shall continue for a moderate length of time, it will operate to drive your petitioner from the market reached by lines of railroad of said Chicago and Northwestern Railway Company.

Your petitioner charges upon information and belief that the rates fixed by said tariffs have been so established in order to place the coal of said mines in said Wilmington Coal Fields and the coal mined at the mines at or near Spring Valley upon the same basis of prices in the market reached by said Chicago & Northwestern Railway and for the purpose of excluding from such market coal from mines east of Chicago.

Your petitioner therefore prays that your honorable board will take cognizance of this, his petition, and that the said Chicago and Northwestern Railway Company may be notified to appear in accordance with the rules of this board, and to answer the same, and that it may be directed to adjust and modify its said tariffs in accordance with right and to cease from such violation of law, and that your petitioner may have such relief as the nature of the case shall require, and your petitioner will ever pray.

(Signed and verified.)

MILWAUKEE CHAMBER OF COMMERCE

v.

CHICAGO, MILWAUKEE, & ST. PAUL R. CO. and Chicago & North Western R. Co.
(No. 121.)

A BSTRACT of Pleadings in case based upon a refusal to accept shipments of grain for Milwaukee, unless billed to elevators, and of a regulation compelling transfers of grain at Milwaukee to be made through elevators.

Complainant alleges that defendants issued orders to their agents in the Northwest to discontinue receiving bulk grain for shipment to Milwaukee, unless the same has been billed to elevators. That complainant appealed to defendants to remove said restrictions but its request was refused, except as to the lowest grade of wheat and coarse grains, and this latter concession was refused by the Chicago & North Western Railway Company. That said restrictions still exist, although the reasons for their adoption have long since ceased to exist, namely: the expeditious unloading of cars.

That defendants have also refused to afford equal facilities with Chicago for the transfer of grain for eastward shipment by cars, although charging the same rates for transportation from nearly all points on their lines to Milwaukee as to Chicago, and receiving additional transportation charges from Milwaukee to Chicago, on all eastern Milwaukee shipments. Such grain is transferred on track at Chicago from western cars to eastern cars without charge; but at Milwaukee the transfer is required through elevators, and is subjected to a charge of one half cent per bushel for such elevator service.

And petitioner prays for such relief as the law provides.

Answer of the defendant, the Chicago, Milwaukee & St. Paul R. Co. filed March 10, 1888. (Mr. John W. Cary, solicitor.)

The defendant, the Chicago, Milwaukee & St. Paul Railway Company, answering the

complaint herein, says that during the seven months, commencing August 1, 1887, and ending March 1, 1888, the amount of bulk grain delivered at Milwaukee was 19,669 cars, and at Chicago 18,268 cars; that defendant's track facilities at Chicago amount to 11,871 feet or over two miles, and at Milwaukee to about 19,592 feet or nearly four miles, and those at Milwaukee exceed the track facilities of any other railway at any station in the Northwest; that of the consignments of bulk grains received at Chicago during said period a comparatively small number were for track delivery, and defendant was able to receive the same without unreasonable detention of its cars without blocking its road, and for that reason it continued to receive the same without restriction, but at Milwaukee during said time a very large proportion of the consignments of grain were for track delivery, so great that though its track facilities at Milwaukee are nearly double those at Chicago, it was found impossible to make such delivery without unreasonable detention of cars or blocking the road; that after consultation with a committee of complainant it was agreed that track delivery of the better grades of wheat could be prohibited with least injury to the business interests of Milwaukee, and thereafter it was determined to be necessary to issue the order complained of; that the elevator and storage room and facilities for unloading were ample, and no greater expense was entailed thereby than for the same facilities at Chicago; that the number of cars of bulk grain unloaded on track at Milwaukee during said months was far greater than were unloaded on track at Chicago during the same time; and that defendant is ready and willing to receive bulk grain for track delivery at Milwaukee whenever its facilities will admit.

Defendant admits that grain for eastern shipment is transferred on track at Chicago, but that the same is done by the eastern roads to avoid paying millage on western cars, but to compel it to haul eastern cars to Milwaukee, paying millage thereon Chicago to Milwaukee and return, and make the transfer at its own expense as an eastern road, defendant avers is unreasonable, and the expense so incurred would be more than its proportion of the through eastern rates.

Answer of the defendant, the Chicago & Northwestern Railway Company (Mr. W. C. Gandy, solicitor) shows that it has rescinded the order complained of and is ready to receive all bulk grain offered for track or elevator delivery at Milwaukee.

Reuben L. RICE et al., Partners as Rice, Robinson & Witherop,

v.

WESTERN NEW YORK & PENNSYLVANIA R. CO. and G. Clinton Gardner, Receiver of the Buffalo, New York & Philadelphia R. R. Co.

(No. 119.)

A NSWERS filed March 22, 1888. See original complaint, ante, 717, and additional complaint, ante, 722.

The separate answer of the Western New York & Pennsylvania Railroad Company, called in the petition herein Western New York & Pennsylvania Railway Company, to the complaint and petition of the above named petitioners, by George Zabriskie, its attorney, respectfully shows:

First: This respondent admits that petitioners are copartners in business under the firm name and style of Rice, Robinson & Witherop, and reside at Titusville, Crawford County, Pennsylvania, and are engaged in the business of refining, shipping and selling petroleum, and have an agency, or branch house, at Buffalo, New York; and that they ship refined oil from time to time from Titusville over this respondent's railroad; but this respondent has no knowledge or information sufficient to form a belief as to the extent of the business carried on by the petitioners, or the amount of capital therein invested.

Second: This respondent admits that it is a corporation, and that it owns and operates a railroad formerly belonging to the Buffalo, New York & Philadelphia Railroad Company, which extends from Newcastle, Pennsylvania, to Buffalo, New York, and runs through Oil City and Titusville; besides other lines of railroad in New York and Pennsylvania; but this respondent denies that it is in any other sense a successor to that company; and it admits that G. Clinton Gardner was appointed receiver of the last named company's property, May 20, 1885, and that he operated the said company's railroad until December 1, 1887.

Third: This respondent admits that it charges the petitioners, and has charged them since it began to operate its railroad, viz.: since December 1, 1887, thirty-four cents per barrel for transportation of refined oil in barrels in car load lots from Titusville to Buffalo or about $8\frac{1}{2}$ cents per 100 pounds.

This respondent does not, and has not required petitioners to ship in each car not less than sixty barrels filled with oil, but the rate aforesaid is based upon shipments in car load lots, and a car load lot of oil in barrels is 24,000 pounds, which is about sixty barrels. It is true that in loading sixty barrels on a car, ten barrels are sometimes placed on the top of the other fifty, which rest on the bottom of the car.

This respondent has no knowledge or information sufficient to form a belief whether that method of loading entails upon petitioners any extra or greater expense, or requires more time or care, or the purchase of lumber or nails, or whether there has been, or will be, loss to petitioners from breakage or leakage as a direct or other result from such method of loading, or whether the alleged extra expense amounts to \$1 per car.

This respondent denies that oil cannot be safely transported when barrels are placed one upon the other.

This respondent is a stranger to all matters alleged in the fourth and fifth and other paragraphs of the petition to have been done by the corporation or persons owning, or operating, the said railroad prior to December 1, 1887, and so far as they are material prays that the petitioners be required to make such proof thereof as they may be advised.

Fourth: This respondent has no knowledge or information sufficient to form a belief as to the allegations contained in the sixth article of the petition relating to the said G. Clinton Gardner, Receiver.

It denies all the other allegations in the said paragraph.

Fifth: This respondent has no knowledge or information sufficient to form a belief whether or not the petitioners ship nine tenths of all the refined oil that goes to Buffalo from the oil regions of Pennsylvania. It denies all the other allegations of the seventh paragraph of the petition, and denies that for the service referred to in paragraph 8 of the petition the rate of twelve cents per barrel, with sixty barrels to the car, would be a just or reasonable charge, or that it is so treated, or has been so treated by this respondent in the case of shipments from Titusville to Perth Amboy or otherwise. Such charge would not afford reasonable or adequate compensation to the carrier.

Sixth: This respondent admits that the petitioners have complained and objected against the rates charged by it on oil from Titusville to Buffalo, but this respondent is a stranger to all the matters alleged in the ninth paragraph of the petition stated to have taken place prior to December 1, 1887, and has no other knowledge or information in regard thereto than the allegations in the petition, and prays that the petitioners make such proof thereof, if material, as they may be advised.

Seventh: This respondent has no knowledge or information sufficient to form a belief whether the Standard Oil Company is a rival of petitioners in their business. It denies that the Standard Oil Company exerts, or ever has exerted, over this respondent, its management or officials, any influence to compel them to exact unjust, unreasonable, or extortionate rates or charges, or conditions of shipment from petitioners or other refiners or shippers of oil in Western Pennsylvania or elsewhere, to injure, embarrass, cripple or ruin their business, or for any other purpose or by any means. As to any efforts of the Standard Oil Company in the direction alleged in the petition this respondent has no knowledge or information sufficient to form a belief; but no such efforts have come to the knowledge of this respondent, or have ever prevailed, or do now prevail, with this respondent, or its management, or officials. Whether or not the alleged rate or charge of twenty-five cents per barrel prior to April 5, 1887, for the service referred to in the tenth paragraph of the petition was due to the interference or dictation of the Standard Oil Company with a view to injure the business of petitioners or others, this respondent has no knowledge or information other than the allegations of the petition, and prays that the petitioners be held to make such proof thereof, if material, as they may be advised.

This respondent denies that the petitioners have sustained or suffered the loss or damage stated in the twelfth paragraph of the petition.

Eighth: Further answering said petition this respondent respectfully shows, that it was organized and became incorporated on or about November 23, 1887, under the laws of the

States of New York and Pennsylvania by the consolidation of the Western New York & Pennsylvania Railway Company of New York, with the Western New York & Pennsylvania Railway Company of Pennsylvania, and that those two corporations were organized under the laws of the States of New York and Pennsylvania respectively, September 15, 1887, by the purchasers of the franchises and property of the Buffalo, New York & Philadelphia Railroad Company, under sales made pursuant to decrees of foreclosure of mortgages; and that this respondent took possession and began to operate the said property and franchises, December 1, 1887.

This respondent has, since December 1, 1887, established and maintained a local rate of thirty-four cents per barrel on oil in barrels shipped in car load lots at Titusville, Pennsylvania, for Buffalo, New York; and during the same time on some occasions oil in barrels has been shipped by the petitioners at Titusville for Perth Amboy, New Jersey, by way of Buffalo, and such oil has been carried over this respondent's road to Buffalo, and thence by the Lehigh Valley Railroad to Perth Amboy, New Jersey; and the through rate on such oil has been, and is, fifty-two cents per barrel from Titusville to Perth Amboy, which has been divided between the several carriers in such proportions that this respondent has received twelve cents per barrel, the Lehigh Valley Railroad Company forty cents per barrel, and such traffic has been and is carried almost entirely in cars furnished by the Lehigh Valley Railroad Company, and not in the cars of this respondent; and this respondent denies that the said rate, or that the proportion thereof received by this respondent, affords a sufficient or reasonable compensation for the transportation of such oil from Titusville to Perth Amboy, and alleges that such rate has been accepted by the several carriers because it is the highest rate they could get.

Perth Amboy is situated on New York Harbor; the Standard Oil Company referred to in the petition controls or operates a continuous line of pipes from the oil regions of Western Pennsylvania, in which Titusville is situated, to the Harbor of New York, and carries its oil in such pipes at a cost of about forty cents per barrel—and the oil of the petitioners and other producers or refiners would be entirely shut out from the New York market, unless the railroad companies fixed such rates as would enable them to compete with the Standard Oil Company.

From Titusville, or other points in Western Pennsylvania, the only means of transportation is by railroad; and there is no line of water transportation. Beside this respondent, the Dunkirk, Alleghany Valley & Pittsburgh Railroad Company, the Lake Shore & Michigan Southern Railway Company, the New York, Lake Erie & Western Railway Company, are engaged in the transportation of oil from the said oil regions to Buffalo; and their respective rates are, as this respondent is informed and believes, substantially the same as this respondent's rates. Said rates are based upon the freight classification adopted by and in force, among all railroads east of the Mississippi and north of the Ohio, in which

INTER 8.

classification refined petroleum is fifth class freight; and such class far as the shipper is concerned, is just, although in this respondent too low to afford adequate remuneration to the carrier. The said rate on oil from Titusville to Buffalo is just, and does not discriminate against petitioners or any other refiners nor in favor of the Standard Oil Company or any other refiners or producers of New York or other seaboard, Buffalo or other interior points, the railroad no more than, but contrary, less than, a fair compensation for service performed.

The answer of the defendant Gardner, Receiver of the Buffalo & Philadelphia R. R. Co., filed March 10, 1888, admits his appointment as such Receiver, and that he operated at that capacity up to December 1, 1887, which time the Western New York & Pennsylvania R. R. Co. has been in possession, and says that from that date to all the allegations in said complaint relating to matters subsequent to that date, and as to matters prior to that date, the Commission is without authority to entertain the same. The only matters contained in the defendant's answer which are substantially embraced in the foregoing of the W. N. Y. & P. R. R. Co.

MICHIGAN CONGRESS WATER CO.

CHICAGO & GRAND TRUNK RAILWAY CO.

(No. 128.)

ABSTRACT of Complaint filed March 10, 1888, charging the imposit
just and exorbitant rate upon mineral water in tank cars, and an improper classification of mineral water.

Mr. William S. Edwards,
complainant:

Complainant is a corporation organized seven years last past in bottling Americanus, or Michigan Congress Mineral Water, from the great artesian wells of Lansing, Michigan, and shipping in iron tanks in bulk, bottles and jars, barrels, cases and hampers, from Lansing to points on the eastern coast: New York, Philadelphia, Washington, New Orleans, and New York, St. Louis, Cincinnati, and other cities east and west from said point of origin.

Defendant is a common carrier of mineral water in the transportation of property to said points; and complainant to time has given, and is giving, defendant its said mineral water in tank cars for loading and unloading thereto, and at its own expense is siding along defendant's track at said points for loading and unloading the labor necessary therefor, and is shipped at complainant's risk, age and without special risk, la

to defendant in the transportation thereof. The tank cars so provided by complainant are lined with a suitable composition to preserve said water as pure as when taken from the well, while shipment of the same in wood gives to it an unpleasant taste from the wood. The said mineral water is of advantage in quenching fires occurring in railroad trains and is not a source of risk to the carrier while in transportation, as petroleum oils are known to be. Heretofore when shipments of said water were made otherwise than in tanks great loss and damage frequently resulted to complainant by reason of breakage and theft by railroad employees and cartmen, and claims for loss and damage frequently made to defendant and other carriers were evaded, to such an extent that further statements of the same were discontinued; and though thousands of barrels and bottles of said water have been shipped during the past five years and many losses sustained, no claim for loss or damage has been paid to complainant during said period.

Complainant has endeavored since July, 1887, to have its grievances adjusted satisfactorily; and once at a meeting with defendant's Assistant Traffic Manager and the General Freight Agent of the Grand Trunk Railway favorable terms were accorded to it, but since then the said traffic manager has assigned as the reason for not carrying the said terms into effect that Chairman Blanchard objected thereto. On February 2, a copy of this petition was submitted to defendant's general agent, and was thereafter informed that the matter would be considered on the 6th inst at Chicago; but no reply has been received.

Since the Act to Regulate Commerce went into effect defendant has demanded thirty-three cents per 100 pounds for the carriage of said mineral water in tank car loads, minimum weight 24,000 pounds, from Lansing to New York. Previous to July 15, 1887, no rate was published in the usual schedules designating the rates on "mineral water in tank cars;" but said schedules did show that twenty-six cents per 100 pounds was charged for same mineral water in barrels in car loads, and prior to said date complainant had been charged on the same car load \$57, to New York, for which, in June last, defendant demanded and received \$89.20, paid under protest.

Complainant has repeatedly applied for fair and equitable rates on tank cars of mineral water over said lines of defendant and connections without success. Your complainant last summer received orders for 100 case lots, covering 5,000 quart bottles, but owing to the prevailing unreasonable rates the same could not

be filled; and upon application to the classification committee of the Trunk Lines no good reason was assigned for such exorbitant charges, and complainant believes that defendant would establish a much less rate on said water, but that it is prevented by reason of the combination of other railroads.

A car load has since been forwarded from Lansing to New York, on which defendant demands \$89.20 as the charge for 24,000 pounds; being the same weight and car used prior to April 5, when the charge was \$57. Fifty-three dollars has been repeatedly paid for transportation of a car load to Philadelphia, \$25 to Chicago, \$30 to Cincinnati; but the shipment to Cincinnati was made in petitioner's tank *via* the Lake Shore & Michigan Southern Railroad, which furnished its own flat car.

Complainant rents its tank car at the rate of \$14 per month, and as soon as reasonable rates can be obtained it will require the use of more. Under the classification of said committee the rate on mineral water in tank cars is minimum weight, 24,000 pounds, no mileage allowed, class 4, while the rate on pine oil is class 6, except mileage, and petroleum, April 1, 1877, was in class 6, but is since published as "special," mileage not mentioned. The rate from Milwaukee to New York is twenty-five cents for sixth class, and from Lansing twenty-four cents per 100 pounds, yet said distance is over 800 miles greater.

Complainant has no knowledge of any occasion where said water destroyed other property in transit or at station, but petroleum oil frequently does, yet petroleum oil is shipped at lower rates than said mineral water. The cost of transportation is less from Europe to eastern cities than from Lansing to said points, and complainant has practiced the greatest economy in order to supply its water at a rate competitive with foreign waters of like nature.

It is therefore prayed that said mineral water be put in the sixth class, with a reasonable allowance for the use of tank cars, and that shipments of the same in smaller packages than in tanks may be classified in accordance with the service performed and risk assumed, as compared with other shipments. Also that in the meantime it may be allowed to pay the rate on its tank car detained in Jersey City for payment of freight as was paid prior to the taking effect of the Interstate Commerce Law; and that the overcharge of \$32.20 heretofore paid defendant in excess of its printed tariff rate may be allowed to complainant on said settlement of the regular rate and release of said car so detained, and for such further relief as may be deemed proper.

SUPREME COURT OF INDIANA.

State of INDIANA, *ex rel.* Bruce CARR,
Auditor of State, *Appt.*,

v.

WOODRUFF SLEEPING & PARLOR
COACH CO.

(From 18 Western Reporter.)

1. The State has no power to levy a tax upon the earnings of a sleeping-car company engaged in the business of

transporting passengers from one State to another. The matter of interstate commerce is a national matter with which no State can in any wise interfere. The jurisdiction of the Federal Government absolutely excludes the State from directly or indirectly hampering or taxing the commerce between States. The statute attempting to authorize it is itself without force. That it restricts the amount of the tax to be

paid by the corporation to the distance which passengers are carried through this State does not relieve it of the objection; for the tax it assumes to levy is upon interstate commerce, and not upon the internal commerce of the State. The tax cannot be sustained upon the ground that the carrier can be compelled to pay a tax upon its gross earnings for the privilege of doing a local business in the State.

2. A State has power to prescribe the terms upon which a foreign corporation may do business within its territory, unless the corporation is engaged in the business of interstate commerce. If it is not engaged in transacting business of that kind, the State may levy a tax upon its receipts within the State, and enforce collection.

(Decided March 9, 1883.)

APPEAL from a judgment of the Marion Circuit Court, Ayres, J., against the plaintiff in a suit against a sleeping-car company for failure to comply with the statute requiring it to return a statement of its earnings for taxation. *Affirmed.*

The facts are stated in the opinion.

Meers, Louis T. Michener, Atty. Gen., and John H. Gillett, for the State:

Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right. Nothing but express constitutional limitation upon legislative authority can exclude anything, to which the authority extends, from the grasp of the taxing power, if the Legislature, in its discretion, shall at any time select it for revenue purposes.

Cooley, Tax. p. 5; Desty, Tax. § 24.

While the State, in the exercise of this inherent and necessary function, must yield to the limitations imposed by the Federal Constitution, yet it is to be remembered that, beyond the scope of these constitutional restrictions, and the implied exemption of the instruments of the Federal government, the State has absolute power to tax anything and everything within its limits.

In the case of *Wheeling, P. & O. Transp. Co. v. Wheeling*, 99 U. S. 273 (25 L. ed. 414), the court says: "Power to tax for the support of the State governments exists in the States independently of the National government; and it may well be assumed that where there is no cession of contradictory or inconsistent jurisdiction in the United States, nor any restraining compact in the Constitution, the power in the States to tax for the support of the State authority reaches all the property within the state which is not properly regarded as the instruments or means of the Federal government."

Osborne v. Mobile, 88 U. S. 16 Wall. 479, 481 (21 L. ed. 473).

The Legislature has power to prescribe not only the property to be taxed, but the mode and agencies by which the tax may be ascertained and enforced; and it is no objection that the methods prescribed are different for different classes of property.

INTER S.

Wagoner v. Loomis, 87 Ohio St. The mode of taxing corporations with the Legislature.

Porter v. Rockford, R. I. & St. Ill. 561. See *Anderson v. Kerns* 14 Ind. 199; *Louisville & N. A. R.* 25 Ind. 177; *Bright v. McCullough Cooley, Tax. p. 378 et seq.*

"Nothing can be more certain in than that the privileges and franchise corporation, and all trades and by which the citizens acquire a liberty be taxed by a State for the support government. Authority to that in the State, independent of the Federal government, and is wholly unaffected by the corporation or individual has made investment in federal security *Society for Savings v. Coite*, 73 594 (18 L. ed. 897).

The State may exclude foreign entirely; it may restrict them to localities, or exact such security for the performance of their contracts as will be in the public interest. The whole matter is left to the discretion.

Paul v. Virginia, 75 U. S. 8 W. ed. 857.

Upon the proposition that it is the State to tax the occupation of a corporation doing a local as well as business, by requiring it to pay a cent of its gross receipts, not on business, but upon business originating out of, or originating terminating within, the State, the *Western Union Tel. Co. v. Mayor*, 28 C. ed. exactly in point.

See also *Western Union Tel. Co.* 26 Gratt. 1; *Western Union Tel. Co. Tex.* 814.

Rev. Stat. § 6355, does not amount to interference with interstate commerce.

See *Delaware R. Tax*, 85 U. S. (21 L. ed. 896); *Erie R. Co. v. Per* U. S. 21 Wall. 492 (22 L. ed. *Union Tel. Co. v. Richmond*, 26 *Western Union Tel. Co. v. Mayor*, 28 *Western Union Tel. Co. v. State* *Wheeling, P. & O. Transp. Co. v. Va.* 170; *State v. Philadelphia*, 45 Md. 361.

The vehicles of commerce may be taxed. See cases cited in note to *State Palace Car Co.* 16 Fed. Rep. 201.

The inability of a State to tax from other and express prohibition in the Federal Constitution; but in case the capital stock of the company the ship may be taxed.

Hayes v. Pacific Mail S. S. Co. How. 596 (15 L. ed. 254); *State Cases*, 79 U. S. 12 Wall. 204 (2 *Wheeling, P. & O. Transp. Co. v. U. S.* 273 (25 L. ed. 412).

Can this defendant claim an exemption from taxation on the privilege of carrying between the same points, merely doing an interstate business as a position will be taken, for not so the authorities are against it.

Thomson v. Pacific R. Co. 76 U. S. 531 (19 L. ed. 792); *Louisville Nat.*

tucky, 76 U. S. 9 Wall. 853 (19 L. ed. 701); *Western Union Tel. Co. v. State*, 55 Tex. 314; *Western Union Tel. Co. v. Richmond*, 28 Gratt. 1.

The State insists that defendant shall pay a tax, as a State carrier would have to do, for its local occupation; and the measure of the amount demanded is a certain per cent of the gross receipts derived by the company for the proportionate amount of travel in this State. As the Ohio Supreme Court says in *Western Union Tel. Co. v. Mayer*, *supra*: "The burden is the price paid for transacting their business within the State."

The tax is upon the local occupation.

Western Union Tel. Co. v. Mayer, *supra*; *State v. Philadelphia, W. & B. R. Co.* 45 Md. 361; *Delaware R. Tax*, 85 U. S. 18 Wall. 206 (21 L. ed. 888); *Philadelphia Contributionship for Ins. v. Com.* 98 Pa. 48; *Portland Bank v. Apthorp*, 12 Mass. 252; *Provident Inst. for Sav. v. Massachusetts*, 73 U. S. 6 Wall. 611 (18 L. ed. 907); *Com. v. People's Sav. Bank*, 5 Allen, 428; *Com. v. Lancaster Sav. Bank*, 123 Mass. 493; *Coite v. Society for Savings*, 32 Conn. 173; 73 U. S. 6 Wall. 594 (18 L. ed. 897); *Jones v. Winthrop Sav. Bank*, 66 Me. 242; *Exempt Firemens Fund v. Roome*, 93 N. Y. 318; *Manufacturers Ins. Co. v. Loud*, 99 Mass. 146; *Com. v. Lowell G. L. Co.* 12 Allen, 75; *Com. v. Hamilton Mfg. Co.* Id. 298; 73 U. S. 6 Wall. 632 (18 L. ed. 904); *Com. v. Cary Imp. Co.* 98 Mass. 19; *Connecticut Mut. L. Ins. Co. v. Com.* 133 Mass. 161; *Coite v. Connecticut Mut. L. Ins. Co.* 36 Conn. 513; *Belo v. Foreyth Co.* 32 N. C. 415; *Carbon Iron Co. v. Carbon Co.* 39 Pa. 251; *Kittanning Coal Co. v. Com.* 79 Pa. 100; *State v. Maine Cent. R. Co.* 74 Me. 376; *State v. Philadelphia, W. & B. R. Co. supra*; *Atty-Gen. v. Bay State Min. Co.* 99 Mass. 148, 152, 153.

We have but a suggestion to offer as to that portion of the second paragraph of answer by which the defendant seeks to set up an estoppel (for the claim must be, if anything, that the facts pleaded create an equitable estoppel) and that is, that the State cannot estop itself by the acts of its officers.

McCaslin v. State, 99 Ind. 428; *State v. Portsmouth Sav. Bank*, 4 West. Rep. 526, 106 Ind. 460; *Union School Trup. v. Crawfordville Nat. Bank*, 1 West. Rep. 107, 102 Ind. 465, 476; *Furish v. Coon*, 40 Cal. 38; *State v. Brewer*, 64 Ala. 287; *People v. Dulaney*, 96 Ill. 508; *Carr v. United States*, 98 U. S. 483 (25 L. ed. 209); *Alexander v. State*, 56 Ga. 478.

Messrs. Addison C. Harris, William H. Calkins, and Oliver T. Morton, for appellee:

Rev. Stat. § 6855, has been held invalid for two reasons.

See *Indiana v. Pullman Palace Car Co.* 11 Biss. 561.

It is elementary that an internal tax for revenue only is ultimately paid by the person using the commodity. Thus, a tax on merchandise is paid by the consumer. A tax on the business or occupation of a physician or lawyer is paid by the clients. A tax on railroad or sleeping-car fares necessarily raises the rate the full amount of the tax. A tax on fares is a tax on the passengers.

Gibbons v. Ogden, 22 U. S. 9 Wheat. 1 (6 L. ed. 23); *Passenger Cases*, 48 U. S. 7 How. 458 (12 L. ed. 776); *Orandall v. Nevada*, 78 U. S. 6 Wall.

35 (18 L. ed. 745); *State Freight Tax*, 32 U. S. 15 Wall. 232 (21 L. ed. 146); *Brown v. Maryland*, 25 U. S. 12 Wheat. 419 (6 L. ed. 678); *Erie R. Co. v. State*, 31 N. J. L. 531; *Central R. Co. v. State*, 48 N. J. L. 1, 2 Cent. Rep. 715; *Welton v. Missouri*, 91 U. S. 278 (23 L. ed. 347).

If a statute is illegal in any of its provisions, it must fall *in toto*, unless, after expunging all the unlawful parts, enough remains to leave a whole and consistent law.

Baldwin v. Franks, 120 U. S. 685 (30 L. ed. 768); *Cooley*, Const. Lim. p. 177 *et seq.*; *Allen County v. Silvers*, 22 Ind. 491; *Allen v. Louisiana*, 103 U. S. 80; (26 L. ed. 318); *Warren v. Charlestown*, 2 Gray, 84; *United States v. Reese*, 92 U. S. 214 (23 L. ed. 563); *Indiana v. American Exp. Co.* 7 Biss. 227.

The appellee maintains that the statute is void for the reasons following:

1. It violates that provision of the Federal Constitution which gives Congress exclusive power "to regulate commerce among the several States."

Art. 1, § 8.

2. It violates that provision of the same instrument which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Art. 4, § 2.

3. It violates that provision of the Constitution of this State which declares that "the General Assembly shall not pass special laws for the assessment and collection of taxes for State purposes."

Art. 4, § 22.

4. It violates that provision of the same instrument which declares that the rate of taxation shall be "uniform and equal."

Art. 10, § 1.

5. The statute is an attempt to exercise the taxing power upon money beyond this State.

Any tax or burden laid on national commerce by a State is void.

Gibbons v. Ogden, 22 U. S. 9 Wheat. 1 (6 L. ed. 23); *Passenger Cases*, 48 U. S. 7 How. 283 (12 L. ed. 702); *Brown v. Maryland*, 25 U. S. 12 Wheat. 446 (6 L. ed. 688); *United States v. Holliday*, 70 U. S. 3 Wall. 407 (18 L. ed. 182); *Orandall v. Nevada*, 78 U. S. 6 Wall. 35 (18 L. ed. 745); *Southern S. S. Co. v. Port Wardens*, 78 U. S. 6 Wall. 81 (18 L. ed. 749); "The Daniel Ball," 77 U. S. 10 Wall. 557 (19 L. ed. 1001); *Philadelphia & R. R. Co. v. Pennsylvania*, 32 U. S. 15 Wall. 282-284 (21 L. ed. 146); *Baltimore & O. R. Co. v. Maryland*, 38 U. S. 21 Wall. 456 (23 L. ed. 678); *Welton v. Missouri*, 91 U. S. 275 (23 L. ed. 347); *Henderson v. Mayor of N. Y.* 92 U. S. 259 (23 L. ed. 543); *Chy Lung v. Freeman*, 92 U. S. 275 (23 L. ed. 550); *United States v. 43 Gallons of Whiskey*, 98 U. S. 188 (23 L. ed. 846); *Foster v. Port Wardens*, 94 U. S. 246 (24 L. ed. 123); *Hannibal & St. J. R. Co. v. Huse*, 95 U. S. 465 (24 L. ed. 527); *Hall v. De Ouir*, 95 U. S. 485 (24 L. ed. 547); *Pensacola Tel. Co. v. Western Union Tel. Co.* 96 U. S. 1 (24 L. ed. 708); *Cook v. Pennsylvania*, 97 U. S. 566 (24 L. ed. 1015); *Guy v. Baltimore*, 100 U. S. 434 (25 L. ed. 743); *Webber v. Virginia*, 103 U. S. 844 (26 L. ed. 565); *Western Union Tel. Co. v. Texas*, 105 U. S. 460 (26 L. ed. 1067); *Head Money Cases*, 119 U. S. 591 (28 L. ed. 798); *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196 (29 L. ed. 156); *Brown v. Houston*, 114 U. S. 622 (29 L. ed. 257); *Walling v. Michi*

you to do a large business over our line. As regards our guarantying you as low net rates as other shippers are charged, I have repeatedly assured you that our rates are the same to all shippers; and I do not know that I can do any more than already stated in this matter.

"I believe the largest tank cars we have hauled over our line contained about 40,000 pounds and as low as 20,000 pounds.

"I trust these new rates will enable you to ship over our line not only to the strictly local stations, but to Jackson, Tennessee, Holly Springs, Grenada, and Jackson, Mississippi, as well, at all of which points there is a good trade.

"We would also like to handle business for you to Aberdeen, West Point, and Starkville, Mississippi, which points we can reach via Durant and C., A. & N. Railroad."

This answer was as polite as it was misleading. The party writing desires us to understand that it had no reference to shipments to New Orleans, though nothing in it or in the letter to which it was an answer would restrict it in any such way; and how this officer could reconcile it to his duty to his own company or to the public to allow shipments of 40,000 pound tanks to New Orleans at the rates charged on tanks of 20,000 pounds he fails entirely to explain, as he does also to explain or excuse his discrimination in this regard between the shipments to New Orleans and those complainant might make to other points to which the other shippers over defendant's line were not sending tank cars.

Here, again, the question of paying for the use of the tank cars comes in question. It has been seen that on May 31 the general freight agent wrote: "Tanks which are hauled one way loaded are at present returned without extra charge, *in the same manner as other foreign cars are handled.*" What is meant by this we do not know. All the evidence adduced before us tends to show the rule to be that foreign cars are not merely returned without charge, but that their use is paid for.

This officer being on the stand, the following proceedings took place:

Q. What milage do you pay for the use of tank cars?

A. I have nothing to do with milage.

Q. Have you no knowledge as to the amount of milage paid?

A. If there is any paid it is three fourths of a cent, the same as other cars. We make no discrimination in that matter.

Q. You treat one car the same as you do the other?

A. That is my understanding.

If the general freight agent of the defendant did not know what the rule was on this important subject, it may be safely assumed that the defendant made no publication which gave the information to the general public. So long as that was the case a protest that the defendant makes no discrimination is not very assuring. The public was entitled to information given in an authoritative way as a part of the rate sheet itself, and should not have been left to suppose or imagine that it was or might be the subject of private arrangement.

Nothing in these cases more distinctly challenges attention than the fact that several of

the defendants, while giving tank rates regardless of the quantity carried, informed complainant, when interrogated by him on the subject, that if the quantity exceeded a certain specified weight, a charge would be made for the excess. The published rate sheets ought to have given clear and reliable information on the subject; and it was only because they were silent or ambiguous that the inquiries became necessary. The remarkable thing about the matter is that so many of these defendants should make the same mistake; a mistake, too, that it was antecedently so improbable any one of them would make. The Louisville & Nashville, the Cincinnati, New Orleans & Texas Pacific, the Newport News & Mississippi Valley, and the Illinois Central Companies are all found giving out the same erroneous information, and no one of them can tell how or why it happened to be done, much less how so many could contemporaneously, in dealing with the same subject, fall into so strange an error. It is to be noted, too, that it is not a subordinate agent or servant who makes the mistake in any instance, but it is the man at the head of the traffic department, and whose knowledge on the subject any inquirer would have a right to assume must be accurate. In no case is the error excused, and if it be conceded that there was no purpose to mislead, the case is not relieved of unpleasant features, for gross negligence, when it is damaging, may be equally culpable with wrongs of intent.

In our review of these cases two facts have been constantly pressing upon attention, as constituting cogent if not conclusive proof that the several defendants operating lines east of the Mississippi were not endeavoring by their tariff sheets to adjust their rates on grounds of relative justice, as between themselves and their patrons, and also between the two classes of patrons, and that the considerations which they say in their answers and testimony entitled them to make the higher charge on barrel shipments were not controlling in the fixing of rates.

One of these facts is that they made tank car rates, regardless of quantity. It cannot be said that this was done in ignorance of the great differences which existed. It clearly appears that it was generally known that the differences were very great. If it had not been known it should have been. The evidence shows that the weight and capacity of the tank cars of the Standard Oil Company of Kentucky were not stenciled upon them, as was the case with the like cars of some other lines, but the difference in size must have been very obvious to the eye, and defendants, it is to be presumed, had the means at any of their important stations to weigh or gauge them.

The other fact is that the discriminations were made on no principle, and could not possibly have been measured from a consideration of the circumstances which defendants say entitled them to impose the heavier charges on the traffic carried on barrels. Sometimes the rates were made the same, and when that was the case no reason has been assigned therefor which would embrace all the cases and distinguish them from other cases in which the discriminations were very great; but when discriminations were made the excess in charge

It is said that gross receipts of railway companies doing a like business are not taxed, and therefore the tax in question creates an invidious classification. But, even within a class taxed, there may be rules of distinction perfectly admissible, provided they are general rules and are observed.

Cooley, Tax. p. 170.

The right of classification cannot be disputed.

State Const. art. 10, § 1, declares that the Legislature "shall prescribe such regulations as shall secure a just valuation for taxation of all property."

The Constitution of Kentucky does not require taxes to be levied by a uniform method upon all descriptions of property; and there is nothing to forbid the classification of property for purposes of taxation, and the valuation of different classes by different methods.

Kentucky R. R. Tax Cases, 115 U. S. 321 (29 L. ed. 414).

The power to tax, and the power of apportionment and classification, are identical and inseparable; and the legislative determination as to the just proportion to be borne by the public, and the classification of subjects to be taxed, is conclusive, subject only to the constitutional principle that all of the same class shall bear equal burdens, and that the principle of uniformity be preserved.

Desty, Tax. pp. 98, 94.

To the same effect, see—

Louisville & N. A. R. Co. v. McCarty, 25 Ind. 177.

In New Jersey, with a constitutional provision like our own, it was held that the provision did not require all property to be taxed, and that the legislative power to select subjects for taxation was untrammelled.

State v. Bunyon, 41 N. J. L. 98; Cooley, Tax. 198.

A requirement that taxation shall be uniform permits insurance companies to be classified by themselves.

Germania L. Ins. Co. v. Pennsylvania, 85 Pa. 518.

The Constitution of Louisiana, requiring taxation to be equal and uniform, permits classification of the objects of taxation, and one tax to be levied on foreign, and another on domestic, insurance companies.

State v. Lathrop, 10 La. Ann. 398. See also *Ducat v. Chicago*, 48 Ill. 172.

In *Maine v. Western Union Tel. Co.* 78 Me. 518, it was held—although the Constitution required all taxes to be proportioned and assessed equally, and according to the true value thereof; and the tax of 2½ per cent on all property of telegraph companies used in the State was special and at a higher rate—that the tax should be sustained: (1) because the defendant, being a foreign corporation, was subject to any tax the Legislature saw fit to impose; (2) because, the court being bound to give the Act a construction which would render it constitutional, if possible, it must hold that the tax was an excise, and not a property, tax.

In the case at bar, the statute imposes a license fee; the Constitution has reference to the general levy only.

Thomasson v. State, 15 Ind. 449; *Mitchell v. Williams*, 27 Ind. 62.

This is so although the money derived therefrom goes into the treasury to swell the general fund.

Leavenworth v. Booth, 15 Kan. 627, 635.

The constitutional provision that taxation shall be equal and uniform applies only to property, and not to business or occupation.

Western Union Tel. Co. v. Mayer, 28 Ohio St. 521; *Glasgow v. Rouse*, 48 Mo. 479; *Sacramento v. Crocker*, 16 Cal. 119; *Home Ins. Co. v. Augusta*, 50 Ga. 543; *Adams v. Somerville*, 2 Head, 863; Cooley, Tax. pp. 169–171.

The general right to make exemptions is involved in the right to apportion taxes, and must be understood to exist whenever it is not forbidden. It is a question of policy, not power.

Cooley, Tax. 145; *Wells v. Central Vermont R. Co.* 14 Blatchf. 426. See *State v. Indianapolis*, 69 Ind. 875; *Boody v. Watson*, 1 New Eng. Rep. 2, 63 N. H. 320; *Nassau G. L. Co. v. Brooklyn*, 89 N. Y. 409.

As to the claim that the statute under consideration is violative of the "privileges and immunities" clauses of the Constitution of the United States: it is doubtful if those clauses apply to corporations.

See *Slaughter House Cases*, 83 U. S. 16 Wall. 86 (21 L. ed. 894); *Strauder v. West Virginia*, 100 U. S. 306 (25 L. ed. 665); *Elk v. Wilkins*, 112 U. S. 94 (28 L. ed. 648); *Insurance Co. v. New Orleans*, 1 Woods, 87.

But, assuming their application, upon the inference from *Santa Clara County v. Southern Pac. R. Co.* 118 U. S. 396 (30 L. ed. 118), yet those privileges and immunities must be of common right to citizens of the several States; not special privileges and immunities enjoyed by citizens in their own State, nor the exercise of corporate functions in a foreign State.

Paul v. Virginia, 75 U. S. 8 Wall. 180 (19 L. ed. 360); *Bank of Augusta v. Earle*, 38 U. S. 18 Pet. 584 (10 L. ed. 805); *Lafayette Ins. Co. v. French*, 59 U. S. 18 How. 406 (15 L. ed. 340); *Doyle v. Continental Ins. Co.* 94 U. S. 535 (24 L. ed. 148).

Elliot, J., delivered the opinion of the court:

The relator, as Auditor of State, avers in his complaint that the defendant is a corporation organized under the laws of another State; that for more than two years past it has been engaged in the business "of conveying to, from, and through the State of Indiana, passengers for hire, in sleeping-cars, under contracts with railway companies for the transportation of its cars; that during the year immediately preceding the 1st day of April, 1887, it earned and collected for the transportation of passengers in its cars in this State, and by the transportation of passengers by continuous passage, for an entire consideration, from other States into and across this State and other States, a large sum of money, to wit, \$1,000,000; of which sum \$200,000 represented, and was, the proportion which the distance traveled in this State bore to the whole distance paid for; that, notwithstanding the receipt of such money, the defendant has wholly failed to report to plaintiff a relator its receipts or any part thereof, and has wholly failed to file any report whatever.

The complaint is based upon the following statute: "Every joint-stock association, com-

pany, or corporation, incorporated under the laws of any other State, and conveying to, from, and through this State, or any part thereof, passengers and travelers in palace cars, drawing-room cars, sleeping-cars, or chair cars, on contract with any railroad company or the manager, lessee, agent, or receiver thereof, shall be held and deemed to be a sleeping-car company. Every such sleeping-car company doing business in this State shall annually, between the 1st day of April and the 1st day of June, report to the auditor of state, under the oath of an officer or agent of such corporation, the gross amount of all its receipts within or without the State, for fares earned or business done by such company within this State, for the year then next preceding the 1st day of April of the current year; and in computing such gross receipts the same shall be in the proportion that the distance traversed in this State bears to the whole distance paid for. At the time of making such report, such company shall pay into the treasury of the State the sum of \$2 on every \$100 of such receipts. Every sleeping-car company failing or refusing, for more than thirty days after the 1st day of June, to render an accurate account of such gross receipts, as above provided, and to pay the required tax thereon, shall forfeit \$25 for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana, on the relation of the auditor of state, in any court of competent jurisdiction; and the attorney-general shall conduct such prosecution; and such sleeping-car company so failing or refusing shall be prohibited from carrying on such business until such payment is made. All railroad companies in this State, or the persons managing or operating the same, are prohibited from hauling any cars of any sleeping-car company while so in default, and for each violation of this prohibition shall be liable to pay to the State of Indiana the sum of \$100, to be recovered in the proper action by the State; and it shall be the duty of the attorney-general, at the request of the auditor of state, to prosecute all such suits."

It is firmly established that a State has power to prescribe the terms upon which a foreign corporation may do business within its territory, unless the corporation is engaged in the business of interstate commerce. If it is not engaged in transacting business of that kind, the State may levy a tax upon its receipts within this State and enforce collection. *Phenix Ins. Co. v. Burdett*, 11 West. Rep. 289, 112 Ind. 204; *Doyle v. Continental Ins. Co.* 94 U. S. 585 (24 L. ed. 148); *Ducat v. Chicago*, 77 U. S. 10 Wall. 410 (19 L. ed. 972); *La Fayette Ins. Co. v. French*, 59 U. S. 18 How. 404 (15 L. ed. 840); *Goldsmith v. Home Ins. Co.* 62 Ga. 379; *Phenix Ins. Co. v. Welch*, 29 Kan. 672; *People v. Fire Assn.* 92 N. Y. 311; *S. C.* 44 Am. Rep. 380.

In the cases referred to, this principle is explicitly and strongly asserted; and in many cases it has been assumed without discussion and applied as a settled rule of law. *North America Ins. Co. v. Brim*, 9 West. Rep. 830, 111 Ind. 281; *Granite State Mut. Aid Assn. v. Porter*, 58 Vt. 581; *Ohio v. Moore*, 39 Ohio St. 486; *State v. New York L. Ins. Co.* 81 Mo. 89; *State v. Farmers & M. Mut. Ben. Assn.* 18 Neb. 276; *S. C.* 15 Ins.

L. J. 821; *Ehrman v. Teutonia Crary*, 126; *Mutual Benefit L.* 192 Pa. 352.

We cannot, therefore, assertment of counsel which assume may not classify and regulate tions, even though they are not affairs of interstate commerce.

We do affirm, however, that commerce between the States, Federal government is exclusive. The later decisions of the Supreme Court of the United States close the question to all State courts; for it is a Federal question and on such questions the decisions of the Supreme Court are final. Its earlier decisions are not harmonious,—there was much more of confusion; but they have carried the doctrine to the present. These decisions have much rest to them; they have not completely annihilated the power of the States where interstate commerce is involved, and they have away all State lines. In a very recent case, *Mr. Justice Bradley*, said, that, "in a word, it makes the matter of interstate commerce between the States but one country, and is subject to one system of law; not to a multitude of systems." *Shelby County*, 120 U. S. 489 (30 L. ed. 114).

Although the chief justice associates justices, in a vigorous opinion, the decision is to us as law. Other decisions of that court are going so far as the decision which we have quoted, go quite as far as to decide that the State may levy a tax upon the earnings of a sleeping-car company engaged in the business of transporting passengers from one State to another. *Philadelphia & S. S. Co. v. P.* 120 U. S. 826 (30 L. ed. 1200); *Wester v. Pendleton*, 123 U. S. 347 (30 L. ed. 114); *St. L. & P. R. Co. v. Illin.* (30 L. ed. 244); *Gloucester Ferry v. Pennsylvania*, 114 U. S. 196 (29 L. ed. 114); *Burg & O. R. Transp. Co. v. Ill.* 120 U. S. 691 (27 L. ed. 584); *West Co. v. Texas*, 105 U. S. 480 (30 L. ed. 114); *Pensacola Tel. Co. v. Western* 96 U. S. 1 (24 L. ed. 708); *Welch v. State*, 91 U. S. 275 (23 L. ed. 347).

In the case first cited, one of the justices decided in the case of *State v. Fre* 82 U. S. 15 Wall. 282 (21 L. ed. 114), declared to be wrongly decided, that "a tax upon freights and a tax upon the transportation of goods by the State can levy." The rule by the recent decisions, which we have cited, is thus stated in *Robbins v. State* *supra*. "As before said, the fact that the tax is upon the State's own internal commerce, but that it is any right to tax interstate commerce."

The attorney-general ably argues that the statute is valid, and that the State is competent for the State to "take possession of appellant by the measure of receipts for the proportionate share in this State." But this argument, without plausibility, is radical. Under the law as authoritative

court of last resort, no tax, in any form or for any purpose, can be laid upon interstate commerce. The matter of interstate commerce is a national matter, with which States can in no wise interfere. The jurisdiction of the Federal government absolutely excludes the States from directly or indirectly hampering or taxing the commerce between the States.

The claim of the State is also put upon the ground that the appellee can be compelled to pay a tax upon its gross earnings for the privilege of doing a local business in Indiana. This position is untenable. In no event can a corporation engaged in the business of interstate commerce be taxed for the privilege of doing business in this or any other State. This principle early found a place in our jurisprudence. Much as the highest court of the nation has wavered upon kindred questions, from this principle it has never departed. Indeed, one of the great causes which led to the adoption of our Federal Constitution was the evil produced by the levying of tribute, in the form of taxes, upon the commerce between the States, by some of the States, under the Articles of Confederation. It is evident that to permit each State to levy taxes upon the earnings of common carriers whose lines of railroad traverse its territory would lead to deplorable results; for, once the power is conceded, then the method of its exercise, the amount of the tax, and like matters, would be within the exclusive control of the Legisla-

ture of each State, as neither the Federal nor the State courts could supervise or control their discretion.

The complaint does not aver that passengers were carried from point to point within the State. On the contrary, the theory of that pleading is that the State may levy a tax upon the gross earnings of the corporation, in the proportion that the distance traveled through this State bears to the entire distance for which fares were received. That theory is unsound and the complaint bad. It is, however, not the fault of the pleader that the complaint fails, for it is constructed upon the statute as well as a complaint can be constructed. The statute itself is without force. The statute is invalid because it assumes to tax interstate commerce. It is true that it restricts the amount of the tax to be paid by the corporation to the distance passengers are carried through this State; but that does not relieve it of the objection we have stated, for the tax it assumes to levy is upon interstate commerce, and not upon the internal commerce of the State. A man on his way to the seaboard, who travels through Indiana, is carried in the course of the interstate commerce, and not in the course of domestic commerce, and a fare received from him is received in the matter of interstate commerce. A fare thus received no State can tax.

The complaint is bad and the judgment is affirmed.

UNITED STATES SUPREME COURT.

Joseph J. SMITH, *Plff. in Err.*,

v.

State of ALABAMA.

(From Lawyers' ed. U. S. Reports, Bk. 31.)

1. **The Statute of Alabama requiring locomotive engineers to be examined and licensed is not a regulation of interstate commerce, and does not therefore contravene the Constitution of the United States, and is valid.**
2. **Such statute is properly an Act of legislation, within the power reserved to the State to regulate the relative rights and duties of persons within its territory, intended to secure for the public safety of person and property.**
3. **Such statute, so far as it affects transactions of commerce among the States, does so indirectly, incidentally and remotely, and not so as to burden or impede them; and in the particulars in which it touches those transactions at all it is not in conflict with any enactment of Congress on the subject, nor contrary to any intention of Congress to be presumed from its silence.**
4. **Any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority.**
5. **The fee to be paid by an applicant for his examination is not a provision for**

raising revenue, but is only an equivalent for the service rendered, and is not a tax or burden upon transportation.

(Argued Jan. 4, 1888. Decided Jan. 30, 1888.)

IN ERROR to the Supreme Court of the State of Alabama, to review a judgment of that court affirming a judgment of the City Court of Mobile, in proceedings upon a writ of *habeas corpus* brought to discharge plaintiff from a commitment. *Judgment affirmed.*

Statement by Mr. Justice Matthews:

This is a writ of error bringing into review a judgment of the Supreme Court of the State of Alabama, affirming a judgment of the City Court of Mobile. The proceeding in the latter court was upon a writ of *habeas corpus* sued out by the plaintiff in error, seeking his discharge from the custody of the Sheriff of Mobile County, in that State, under a commitment by a justice of the peace upon the charge of handling, engineering, driving and operating an engine pulling a passenger train upon the Mobile and Ohio Railroad used in transporting passengers within the County of Mobile, and State of Alabama, without having obtained a license from the board of examiners appointed by the Governor of said State, in accordance with the provisions of an Act entitled "An Act to Require Locomotive Engineers in this State to be Examined and Licensed by a Board to be Appointed by the Governor for That Purpose," approved February 28, 1887, and after more than three months had elapsed from the date of appointment and qualification of said board. The plaintiff in error, upon complaint, was com-

mitted by the examining magistrate to the custody of the sheriff to answer an indictment for that alleged offense. The ground of the application for discharge upon the writ of *habeas corpus* in the City Court of Mobile was that the Act of the General Assembly of the State of Alabama, for the violation of which he was held, was in contravention of that clause of the Constitution of the United States which confers upon Congress power to regulate commerce among the States.

The facts, as they appeared upon the hearing upon the return of the writ, are as follows: the petitioner at the time of his arrest on July 16, 1887, within the County of Mobile, was a locomotive engineer in the service of the Mobile and Ohio Railroad Company, a corporation owning and operating a line of railroad forming a continuous and unbroken line of railway from Mobile, in the State of Alabama, to St. Louis, in the State of Missouri, and as such was then engaged in handling, operating, and driving a locomotive engine, attached to a regular passenger train on the Mobile and Ohio Railroad, within the county and State, consisting of a postal car carrying the United States mail to all parts of the Union, a southern express car containing perishable freight, money packages, and other valuable merchandise destined to Mississippi, Tennessee, Kentucky, and other States, passenger coaches, and a Pullman palace sleeping car occupied by passengers to be transported by said train to the States of Mississippi, Tennessee, and Kentucky. The petitioner's run, as a locomotive engineer in the service of the Mobile and Ohio Railroad Company, was regularly from the City of Mobile, in the State of Alabama to Corinth, in the State of Mississippi, sixty miles of which run was in the State of Alabama, and two hundred and sixty-five miles in the State of Mississippi; and he never handled and operated an engine pulling a train of cars whose destination was a point within the State of Alabama when said engine and train of cars started from a point within that State. His train started at Mobile, and ran through without change of coaches or cars on one continuous trip. His employment as locomotive engineer in the service of said company also required him to take charge of and handle, drive, and operate an engine drawing a passenger train which started from St. Louis, in the State of Missouri, destined to the City of Mobile, in the State of Alabama, said train being loaded with merchandise and occupied by passengers destined to Alabama and other States; this engine and train he took charge of at Corinth, in Mississippi, and handled, drove and operated the same along and over the Mobile and Ohio Railroad through the States of Mississippi and Alabama to the City of Mobile. It frequently happened that he was ordered by the proper officers of the said company to handle, drive and operate an engine drawing a passenger train loaded with merchandise, carrying the United States mail, and occupied by passengers from the City of Mobile, in Alabama, to the City of St. Louis, in Missouri, being allowed two lay-overs; said train passing through the States of Alabama, Mississippi, Tennessee, Illinois, and into the State of Missouri.

It was admitted that the petitioner had not obtained the license required by the Act of the INTER S.

General Assembly of the State of Alabama, February 28, 1887, and had no board of examiners, or any of such license, and that more than had elapsed since the appointment of said board of examiners having been duly appointed by the State under the provisions of the Statute of Alabama, which is thus drawn in question by the Constitution of the State and the validity of which has the judgment of the Supreme Court of Alabama now in review, is as follows:

"AN ACT to Require Locomotive Engineers in this State to be Examined and Licensed by a Board to be Appointed by the Governor for That Purpose.

"Section 1. *Be it enacted by the Legislature of Alabama*, That it shall be the duty of any railroad to employ an engineer or engine upon the main line of any railroad in this State which is used for the transportation of persons, passengers or freight, without first undergoing an examination and obtaining a license as hereinafter provided.

"Sec. 2. *Be it further enacted*, That any locomotive engineer shall be required to obtain an engine upon the main line of any railroad in this State used for the transportation of persons or freight, before he can be employed by the board of examiners hereinafter provided for in this Act, and be examined by two or more members of the board of examiners, and concerning the competency of operating a locomotive engine as an engineer.

"Sec. 3. *Be it further enacted*, That the examination of any engineer as required by this Act, if the applicant is found to be incompetent, shall, upon payment of five dollars, be repeated, and a license, which shall be signed by the board, and which shall be a condition of the fact that the said engineer has been examined as required by law and is competent to engage as an engineer on an engine in this State.

"Sec. 4. *Be it further enacted*, That the board of examiners to the examination provided for in this Act, it shall be the duty of the board of examiners, before issuing the license, to inquire into the habits of all engineers applying for a license, and in no case shall a license be issued to any person who is found to be of reckless habits.

"Sec. 5. *Be it further enacted*, That any engineer who, after procuring a license, shall be found guilty of an act of recklessness, carelessness or negligence while running an engine, by which the life of persons or property is endangered, or he is engaged in running an engine while under the influence of intoxication, shall forfeit all the rights and privileges of an engineer, and the board may determine after the expiration of the license to appear before the board and be heard into his act or conduct, and the duty of the board to determine

engineer is unfit or incompetent by reason of any act or habit unknown at the time of his examination, or acquired or formed subsequent to it; and if it is made to appear that he is unfit or incompetent from any cause, the board shall revoke or cancel his license, and shall notify every railroad in this State of the action of the board.

"Sec. 6. *Be it further enacted*, That it shall be the duty of the Governor, as soon after the approval of this Act as practicable, to appoint and commission five skilled mechanics, one of whom shall reside in Birmingham, one in Montgomery, one in Mobile, one in Selma, and one in Eufaula, who shall constitute a board of examiners for locomotive engineers. It shall be the duty of said board to examine locomotive engineers, issue licenses, hear causes of complaint, revoke or cancel licenses, and perform such duties as are provided in this Act; *Provided*, That any one of said board shall have authority to examine applicants for licenses, and if the applicant is found competent, to issue license to him; *Provided further*, That for every examination provided in this Act, the board or member thereof making the examination shall be entitled to five dollars, to be paid by the applicant.

"Sec. 7. *Be it further enacted*, That all engineers now employed in running or operating engines upon railroads in this State shall have three months after the appointment of the board herein provided within which to be examined and to obtain a license.

"Sec. 8. *Be it further enacted*, That any engineer violating the provisions of this Act shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty nor more than five hundred dollars, and may also be sentenced to hard labor for the county for not more than six months."

Messrs. E. L. Russell and B. B. Boone,
for plaintiff in error:

The power to regulate commerce with foreign Nations, and among the several States, is exclusively vested in Congress.

Gibbons v. Ogden, 22 U. S. 9 Wheat. 1 (6: 23); *Passenger Cases*, 48 U. S. 7 How. 283 (12: 702); *Mobile County v. Kimball*, 102 U. S. 691 (26: 288); *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196 (29: 158); *Fargo v. Michigan*, 121 U. S. 281 (30: 890); *W. U. Tel. Co. v. Pendleton*, 122 U. S. 347 (30: 1187).

The transportation of passengers and freight from one State to another is interstate commerce.

Gloucester Ferry Co. v. Pennsylvania, *supra*.

The nonexercise of the power in respect to the regulation of commerce between the States is equivalent to a declaration that such commerce shall be free and untrammelled.

Welton v. Missouri, 91 U. S. 275 (23: 847); *Brown v. Houston*, 114 U. S. 622 (29: 257); *Gloucester Ferry Co. v. Pennsylvania*, *supra*; *Pickard v. Pullman St. Car Co.* 117 U. S. 84 (29: 785); *Wabash, St. L. & P. R. Co. v. Illinois*, 118 U. S. 557 (30: 244); *Walling v. Michigan*, 116 U. S. 446 (29: 691); *Corson v. Maryland*, 120 U. S. 503 (30: 699); *Hall v. DeCuir*, 95 U. S. 485 (24: 547); *Hannibal & St. J. R. R. Co. v. Husen*, 95 U. S. 465 (24: 527).

Interstate commerce must be open and free to

all persons, unless restricted by congressional legislation.

Webber v. Virginia, 103 U. S. 844 (26: 565); *Henderson v. Mayor of N. Y.*, 92 U. S. 259 (23: 543); *People v. Compagnie Générale Transatlantique*, 107 U. S. 59 (27: 883).

A State will not be permitted to impose conditions which will amount to a regulation of interstate commerce.

Pensacola Tel. Co. v. W. U. Tel. Co. 96 U. S. 1 (24: 708); *Cooper Mfg. Co. v. Ferguson*, 118 U. S. 727 (28: 1137); *Case of State Freight Tax*, 82 U. S. 15 Wall. 232 (21: 146); *The Montello*, 78 U. S. 11 Wall. 411 (20: 191); *Passenger Cases*, *supra*; *Robbins v. Shelby County Taxing Dist.*, 120 U. S. 489 (30: 694); *Fargo v. Michigan*, 121 U. S. 247 (30: 895).

The Act of the State of Alabama requiring locomotive engineers, engaged solely in interstate transportation, to pay for and take out a license before engaging in the business of interstate commerce is unconstitutional and void.

LaFayette Ins. Co. v. French, 59 U. S. 18 How. 404 (15: 451); *Ducat v. Chicago*, 77 U. S. 10 Wall. 410-415 (19: 972, 973); *Home Ins. Co. v. Morse*, 87 U. S. 20 Wall. 445-456 (22: 365-369); *St. Clair v. Cox*, 106 U. S. 350-356 (27: 222-225); *Philadelphia Fire Asso. v. New York*, 119 U. S. 110-120 (30: 842-347); *Barron v. Burnside*, 121 U. S. 200 (30: 919); *Welton v. Missouri*, *supra*; *Cook v. Pennsylvania*, 97 U. S. 566 (24: 1015); *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196 (29: 158); *Fargo v. Michigan*, 121 U. S. 244 (30: 894); *Robbins v. Shelby County Taxing Dist.*, *Pickard v. Pullman St. Car Co.* and *Cooper Mfg. Co. v. Ferguson*, *supra*; *W. U. Tel. Co. v. Texas*, 105 U. S. 480 (26: 1067); *W. U. Tel. Co. v. Pendleton*, 122 U. S. 347 (30: 1187).

Mr. T. N. McClellan, for defendant in error:

The State is entrusted with the duty of creating and maintaining all those internal regulations which are necessary for the preservation of, and the prevention of injury to, the rights of others.

Tiedeman, Lim. Police Powers, § 201; *Mayor of N. Y. v. Miln*, 86 U. S. 11 Pet. 103 (9: 646); *Ohylung v. Freeman*, 92 U. S. 280 (23: 553).

A State may exercise its police power, even though in doing so it may incidentally operate upon commerce.

Munn v. Illinois, 94 U. S. 185 (24: 87); *Hannibal & St. J. R. R. Co. v. Husen*, 95 U. S. 478 (24: 531); *Patterson v. Kentucky*, 97 U. S. 504 (24: 1116); *Mobile County v. Kimball*, 102 U. S. 698 (26: 240); *Morgan's La. & T. R. R. & S. Co. v. Louisiana Health Bd.* 118 U. S. 455 (30: 237).

If there is no field for the exercise of police power, the state legislation will be held inoperative and void.

Patterson v. Kentucky and *Ohylung v. Freeman*, *supra*; *Hannibal & St. J. R. R. Co. v. Husen*, 95 U. S. 465 (24: 527).

The States, in the absence of congressional legislation, may enact laws to prevent the landing in their ports of the pauper and criminal classes.

Mayor of N. Y. v. Miln, 86 U. S. 11 Pet. 103 (9: 646); *Henderson v. Mayor of N. Y.* 92 U. S. 259 (23: 543); *People v. Compagnie Générale Transatlantique*, 107 U. S. 59 (27: 883).

Police regulations of this nature, incidentally

ing commerce, have been sustained by the courts.

McDonald v. State, 81 Ala. 283; *Chicago & N. W. R. Co. v. Fuller*, 84 U.S. 17 Wall. 560 (21: 710); *Mobile & O. R. R. Co. v. State*, 51 Miss. 187; *Commonwealth v. Eastern R. R. Co.* 103 Mass. 254; *People v. Boston & A. R. R. Co.* 70 N. Y. 569; *R. R. Comrs. v. Portland & O. Cent. R. R. Co.* 68 Me. 269; *Davidson v. State*, 4 Tex. App. 545; *Tiedeman, Lim. Police Powers*, § 194; *Cooley, Const. Lim.* 5th ed. 579, *et seq.*

State quarantine laws do not derive their validity from their adoption by Congress.

Mobile County v. Kimball, supra; *Cooley v. Board of Wardens*, 53 U.S. 12 How. 299 (18: 996); *Morgan's La. & T. R. R. & S. S. Co. v. Louisiana Health Bd. supra*.

This law is to be tested by its terms as they are, and not by what it might have contained.

Yick Wo. v. Hopkins, 118 U.S. 371 (80: 226).

Mr. Justice Matthews delivered the opinion of the court:

The grant of power to Congress in the Constitution to regulate commerce with foreign Nations and among the several States, it is conceded, is paramount over all legislative powers which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority. As the regulation of commerce may consist in abstaining from prescribing positive rules for its conduct, it cannot always be said that the power to regulate is dormant because not affirmatively exercised. And when it is manifest that Congress intends to leave that commerce, which is subject to its jurisdiction, free and unfettered by any positive regulations, such intention would be contravened by state laws operating as regulations of commerce as much as though these had been expressly forbidden. In such cases, the existence of the power to regulate commerce in Congress has been construed to be not only paramount but exclusive, so as to withdraw the subject as the basis of legislation altogether from the States.

There are many cases, however, where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations. If their operation and application in such cases regulate such commerce, so as to conflict with the regulation of the same subject by Congress, either as expressed in positive laws or implied from the absence of legislation, such legislation on the part of the State, to the extent of that conflict, must be regarded as annulled. To draw the line of interference between the two fields of jurisdiction, and to define and declare the instances of unconstitutional encroachment, is a judicial question often of much difficulty, the solution of which, perhaps, is not to be found in any single and exact rule of decision. Some general lines of discrimination, however, have been drawn in varied and numerous decisions of this court. It has been uniformly held, for example, that the States cannot by legislation

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place burdens upon comm Nations or among the sev upon an examination of the were rendered," as was said king, 98 U. S. 99, 102 [23:819 found that the legislation ad posed a tax upon some instr commerce, or exacted a licer engaged in commercial pur impediment to the free n public waters, or prescribed cordance with which comm articles or between particul quired to be conducted. In legislation condemned oper commerce, either by way of ness, license upon its pur channels, or conditions for c that case it was held that a giving a right of action to sentatives of the deceased, w caused by the wrongful a another, was applicable to tl life occasioned by a collisi boats navigating the Ohio R interstate commerce, and did regulation of commerce in Constitution of the United point the court said, p. 108 legislation of this kind, pre ities or duties of citizens o distinction as to pursuit or c to any valid objection bec persons engaged in foreign merce. Objection might, ety, be urged against legislat form in which contracts shal or property descend or be death of its owner, becau contracts or estates of perso commerce. In conferring regulation of commerce, it v to cut the States off from leg jects relating to the health their citizens, though the le directly affect the commerc Legislation, in a great var affect commerce and pers without constituting a regu the meaning of the Constitut may be said, generally, that State, not directed against c its regulations, but relating t and liabilities of citizens, a and remotely affecting the merce, is of obligatory fo within its territorial jurisdi land or water, or engaged in or interstate, or in any other case it was admitted, in tl court, that Congress might l power to regulate commerce, ity of parties for marine tor death of the persons inju the absence of such legislati statute of the State, giving st constituted no encroachmei merical power of Congress, also said, p. 103 [820], "I commercial power conferr tion is one without limitat legislation with respect to

foreign and interstate commerce, the persons engaged in it, and the instruments by which it is carried on."

The Statute of Indiana held to be valid in that case was an addition to and an amendment of the general body of the law previously existing, and in force, regulating the relative rights and duties of persons within the jurisdiction of the State, and operating upon them, even when engaged in the business of interstate commerce. This general system of law, subject to be modified by state legislation, whether consisting in that customary law which prevails as the common law of the land in each State, or as a code of positive provisions expressly enacted, is nevertheless the law of the State in which it is administered, and derives all its force and effect from the actual or presumed exercise of its legislative power. It does not emanate from the authority of the national government, nor flow from the exercise of any legislative powers conferred upon Congress by the Constitution of the United States; nor can it be implied as existing by force of any other legislative authority than that of the several States in which it is enforced. It has never been doubted but that this entire body and system of law, regulating in general the relative rights and duties of persons within the territorial jurisdiction of the State, without regard to their pursuits, is subject to change at the will of the Legislature of each State, except as that will may be restrained by the Constitution of the United States. It is to this law that persons within the scope of its operation look for the definition of their rights and for the redress of wrongs committed upon them. It is the source of all those relative obligations and duties enforceable by law, the observance of which the State undertakes to enforce as its public policy. And it was in contemplation of the continued existence of this separate system of law in each State that the Constitution of the United States was framed and ordained with such legislative powers as are therein granted expressly or by reasonable implication.

It is among these laws of the States, therefore, that we find provisions concerning the rights and duties of common carriers of persons and merchandise, whether by land or by water, and the means authorized by which injuries resulting from the failure properly to perform their obligations may be either prevented or redressed. A carrier exercising his calling within a particular State, although engaged in the business of interstate commerce, is answerable according to the laws of the State for acts of nonfeasance or misfeasance committed within its limits. If he fail to deliver goods to the proper consignee at the right time or place, he is liable in an action for damages under the laws of the State in its courts; or if by negligence in transportation he inflicts injury upon the person of a passenger brought from another State, a right of action for the consequent damage is given by the local law. In neither case would it be a defense that the law giving the right to redress was void as being an unconstitutional regulation of commerce by the State. This, indeed, was the very point decided in *Sherlock v. Alling*, above cited. If it is competent for the State thus to administer justice according to its own laws

for wrongs done and injuries suffered, when committed and inflicted by defendants while engaged in the business of interstate or foreign commerce, notwithstanding the power over those subjects conferred upon Congress by the Constitution, what is there to forbid the State, in the further exercise of the same jurisdiction, to prescribe the precautions and safeguards foreseen to be necessary and proper to prevent by anticipation those wrongs and injuries which, after they have been inflicted, it is admitted the State has power to redress and punish? If the State has power to secure to passengers conveyed by common carriers in their vehicles of transportation a right of action for the recovery of damages occasioned by the negligence of the carrier in not providing safe and suitable vehicles, or employés of sufficient skill and knowledge, or in not properly conducting and managing the act of transportation, why may not the State also impose, on behalf of the public, as additional means of prevention, penalties for the nonobservance of these precautions? Why may it not define and declare what particular things shall be done and observed by such a carrier, in order to insure the safety of the persons and things he carries, or of the persons and property of others liable to be affected by them?

It is that law which defines who are or may be common carriers, and prescribes the means they shall adopt for the safety of that which is committed to their charge, and the rules according to which, under varying conditions, their conduct shall be measured and judged, which declares that the common carrier owes the duty of care, and what shall constitute that negligence for which he shall be responsible.

But for the provisions on the subject found in the local law of each State, there would be no legal obligation on the part of the carrier, whether *ex contractu* or *ex delicto*, to those who employ him; or if the local law is held not to apply where the carrier is engaged in foreign or interstate commerce, then, in the absence of laws passed by Congress or presumed to be adopted by it, there can be no rule of decision based upon rights and duties supposed to grow out of the relation of such carriers to the public or to individuals. In other words, if the law of the particular State does not govern that relation, and prescribe the rights and duties which it implies, then there is and can be no law that does until Congress expressly supplies it, or is held by implication to have supplied it, in cases within its jurisdiction over foreign and interstate commerce. The failure of Congress to legislate can be construed only as an intention not to disturb what already exists, and is the mode by which it adopts, for cases within the scope of its power, the rule of the state law, which until displaced covers the subject.

There is no common law of the United States, in the sense of a national customary law, distinct from the common law of England as adopted by the several States each for itself, applied as its local law, and subject to such alteration as may be provided by its own statutes. *Wheaton v. Peters*, 83 U. S. 8 Pet. 591 [8:1055]. A determination in a given case of what that law is may be different in a court of the United States from that which prevails in affect-

the judicial tribunals of a particular State. This arises from the circumstance that the Courts of the United States, in cases within their jurisdiction, where they are called upon to administer the law of the State in which they sit or by which the transaction is governed, exercise an independent though concurrent jurisdiction, and are required to ascertain and declare the law according to their own judgment. This is illustrated by the case of *N. Y. Cent. E. R. Co. v. Lockwood*, 84 U. S. 17 Wall. 357 [21:627] where the common law prevailing in the State of New York, in reference to the liability of common carriers for negligence, received a different interpretation from that placed upon it by the judicial tribunals of the State; but the law as applied was none the less the law of that State.

In cases, also, arising under the *lex mercatoria*, or law merchant, by reason of its international character, this court has held itself less bound by the decisions of the state courts than in other cases. *Swift v. Tyson*, 41 U. S. 16 Pet. 1 [108: 65]; *Carpenter v. Providence Washington Ins. Co.* 41 U. S. 16 Pet. 495 [10:1044]; *Oates v. First Nat. Bank*, 100 U. S. 289 [25: 580]; *Brooklyn, C. & N. R. R. Co. v. National Bank of the Republic*, 102 U. S. 14 [26:61].

There is, however, one clear exception to the statement that there is no national common law. The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history. The code of constitutional and statutory construction which, therefore, is gradually formed by the judgments of this court, in the application of the Constitution and the laws and treaties made in pursuance thereof, has for its basis so much of the common law as may be implied in the subject, and constitutes a common law resting on national authority. *Moore v. U. S.* 91 U. S. 270 [23:346].

The Statute of Alabama, the validity of which is drawn in question in this case, does not fall within this exception. It would, indeed, be competent for Congress to legislate upon its subject matter, and to prescribe the qualifications of locomotive engineers for employment by carriers engaged in foreign or interstate commerce. It has legislated upon a similar subject by prescribing the qualifications for pilots and engineers of steam vessels engaged in the coasting trade and navigating the inland waters of the United States while engaged in commerce among the States (Rev. Stat. tit. 53, §§ 4399-4500); and such legislation undoubtedly is justified, on the ground that it is incident to the power to regulate interstate commerce.

In *Sinnot v. Davenport*, 63 U. S. 22 How. 227 [16:243], this court adjudged a law of the State of Alabama to be unconstitutional—so far as it applied to vessels engaged in interstate commerce—which prohibited any steamboat from navigating any of the waters of the State without complying with certain prescribed conditions, inconsistent with the Act of Congress of February 17, 1793, in reference to the enrollment and licensing of vessels engaged in the coasting trade. In that case it was said, p. 243 [247]: "The whole commercial marine

of the country is placed by under the regulation of Congress, passed by that body in the regulation and trade, whether for is therefore but the exercise power. When, therefore, a State prescribes a subject repugnant to and in regulation of Congress, the way, and this without regard power whence the State Legislature enactment."

The power might with exercised in prescribing the locomotive engineers employed companies engaged in the transportation of passengers and goods among that case would supersede all provisions on the same subject authority.

But the provisions on the in the Statute of Alabama are not regulations of interest is a misnomer to call them in themselves, they are part the local law which, as we properly governs the relation of passengers and merchant who employ them, which until they come in conflict with the provisions of Congress in the exercise of commerce, and which, according to the evident intention, remain as the law governing the charge of their obligations in the purely internal commerce in commerce among the States.

No objection to the statement to the free transaction of the States, can be found in provisions. It requires that an engineer shall have a license limit the number of persons licensed nor prescribe any as to the grant. The fee of \$ applicant for his examination for raising revenue, but is equivalent for the service rendered be considered in the light of on transportation. The applicant before obtaining his license, of examiners in reference to practical mechanics, his skill in locomotive engine, and his grade as an engineer; and the basis the license is required to inquire into character and habits, and to which he be found to be reckless or

Certainly it is the duty of an engineer engaged in the domestic State or in interstate commerce to furnish itself with locomotive precise description, competent, skilled and sober; and if lessness in the selection of a qualified, injury or loss is of no matter in what business possible according to the local law in such cases, in the national legislation.

The statute in question furnishes any engineer licensed under his license if at any time found

of examiners, of an act of recklessness, carelessness or negligence, while running an engine, by which damage to person or property is done, or who shall immediately preceding or during the time he is engaged in running an engine be in a state of intoxication; and the board is authorized to revoke and cancel the license whenever they shall be satisfied of the unfitness or incompetency of the engineer by reason of any act or habit unknown at the time of his examination, or acquired or formed subsequent to it. The eighth section of the Act declares that any engineer violating its provisions shall be guilty of a misdemeanor, and upon conviction inflicts upon him the punishment of a fine not less than \$50 nor more than \$500, and also that he may be sentenced to hard labor for the county for not more than six months.

If a locomotive engineer, running an engine, as was the petitioner in this case, in the business of transporting passengers and goods between Alabama and other States, should, while in that State, by mere negligence and recklessness in operating his engine, cause the death of one or more passengers carried, he might certainly be held to answer to the criminal laws of the State if they declare the offense in such a case to be manslaughter. The power to punish for the offense after it is committed certainly includes the power to provide penalties directed, as are those in the statute in question, against those acts of omission which, if performed, would prevent the commission of the larger offense.

It is to be remembered that railroads are not natural highways of trade and commerce. They are artificial creations; they are constructed within the territorial limits of a State, and by the authority of its laws, and ordinarily by means of corporations exercising their franchises by limited grants from the State. The places where they may be located, and the plans according to which they must be constructed, are prescribed by the legislation of the State. Their operation requires the use of instruments and agencies attended with special risks and dangers, the proper management of which involves peculiar knowledge, training, skill, and care. The safety of the public in person and property demands the use of specific guards and

precautions. The width of the gauge, the character of the grades, the mode of crossing streams by culverts and bridges, the kind of cuts and tunnels, the mode of crossing other highways, the placing of watchmen and signals at points of special danger, the rate of speed at stations and through villages, towns, and cities, are all matters naturally and peculiarly within the provisions of that law from the authority of which these modern highways of commerce derive their existence. The rules prescribed for their construction and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the limits of the local law. They are not *per se* regulations of commerce; it is only when they operate as such in the circumstances of their application, and conflict with the expressed or presumed will of Congress exerted on the same subject, that they can be required to give way to the supreme authority of the Constitution.

In conclusion we find, therefore: first, that the Statute of Alabama, the validity of which is under consideration, is not, considered in its own nature, a regulation of interstate commerce, even when applied as in the case under consideration; secondly, that it is properly an act of legislation within the scope of the admitted power reserved to the States to regulate the relative rights and duties of persons being and acting within its territorial jurisdiction, intended to operate so as to secure for the public safety of person and property; and, thirdly, that, so far as it affects transactions of commerce among the States, it does so only indirectly, incidentally, and remotely, and not so as to burden or impede them; and, in the particulars in which it touches those transactions at all, it is not in conflict with any express enactment of Congress on the subject, nor contrary to any intention of Congress to be presumed from its silence.

For these reasons, we hold this statute, so far as it is alleged to contravene the Constitution of the United States, to be a valid law.

The judgment of the Supreme Court of Alabama is, therefore, affirmed.

Mr. Justice Bradley dissented.

THE INTERSTATE COMMERCE COMMISSION.

John Henry NICOLAI, Trading as the Eagle Oil Works,

v.

PENNSYLVANIA R. R. CO., Pennsylvania Co., and Pittsburgh, Cincinnati & St. Louis R. Co.

(No. 100.)

John W. S. BRADY and George T. Parkhurst, Copartners under the Firm Name of J. Parkhurst, Jr. & Co.,

v.

SAME.

(No. 101.)

THE original complaints in these actions, alleging excessive rates on crude petroleum oil, filed November 28, 1887 (see *ante*, 649), were against the Pennsylvania Railroad Com-

pany only, and the cases were heard and submitted on January 28, 1888.

On February 18, 1888, the Commission issued an order giving leave to the respective complainants to amend the complaints by making the Pennsylvania Company a party defendant. On February 21, 1888, a like order was issued, giving leave to amend the complaints by making the Pittsburgh, Cincinnati & St. Louis Railway Company a party defendant.

Amended complaints, containing such additional parties, were filed March 17, 1888, and the new defendants served with copies thereof.

On April 3, 1888, the new defendants filed answers, of which an abstract is now given.

Mr. John Henry Keene, for complainants.

Mr. James A. Logan, for defendant the Pennsylvania Railroad Company.

Mr. J. T. Brooks, for defendants the Pennsylvania Company and the Pittsburgh, Cincinnati & St. Louis Railway Company.

ABSTRACT OF ANSWERS.

The Pennsylvania Company denies each and every averment in said complaints contained so far as relates to it.

The Pittsburgh, Cincinnati & St. Louis Railway Company denies generally the allegations of the complaints, and says that during the period specified it transported no oil whatever in the direction of Baltimore from Washington, or made any engagement to carry such oil, other than to carry the same upon the Charters Railway, controlled by it, between Washington, Pennsylvania, and Mansfield, Pennsylvania, and on its own line between Mansfield and Pittsburgh, Pennsylvania; that all it had to do with such transportations was to carry such oil from Washington to Pittsburgh; that its uniform rate on all so transported by it from Washington to Pittsburgh was fifteen cents per barrel to all parties, whether the same was delivered to owners at Pittsburgh or to common carriers for transportation eastward of Pittsburgh; and that said rate of fifteen cents so charged was and is a reasonable rate for such service.

Reuben L. **RICE et al.**, Partners as Rice, Robinson & Witherop,

WESTERN NEW YORK & PENNSYLVANIA R. CO. and **G. Clinton Gardner**, Receiver of the Buffalo, New York & Philadelphia R. Co.

(No 119.)

ABSTRACT of answers to additional complaint filed April 3, 1888. See original complaint *ante*, 717; additional complaint, *ante*, 792; answers to original, complaint *ante*, 795.

Mr. George Zabriskie, for defendants.

The defendant, The Western New York & Pennsylvania Railroad Company, answering the additional complaint filed herein, says that the same is not filed by authority of law or by permission of the Commission, that it is irregular and the Commission has no jurisdiction to entertain said additional complaint.

Further answering and saving all objection, the defendant denies that it, by way of retaliation or revenge, raised the rate of March 1, 1888, for carrying oil in car loads from Titusville, Pennsylvania, to Buffalo, New York, from thirty-four to thirty-six cents per barrel, but admits that before the petition herein was filed or served the rates on its road on fourth, fifth, and sixth classes were raised and that refined petroleum is in its fifth class, and as such was included in such advance, and defendant denies that such advance was intended to discriminate between oil shipments for Buffalo and those for points more distant or against petitioners, or against Buffalo.

Defendant denies the allegation in paragraph 8 of said additional complaint.

The defendant, G. Clinton Gardner, Receiver of the Buffalo, New York & Philadelphia Railroad Company, denies the jurisdiction.

tion of the Commission to hear said additional complaint and says he is a stranger to all the matters and things alleged therein.

WORCESTER EXCURSION CAR CO.

PENNSYLVANIA R. CO.

(No. 129.)

COMPLAINT filed April 3, 1888, charging unjust discrimination in hauling cars of the Pullman Palace Car Company and in refusing to haul cars belonging to the complainant company.

1. The complainant is a corporation legally organized under the laws of the Commonwealth of Massachusetts "For the purpose of building, constructing, furnishing, and keeping in repair cars to be run upon railroads for the use and pleasure of hunting parties and excursions." It has its office in the City of Worcester, in said Commonwealth of Massachusetts.

2. The defendant is a railroad corporation engaged in the transportation of passengers and property by railroad from one State to another owning or operating railroads or lines of railroads from one State to another, and subject to the provisions of chapter 104 of the Acts of Congress for the year 1887, entitled, "An Act to Regulate Commerce," and known as the Interstate Commerce Act.

3. It operates, among others, lines of railroad between Chicago, in the State of Illinois, and Philadelphia, in the State of Pennsylvania, and New York, in the State of New York, and between Pittsburgh, in the State of Pennsylvania, and New York, in the State of New York.

4. The complainant owns cars constructed and fitted up as set forth in its charter aforesaid, for which there is a constant use and demand. Said cars are of proper construction to be hauled over the defendant's lines of railroad safely and conveniently, and the complainant has always been ready and willing, and has offered to pay all regular and proper charges for such service.

5. The complainant has requested the defendant to draw the complainant's cars over the defendant's railroads from Chicago, aforesaid, to Philadelphia, aforesaid, and New York City, aforesaid, and from Pittsburgh, aforesaid, to New York City, and has offered to pay the regular and proper charge for said service, but the defendant refused to haul the complainant's cars as above requested, to the great inconvenience and damage of the complainant.

6. Other corporations own and operate cars for purposes of passenger and property transportation from State to State, which, like the complainant, do not own and operate railroads, but whose cars are hauled by railroad corporations. Among said corporations is the Pullman Palace Car Company.

7. The complainant says that the defendant hauls the cars of the Pullman Palace Car Company, similar to the complainant's cars, over its railroads for the same purposes for which the complainant requested it to draw its cars and upon terms with which the complainant was willing and offered to comply, and the de-

fendant refused to haul the complainant's cars for the reason that it was under contract with the Pullman Palace Car Company to haul its cars exclusively for the purposes for which the complainant owns and operates its cars.

8. The complainant says that the defendant has given an undue and unreasonable discrimination and advantage in favor of the said Pullman Palace Car Company, and has subjected the complainant to an undue and unreasonable prejudice and disadvantage, to its great damage and loss.

The complainant prays:

1. That it might be relieved from the unjust discrimination above set forth;

2. That the Pennsylvania Railroad Company may be enjoined and restrained from receiving and hauling the cars of the Pullman Palace Car Company or any other company exclusively, or upon more favorable terms than it will receive and haul the cars of the complainant;

3. That the Pennsylvania Railroad Company may be ordered to receive and haul the cars of the complainant upon the same terms and conditions as it receives and hauls the cars of the Pullman Palace Car Company or of any other similar company;

4. And for such other and further relief as to your honorable board shall seem just and proper.

Worcester Excursion Car Company,
By Rice, King & Rice, its attorneys

William P. REND

v.

CHICAGO & NORTHWESTERN R. Co.

(No. 127.)

A BSTRACT of Answer filed April 9, 1888.
See complaint, *ante*, 798.

Mr. W. C. Goudy, attorney for defendant.

The defendant admits, substantially, the introductory allegations of the complaint and says that there are coal mines in addition to those at Wilmington and Spring Valley at Streator, Minonk, Lacon, Wyoming, Peoria, Farmington, Canton, Vermont, Monmouth and Burlington and other points north of a line drawn through said points; that the coal mined at such places is carried to the north and northwest upon difficult lines of road, to points in Wisconsin, Minnesota and Dakota, without shipment through Chicago, except the so-called Wilmington mines, from which the most direct route is through the City of Chicago.

That the railways carrying said coal agreed upon the rates to be charged from said points, making the same in a group and describing the territory as follows: "On and north or west of the line drawn along the Chicago & Alton Railroad from Chicago to Dwight; thence to Streator, thence to Lacon, and north and west of the line from Lacon to Peoria by the Chicago, Rock Island & Pacific; thence along the Central Iowa Railway from Peoria to Farmington; and thence by the Chicago, Burlington & Quincy Railroad through Canton, Vermont, Bushnell and Monmouth, Illinois, to Burlington, Iowa, including points in

such boundary line, and also including on and north of the line of the Toledo, Peoria & Western from Canton, Illinois, through Bushnell to Iowa Junction, and also including Minonk on the Illinois Central Railroad and it was agreed that the tariff from each of said points should be the same to the several points of destination. Defendant says that the establishment of said group is proper, under the Law, and the rates are entirely reasonable.

Defendant also says it has made no joint tariffs with railways running east from Chicago into Ohio and Pennsylvania.

OHIO COAL EXCHANGE

v.

WISCONSIN CENTRAL R. CO.

(No. 126.)

A BSTRACT of Answer filed April 6, 1888.
See complaint, *ante*, 798.

Defendant says it has not made, or knowingly been a party to, any through rates or divisions with the Chicago & Eastern Illinois R. Co. on Indiana block coal, and that its only rates on said coal are the full local tariff rates from Chicago.

J. W. SLAPPEY *et al.* (The Marshallville
Cider & Vinegar Co.)

v.

CENTRAL R. R. OF GEORGIA, Brunswick
& Western R. R. Co., Savannah, Florida &
Western R. R. Co., and South Florida R.
R. Co.

(No. 104.)

A BSTRACT of Answers to complaint given
ante, 675.

Messrs. Lawton & Cunningham, for defendants.

The answer of the Central Railroad of Georgia, filed March 16, 1888, admits that the rate from Marshallville, Georgia, to Tampa, Florida, on said class of freight was \$1 per 100 pounds, but that the same, without reference to the petition herein, was reduced to eighty-six cents per 100 pounds, by reason of the action of the Florida Railroad Commission, and denies that the rate from Macon, Georgia, to Tampa was ever fifty-two cents per 100 pounds on said class of freight, while the above rate of \$1 per 100 pounds from Marshallville was in force, but that the same was \$1 per 100 pounds, and when the above reduction was made the same rate of eighty-six cents per 100 pounds went into effect from Macon, Georgia.

The answer of the Brunswick & Western R. R. Co. filed March 30, 1888, disclaims any knowledge of the transportation of the property in question and denies any participation therein.

The answer of the Savannah, Florida & Western R. R. Co. filed April 5, 1888, says that the Central Railroad of Georgia is the initial road in the transportation of said freight; that it did not make the rate of \$1 per 100 pounds complained of; that when notice of said rate was received by it the same was referred back to the initial company and the rate corrected to eighty-six cents per 100 pounds was there-

apolis is just as free of transportation charges as is property delivered to defendants by Milwaukee shippers.

Complainant is notified that said discrimination will be discontinued February 22, 1888; but it is continued in the mean time, and complainant therefore petitions that defendants be adjudged guilty of unjust discrimination against Milwaukee in violation of the Act to Regulate Commerce.

John D. HECK and L. J. A. Petree, composing firm of Heck & Petree,

v.

EAST TENNESSEE, VIRGINIA & GEORGIA R. Co.; Knoxville & Ohio R. R. Co.; Richmond & Danville R. R. Co.; Richmond & West Point Terminal & Warehouse Co.; Coal Creek & New River R. R. Co.

(No. 78.)

*A railroad chartered by the State of Tennessee owns a short road wholly in that State, but never owned any rolling stock nor operated its road. The road was used and operated as a means of conducting interstate traffic in coal by companies owning connecting interstate roads. *Held,*

1. That the short road is one of the facilities and instrumentalities of interstate commerce, and, as such, is subject to the provisions of the Act to Regulate Commerce.
2. In respect to such traffic the duties of such a road to the public are the same, without respect to ownership, corporate control, the authority or means of its construction.
3. As one of the "instrumentalities of shipment or carriage" it must be accessible to all interstate shippers on equal and reasonable terms. The public cannot be deprived of this right by the separate or joint action of defendants.
4. The traffic in question is interstate traffic. The companies conducting it use this short road as a facility to such traffic. They cannot be permitted to use it for purposes of discrimination between mine owners on its line.
5. The claim for pecuniary damages presents a case at common law, in which defendants are entitled to a jury trial.

(Heard Dec. 9, 1887; Decided Feb. 15, 1888.)

COMPLAINT alleging discrimination in furnishing cars for transportation of coal, and demanding pecuniary damages. See complaint, ante, 498.

Messrs. Webb & McClung, and S. F. Phillips, for petitioner.

Messrs. W. M. Baxter and E. M. Johnson, for defendants, East Tennessee, Virginia & Georgia R. Co., and Knoxville & Ohio R. R. Co.

Mr. J. T. Worthington, for defendants, Richmond & Danville R. R. Co., and Rich-

mond & West Point Terminal & Warehouse Co.

Mr. E. R. Chapman, for defendant, Coal Creek & New River R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

Morrison, Commissioner:

The complaint against the defendants is that on April 15, 1887, and continually since then, they refused to transport coal which up to that time they had transported for the complainants from their mine in the Coal Creek coal field, in the State of Tennessee, to their customers in North Carolina and other States; that while so refusing to carry complainants' coal, the defendants carried and continued to carry coal from said coal field since April 15, 1887, as they did before, for other miners and shippers; that in respect of the traffic in coal the defendants unjustly discriminate against the complainants and refuse to afford them the reasonable and equal advantages for forwarding coal afforded to others. Complainants ask that their rights as shippers of coal may be secured to them by order of this Commission, and that large pecuniary damages may be awarded to them which they claim for their alleged losses by nonshipment of their coal.

The Coal Creek & New River Railroad Company, answering separately, denies that it discriminates unjustly or at all against the complainants, denies that it refused to afford them any facilities afforded to other shippers of coal on the line of defendant's road; and denies that it refused the use of its track to the plaintiffs by the stoppage of the running thereon of engines and cars of other companies, except by general refusal which applied to any and all use of its road or track. It alleges that any use of said track subsequent to such general refusal has been under an arrangement open alike to all shippers, and that no application has been made by complainants for any arrangement.

The East Tennessee, Virginia & Georgia Railway Company and the Knoxville & Ohio Railroad Company, two of the defendant companies, jointly answering, deny the existence of any facts which gives the right to or makes it the duty of said last named company to operate the road of said Coal Creek & New River Company as against its consent and express orders; deny that they or either of them have ever managed or controlled said Coal Creek & New River Road or run cars or engines over it at any time, except by its acquiescence and authority. They aver that subject to such acquiescence the Knoxville & Ohio Railroad Company heretofore ran its engines and cars, and engines and cars under its control, over the line of said Coal Creek & New River Road to accommodate coal miners on the line thereof, for which service a switching charge was made; that such service was discontinued on all of its road by order of said Coal Creek & New River Company and with its authority and acquiescence restored on so much of its road as extends to the mine of the Excelsior Coal Company, and within one fourth mile of complainants' mine. And except as above stated these defendants deny every other allegation of complainants and deny jurisdiction

*Head notes by COOLLEY, *Chairman*.

INTER S.

have been accustomed to stop and consider these questions. If presented, they have been brushed aside, in the race for business which absorbs the entire community. A common carrier should be as sensitive to suspicion of unfairness as a register of deeds, clerk of a court, or any other public servant. The purchase of his services at a stated price, equal to all, should be a matter of course with every shipper, without any more thought of obtaining personal advantage in the transaction than of counterfeiting the coin that pays the bill.

The re-establishment of a correct public sentiment upon this most important matter must be effected by the enactment and enforcement of just laws. In the Act to Regulate Commerce the country is brought face to face with certain principles governing transportation by common carriers which had been almost totally overlooked. One is that their service is a public service, and that common carriers have no right to conduct their business as private enterprises are sometimes conducted, giving favors for the hope of gain and seeking to control business by discounts and concessions. Such methods, possibly legitimate in the counting room of the merchant or the manufacturer, must be rigidly excluded from the office of the common carrier. The very name "common" carrier implies equality; it signifies common to all; the servant of the public. The adoption of the vocation carries with it the assurance imposed by one of the elementary principles of the common law, that every customer shall be served alike; and it is rewarded with privileges and securities which many other vocations do not possess.

On the other hand the common carrier is at least entitled to the same fair dealing and honesty on the part of its customers which are expected between man and man in the ordinary commercial transactions of life; and should not be called upon for the exercise of an extraordinary degree of suspicion or required personally to revise every representation made by shippers. The business of the world is founded upon mutual trust and confidence. When once the true relations of the common carrier to the public are generally recognized, and their importance appreciated, the same honorable course of dealing which American merchants and manufacturers are justly expected to pursue between themselves and with strangers will be applied unhesitatingly in respect to the subject of transportation.

The prohibitions of the Act to Regulate Commerce are fortunately not limited to the methods of unjust discrimination by special rate, rebate, or drawback, but contain the added words "or other device." The attention of the Commission has been recently attracted in various ways by allegations that the device known as "underbilling" is being largely employed by shippers and carriers as a method by which a less compensation is paid by one person than by another for "a like and contemporaneous service." It became the duty of the Commission to investigate the subject, and such an investigation has accordingly been had. Time was not available for such a full examination of the question in all parts of the country as might have been desired, but the taking of testimony and the collection of facts

was carried sufficiently far to lay open the subject as it is found to exist in certain important localities, from which generalizations can be safely made. A statement of the matters thus disclosed, in respect to a part only of the traffic concerning which detailed evidence is in the hands of the Commission, is given below, with some explanation of the difficulties that surround the situation and some suggestions for the correction of the evils that exist.

There is no doubt whatever, and the Commission finds the fact to be, that an immense amount of traffic has been carried by the railroads of the country during the last six months, and to some extent during the entire period since the passage of the Act to Regulate Commerce, the tonnage or weight of which was underbilled. The shipper in such cases pays freight upon a less quantity than is actually carried, the result of which is that upon the gross amount he pays a reduced rate; in other words, a less sum than is charged to other shippers for a like service.

This has not been confined to any particular road or group of roads, but has been very generally prevalent in various parts of the United States, and even upon lines which at the same time were protesting most emphatically their absolute conformity to the requirements of the law. The practice is unequivocally condemned by every railroad official and traffic manager whom the Commission has approached upon the subject; and they have been very many, including the officers of most of the leading lines in the Central and Western States; but at the same time the fact cannot be denied that the same lines have admitted traffic upon which the billing was short, and that usually they have known, or easily might have known, that such was the case.

It should, however, be added that measures have been voluntarily adopted by many of the carriers, designed to prevent future underbilling; inspection of freight has been greatly extended; methods of receiving freight in some cases have been changed, and although the practice is by no means at an end, considerable progress has already been made in the direction of putting it down.

A difficulty in dealing with this device under the existing provisions of law is found in the fact that in each particular case the carriers assert that they did not know of its existence; that they were imposed upon by the shipper or were unwittingly led into error by the fraud or ignorance of an agent; so that while these irregular shipments may have been overlooked or winked at, and in many cases, perhaps, suggested, by the responsible officers of the companies, yet proof of this, to the satisfaction of a jury in any given case, might be difficult to make. Nevertheless, in every case a degree of negligence is apparent which is not easily explainable. Various excuses are also offered: the appliances and assistants necessary for ascertaining weights and quantities are deficient in many places; the exaction of just tonnage by one road might send business to a less scrupulous competitor; the traffic is received from connections where means or disposition to be exact may not exist. The general fact is apparent that railroad managers are reluctant to move individually in putting an end to dis-

it was always treated as a part of the continuous line, and one of the instrumentalities by which the coal from this mine in Tennessee was expected to reach and did reach the markets in the other States.

If this road is one of the means by which commerce in coal is carried on between Tennessee and other States as an instrumentality of interstate commerce, its duties to the public under the Act to Regulate Commerce in respect to such traffic are the same, without respect to its ownership, corporate control, the authority or means of its construction.

By the first section of the Act to Regulate Commerce the term "railroad" is made to include "all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease;" and the term transportation is made to include "all instrumentalities of shipment or carriage."

This road has been operated by the Knoxville & Ohio Company from the time it was built. This has been done, as alleged in defendants' answer, by agreement or contract, since April 14, 1887. Presumably it was so done *before*. This would seem to bring this road within the reason of the provisions of the Act to Regulate Commerce relating to lines for continuous carriage from one State or Territory to another State or Territory, and make it, in connection with the roads of the other defendants, a part of such a line.

Yet, in the view we take of this case, the relief asked by complainants is not dependent upon this Coal Creek & New River Company being a common carrier, or upon its road being a part of a line for continuous carriage to other States.

Whatever else this road may or may not be, it is one of the means and facilities for shipment to and over lines from complainants' and other mines in Tennessee to market in other States. It is one of the "instrumentalities of shipment or carriage" included in the term transportation, to which the Act to Regulate Commerce applies. As such it must be open and accessible alike to all shippers, and on equal and reasonable terms. This is a right belonging to the public, of which it cannot be deprived by the separate act or control of any one of the defendants, nor by the act of any or all of them combined.

The other defendant companies insist that they have no control over the Coal Creek & New River Company, and deny that they have any legal right to operate or owe any duty to the public which require them, or either of them, to operate its road without the consent and against the express orders of said Coal Creek & New River Company. Neither denying nor admitting their legal obligation to do so they aver readiness to carry coal over said road with the acquiescence of the said New River Company, which acquiescence they claim to have had in all the carrying done over its road. This road is included in the term "railroad" or the term "transportation," or both, as defined in the Act to Regulate Commerce; when the defendants are permitted to make use of and to control it for their own purposes they have no legal right in doing so

to refuse impartial accommodation. That such refusal would subject it to responsibility to the state laws is not questioned, and whether the company as owner of the road would be subject to the jurisdiction of this Commission is therefore not important. The East Tennessee, Virginia & Georgia Company operating its own line and the line of the Knoxville & Ohio Company, is an interstate road, and the traffic in question is interstate traffic; this short road is made use of by the other roads as a mere facility to such traffic. They cannot be permitted to make use of it, or any part of it, for the purposes of discrimination, as between the mine owners upon it. The attempt to shelter themselves behind the action of the owners of the short road is but a pretense. The interstate roads control the other, and they cannot be allowed to abuse that control to oppress the public or any part of it.

The "Y" switch to the coal field did not and does not extend as far up as the mine of complainants on the coal lands owned by the lessor, separately or jointly, with the defendants, Knoxville & Ohio Company. To reach these lands their owners, Heck and the Knoxville & Ohio Railroad Company, built the New River Road. Previous to October, 1886, Heck was President of the New River Company. The Knoxville & Ohio Company operated the Coal Creek & New River Company's Road until April 15, 1887, for all shippers, and since then for all except complainants. Since it was built, new mines have been opened and investments made for the development of mines, in view of the transportation which this road afforded and of which it is a necessary part. It is neither good faith nor legally right to deny its use to the sole purpose of its construction.

The misunderstanding and disagreement between Heck and the stockholders or others interested in the defendants' roads has furnished a pretext for, but does not justify the illegal acts of defendants in refusing to transport the coal of complainants, which was done to bring Heck to terms. The public, of which the complaining firm is a part, cannot wait for its rights while stockholders or persons interested in the defendant companies adjust their accounts or settle their differences.

The complainants and other miners on the line of said Coal Creek & New River Road are entitled to have their coal carried over it to its connecting road and thence to destination.

The claim for pecuniary damages made by complainants was not entertained on the hearing, because it presents a case at common law in which the defendants are entitled to a jury trial.

It is, therefore, found that the conduct of the defendants in failing and refusing to receive coal for interstate transportation when tendered by complainants, was in contravention of the provisions of the Act to Regulate Commerce; and it is ordered that said defendants and each of them forthwith cease and desist from such failure and refusal, and henceforward receive and forward coal when so offered for transportation on any part of the line of said Coal Creek & New River Railroad upon just, reasonable, and equal terms.

In examining the schedules in detail a large number of grain shipments from Toledo were observed, of which only a few are given above. In all some fifty car loads of grain were shipped from Toledo to various points, of which the average underbilling was over 12,000 pounds per car, considerably more than 25 per cent of the actual weight being thrown off. At first it seemed incredible that such a series of transactions could have occurred without the connivance of the responsible officers of the railroad company. Investigation showed that it is not impossible that the carrier was wholly innocent, as it stoutly claims to be. The shipments, or many of them, were made by Messrs. Southworth, Paddock & Company, of Toledo, from an elevator known as the Narrow Gauge Elevator, situated at the junction of the Toledo, St. Louis & Kansas City Railroad with the Canada Southern. The business of this firm was solicited by the agent of the Michigan Central (operating the Canada Southern). The margin under which grain could be profitably handled by the Toledo operators was very close. Shipments were presently begun in which the cars were loaded from the elevator, and closed; the weights furnished by the shipper were accepted by the carrier as correct for billing purposes. The elevator in question was not a "public" or "regular" elevator, in the strict sense, signifying responsible supervision and exactitude officially ascertained, but it has long been customary for carriers to accept its weight, which had been previously believed to be accurate. When the underbilling was discovered by the inspectors at Buffalo a demand was made upon the shippers, who paid the amount required as freight upon the total weights reported. The agent of the railroad company asseverates that he made no suggestion that the grain might be underbilled, and had no suspicion that such was the case. The shippers, however, seem in some way to have obtained an impression that the weights given by them would be accepted without correction.

The above facts have been stated as an example of the way which in such business can be done on a large scale with a possibility of ignorance on the part of the carrier. It should be further stated that after the disclosure of the facts was made, the Michigan Central commenced at once to weigh all car load lots originating at Toledo upon its own track scales; and also that indications point strongly to the fact that the parties above named were not the only Toledo shippers who have habitually underbilled grain, nor was the above named line the only carrier which accepted such underbilling.

It is apparent that the party which directly reaps the benefit of a fraud like that above described is the shipper. The grain is sold at a certain price "laid down." The purchaser pays for the total grain shipped, as per invoice, deducting the freight actually paid, as per way bill. The carrier is not benefited by the transaction, except perhaps indirectly in receiving a consignment of freight which might have sought some other route or which the party in question might have been unable to profitably handle at all at the tariff rates applied to honest billing.

West bound freight from eastern cities is received by the carriers under circumstances

which afford opportunity for fraud in a manner apparently unavoidable. For example, at New York City the various trunk lines have receiving stations upon the wharves in the lower part of the city and in the city itself. Merchandise is delivered at these stations in an almost constant stream throughout the day. The space available is necessarily somewhat contracted and the accumulation of freight must be prevented. The employees of the carriers receive the contents of each dray delivered to them in packages securely boxed and hooped, and at once truck the boxes and bales to the weighing apparatus, from which it is immediately distributed, according to destination, among the cars in waiting on the tracks or floats. No complaint has appeared in respect to the weights of this class of merchandise, but the classification is made according to the contents as marked upon the packages or the information furnished by the shipper or the drayman. In the rush of business an examination of the packages to ascertain contents is obviously impossible; nevertheless, a misstatement thereof may cause a reduced classification of the goods by which the shipper or the consignee will be materially benefited and the carrier defrauded to the same extent, while other dealers who represent contents truthfully are correspondingly prejudiced by the unjust discrimination. A person who sells an article to another person representing it to be what it is not is liable to punishment for the fraud; a willful misrepresentation to a carrier for the purposes of reduced freight charges is not different in principle.

The method of receiving miscellaneous freight as above described is substantially followed at other large cities and distributing points. The cars so loaded follow the various lines of road to their several destinations. It is impossible for the carriers to inspect their contents without stopping them *en route*, unloading them entirely, and opening each package; a single car load often containing goods from a large number of shippers.

Shipments in car load lots originating in the east are occasionally received from a shipper at a public station, but more frequently are loaded by the shippers themselves upon side tracks placed for their convenience at the various factories, mills, iron works, refineries and other manufacturing establishments found not only in the large cities in the East but throughout the Eastern States, and the Central, Western and Southern States as well. In respect to such shipments the character of the goods offered is generally known, although there are opportunities for fraud in representing the contents of car loads. The weights also may be verified by the carriers, who have track scales at different points for the purpose. It has been quite generally customary, however, for shippers of car load lots to furnish the billing agents with a slip containing the description and weight of the contents of each car, from which the way bills are made out without question, the cars going through to destination without being opened for inspection and without any verification of the weights. It is obvious that this course of business affords great opportunity for obtaining preference and advantage, although the same standard of com-

COMPLAINT charging unjust discrimination in furnishing coal cars. *Dismissed.*
See decision on motion to amend complaint, *ante*, 701.

Mr. J. L. Black, for petitioner.

Messrs. John K. Cowen and H. L. Bond, for defendant.

REPORT AND OPINION OF THE COMMISSION.

Bragg, Commissioner:

The complaint in this proceeding charges that the Baltimore & Ohio Railroad Company does not give the mines represented by petitioners their proportion of cars each day, and that this Company unjustly discriminates against them in furnishing cars to others.

The complainants are sales agents of the Yough Slope Mine, situated near West Newton, on the Baltimore & Ohio Railroad. These unjust discriminations are charged to have been committed during the month of August and the early part of September, 1887, namely: commencing with the 10th of August and ending with the third day of September following, on cars that should have been furnished for shipments of coal from said mine to Arthur & Boylan at Cleveland, Ohio. Various exhibits are attached to the petition in the shape of correspondence relating to these alleged discriminations, and also lists of cars which it is claimed were furnished to the Yough Slope Mine and to other adjacent mines during the period to which the complaint refers.

The answer of the Baltimore & Ohio Railroad Company neither admits nor denies that the complainants were sales agents for the Yough Slope Mine or that on August 10, 1887, they received an order to ship five cars per day to Arthur & Boylan, of Cleveland, Ohio. It admits the receipt of memorandum, copy of which is filed with complaint, marked Exhibit No. 2, but states that in the distribution of coal cars to the mines along the line of its road, it has necessarily to deal directly with the mines, and cannot recognize or notice the orders of third parties, the practice being that each mine makes out a daily requisition for such cars as it needs on blanks furnished by the Railroad Company for the purpose. It states that all the cars used for shipments of coal from mines on the lines of its road over the Pittsburgh & Western Railroad to Cleveland are owned by the Pittsburgh & Western Railroad Company or its leased lines, and that the Baltimore & Ohio Railroad Company in distributing those cars to the mines acts only as the agent of the Pittsburgh & Western Railroad Company and under its direction; that the route for coal from mines on the respondent's road to Cleveland for Pittsburgh & Western cars is by way of the respondent's road to Pittsburgh, the Pittsburgh Junction Road to Allegheny City, the Pittsburgh & Western Road to Akron, and the Valley Railway to Cleveland.

There is, however, direct delivery by the Baltimore & Ohio Railroad to the Pittsburgh & Western Railroad on the line of the Junction Road. The Pittsburgh & Western Railroad and the Valley Railway are distinct and independent roads, and in no way controlled by the Baltimore & Ohio Railroad Company. It states

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that on the 10th of August, 1887, it had previously received an order, then in force, from the Pittsburgh & Western Railroad Company to allow no cars belonging to the Pittsburgh & Western Railroad Company to be loaded with coal for Cleveland; that on the 19th of August, at the instance of the Yough Slope Mine, D. C. Bachelor, train master of the respondent, endeavored to have the standing order referred to revoked as to the Yough Slope Mine, and for that purpose sent to J. T. Johnson, the superintendent of the Pittsburgh & Western Railroad, a telegram in the following words:

"Can coal for Presley & Arthur and Arthur & Boylan, Cleveland, go forward from Yough Slope? Answer quick."

To which telegram the following answer was received from Superintendent Johnson:

"No, sir; I cannot take coal for Presley & Arthur or Arthur & Boylan until further orders. Do not allow any of our cars to be loaded with coal or slack unless you have immediate shipment for it."

That all of the respondent's dealings in regard to the business between the mines on its road and Cleveland were carried on directly with the Pittsburgh & Western Company; that it has no direct dealings with the Valley Railway Company in regard to such business. The respondent cannot, therefore, state with certainty whether the orders as to the shipments of coal to Cleveland above stated were made by the Pittsburgh & Western Company on its own motion or whether they were directed by the Valley Railway; but it is informed and believes that such orders were at least in part dictated by the Valley Railway Company. The order of August 19, 1887, contained in the telegram last quoted, was not revoked until August 30, when Train Master Bachelor received the following telegram from Superintendent Johnson:

"Please send along Arthur & Boylan coal. Valley will receive it."

It denies that it in any way discriminated or intended to discriminate against the Yough Slope Mine in the distribution of cars for the shipment of coal to Arthur & Boylan and other consignees in Cleveland; but alleges that, on the contrary, it did not distribute any cars to any mines on its road for the purpose of making Cleveland shipments, and it could not do so against the orders of the Pittsburgh & Western Railroad Company, which was the owner of the cars; that in regard to the comparison made in the petition filed in this matter between the cars furnished the Yough Slope Mine and those furnished the Youghiogheny and Ashtabula Mines the respondent says that such a comparison is unjust and misleading as made in the petition; that, as appears by the petition itself, the Yough Slope Mine had orders for but five cars a day to be shipped over the Pittsburgh & Western Railroad, and those five cars were for Cleveland shipments. The Youghiogheny and Ashtabula Mines, on the other hand, was a large shipper, not only to Cleveland, where its consignees were, Arthur & Boylan and Presley & Arthur, but also to Fairport, a point on the Pittsburgh & Western system. Its orders for shipments over the Pittsburgh & Western Railroad were some twenty-five cars a day or five times that of the

which may be contrived between unscrupulous shippers and weak or unreliable employees are enormous.

One of the chief difficulties encountered in dealing with a subject like that of underbilling springs from the fact that the carrier must necessarily entrust its business to a great number of agents, and that, being itself a corporation, there often is not on the part of these agents the personal fidelity and loyalty which are likely to exist between employer and employee when the employer is a natural person. In very many cases it is not unlikely that, as between a carrier and one of its patrons, the inclination of the agent would be to prefer the interest of the latter and to sacrifice the interest of his employer to it. If his disloyal conduct affected injuriously third parties, as it commonly would, under the Law as it now stands, there would be no remedy except the criminal remedy, and none at all unless criminal intent on the part of the agent could be established; but the wrong in such a case is more likely to be accomplished through the failure of the agent to exercise due vigilance than through any overt act of dishonesty on his part; and when it is borne in mind that at times a general feeling of discontent may prevail among the employees of a carrier it is not difficult to understand that there may be serious and numerous wrongs, amounting in result to violations of law, of which the managing officers may be wholly ignorant, and which are accomplished not through dishonest connivance, but only because employees do not exercise the care which is necessary to prevent them.

The effect upon the legitimate business of other shippers which is produced by opportunities for underbilling taken advantage of by competitors can be briefly illustrated by facts disclosed in the course of the investigation at Chicago. The public elevator system there is recognized as accurate, and weights furnished therefrom are universally accepted without challenge; small discrepancies of fifteen, twenty or thirty bushels to the car were the utmost irregularities spoken of. In Chicago and its suburbs a large number of so called private elevators are also found from which the returns of weights have been heretofore accepted in like manner by the carriers as *bona fide* and correct.

The price paid for grain by a purchaser is frequently of itself sufficient evidence of the existence of some concession or advantage in the rates of freight. A dealer who observes his competitor purchasing cereals at prices which he cannot afford to pay, in view of the market at the point of delivery and the expense of transportation, immediately infers that the rates are being manipulated, and the inference is strengthened if the fact is observed that such shipments usually follow some particular line. An effort immediately follows on the part of other dealers to participate in like advantages, and no stone is left unturned to accomplish this result.

Upon the breaking down of a car loaded from a private warehouse and shipped on the Grand Trunk Line it was discovered that the car was carrying 15,000 pounds of grain in excess of the weight which had been furnished

for billing. A general system of weighing of cars from private elevators was entered upon by that company. A few instances of the results are given, as follows:

Car number.	Billing weight.	Actual weight.
2737, N. D.	30,000	38,200
3033, M. C.	34,000	43,150
2777, G. T.	28,000	36,350
9791, N. D.	28,000	36,200
9700, C. Ex.	28,000	36,250
9720, C. Ex.	28,000	36,350
10353, G. T.	30,000	36,050
2140, N. D.	26,000	33,200
3743, N. D.	34,000	40,250

The Chicago & Grand Trunk Railway Company has recently organized a new system for the transfer of grain to its cars at Chicago and vicinity, embracing an accurate weighing of the grain, for which the board of trade has formally expressed its thanks to the company on behalf of the grain interests of that city.

The cars weighed as above stated were consigned to Lynn, Charleston, South Framingham, Lawrence, Lowell, Methuen and other local points in Massachusetts, Rhode Island, New Hampshire and Connecticut. Car load consignments of grain to interior points in the Eastern States are not subject to any examination or correction as to weight at the point of delivery. Grain shipments to New York, Boston and other seaports are usually delivered at elevators, where the contents of the cars are separately weighed; but facilities for weighing are not found and could not reasonably be provided at the smaller cities and towns, where a vast amount of this grain naturally goes. The shipments as originally billed are delivered without examination or correction. The grain is usually sold at a named price, delivered, and drafts are drawn for the actual amount, deducting the freight upon the tonnage as way billed. In this way the shipper gets the benefit of the underbilling, which may amount to fifty or sixty dollars per car.

Another course of dealing, in which underbilling has been largely resorted to, is shown in the following illustration: the contents of car No. 10704 (containing middlings) from the Wisconsin Division of the Chicago & Northwestern Railroad were sold on the floor of the Chicago Board of Trade in February last. This car had been billed as containing 21,600 pounds, freight prepaid. When the middlings were transferred for shipment east to a Nickel Plate car and reweighed it was found that the car contained 45,500 pounds. This car was weighed a second time with the same result. It had been underbilled 23,900 pounds. In that transaction the miller saved 7½ cents per cwt. freight on 28,900 pounds to Chicago. If the middlings had been loaded into a "line" car and gone through without transfer he would have saved \$84 freight on the car load.

The evidence shows that during the past season a large amount of grain has been loaded at interior points in the Western States and gone through various junction points south and west of Chicago, without transfer, to the East.

The shipments are made from small country stations, where no facilities for weighing the grain exist, but where local buyers have store houses or country elevators, and their weights have been accepted by the carriers in reliance upon their good faith. It is a custom among railroads to seal cars for long distance shipments, keeping a record at junction points of the condition of the seals—a road upon which a seal is unbroken not being regarded as liable on damage claims, unless the seal remains intact throughout the trip, in which case the loss is apportioned. In many cases of underbilling the initial railroad company has no doubt been cognizant of the fact that the weights were not full; soliciting agents of the through lines have very likely been in part responsible; while other cases no doubt exist in which the carrier was entirely innocent of all complicity in the transaction. In many instances, however, carelessness at least on the part of the local agent must have existed; and negligence on the part of the carriers in failing to weigh at the first track scale may also be claimed.

The result of all this has been exceedingly disastrous to dealers endeavoring to do a like business in a legitimate way. Not only the Chicago Board of Trade, but similar organizations in several other cities have asked for the passage of a law which should make the fraudulent shipper criminally responsible for his conduct.

Other methods of evasion of the Law have also been attempted. A highly reputable merchant testified that he had been approached with a suggestion that one of his employees might be taken upon the salary list of a carrier if his firm would give its business to the road. A letter was produced, written by a shipper to another carrier, asking to be placed in some such position, saying, "I will give to you the monopoly of all business controlled by me. I believe you have a right to employ anyone to work for you, on such terms as you see fit. I would not want to be known as your agent publicly;" and suggesting that about 24 cents per cwt. would be a reasonable compensation. In these cases no bargain was made; but indications point strongly to the fact that secret inducements of that character have been resorted to. Of course every such transaction is a violation of the Act to Regulate Commerce. The pretense of an employment or agency would not for a moment protect the carrier. There is reason for the belief that a critical inspection of pay rolls, vouchers and subvouchers by the responsible officials of many roads would disclose to them a startling recklessness on the part of their subordinates.

The same may be said of an intimation which one witness stated had been made to him—that while no rebates could be given upon shipments after April 5, 1887, yet if he would furnish a list of 100 cars shipped prior to that time they could be taken up for rebating, upon new freight being received of like amount. Such a transaction, if carried into effect, would have resulted in a clear violation of the Law. Other devices and evasions have been suggested as possible, and perhaps actual. It is enough at present to say that while a certain class of men who are found among shippers as well as among representatives of the carriers find it

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extremely difficult to deal honorably and justly with the subject of transportation, yet the enactment of the statutory prohibition of unjust discriminations has resulted in very great progress in the direction of their extermination; and in every case of such illegal favoritism in interstate commerce any party having knowledge or information of the facts is permitted to submit the matter to the consideration of the Commission or of the Federal Courts.

Recurring again to the subject of underbilling, it is found that it has not been confined to shipments of grain. Another industry which has been quite disastrously affected is the packing business. A gentleman whose observation convinced him that discrimination existed which was seriously prejudicial to the pork packers of Chicago, for the purpose of developing the facts purchased a car load of lard from an Omaha packing company. The price agreed upon was seven dollars and thirty-five cents, delivered in Chicago. It was shipped on February 18, 1888. The lard weighed 40,074 pounds. Freight was collected at twelve cents per 100 on 80,000 pounds only. The invoice to the purchaser showed the whole transaction, charging him with 40,074 pounds of lard at the agreed price, less the freight on 80,000 pounds, and the balance was drawn for at sight.

Further investigation disclosed facts as follows: at South Omaha, Nebraska, are situated several very extensive packing establishments. Their output is some 800 cars per day, distributed among the Chicago, Burlington & Quincy, Chicago & Northwestern, Chicago, Milwaukee & St. Paul, Chicago, Rock Island & Pacific, Wabash, and Missouri Pacific Railroads. Their shipments consist of dressed hogs and dressed beef, packing house products of various kinds, and everything that is produced from slaughtered animals, including fertilizers made from the offal. It has been the custom of carriers receiving carload shipments upon side tracks entering all of said establishments to accept the weights given by the shippers, without any examination or verification. The natural result of that custom is seen in the lard shipment mentioned above. The same methods have been general upon all kinds of shipments by all of said concerns upon all of said roads. The manufacturers load the cars and give to the agent of the carrier a slip, from which the way bills are made out. The carriers individually, for reasons in part indicated above, have hesitated to take any measures to revise the weights.

A peculiar difficulty in this instance is found in the fact that large quantities of ice accompany the shipments, which is required for the preservation of the property and for which no freight is charged, but which is constantly wasting and is at times replenished in transit, so that the carload weight of loaded refrigerator cars cannot be accurately taken. It further appears that in some cases cars have been sent from South Omaha directly to the Chicago warehouses of the shippers, where they were unloaded upon private side tracks and returned billed as empty; an accidental examination disclosed that they were in fact loaded with nails, lumber, salt and other supplies needed at the packing houses. In the case of lard or grease

feed or other freight, than was actually transported; and it denies that it has ever, since the publication of said schedule of rates, charged, demanded, collected or received from the persons owning the same a less compensation for the transportation of grain or feed than was specified in the said published schedule of rates or charges then in force; and it denies that it has ever given preferences to any shipper, or class of shippers, or has ever discriminated in favor of any person or persons whatever, or that it has ever done any act or thing in violation of the true intent and spirit of the said Act of Congress, approved the 4th day of February, 1887, entitled An Act to Regulate Commerce, and this defendant denies each and every allegation in said petition contained, charging or tending to charge this defendant with "underbilling," or with any variation from the established tariffs of rates in said petition mentioned.

Defendant further answering says that if "underbilling" has ever been admitted by the officers of any of the roads represented by the Erie Despatch, the admission has always been, as this defendant is informed and believes, in the form of a statement, that "underbilling" has been practiced by shippers, such statement being accompanied with the claim that the transportation companies were not parties to, but were rather the victims of the practice of "underbilling;" and this defendant denies the allegation contained in said petition that the fast freight lines and the railroads transporting grain and merchandise so "underbilled," are parties to any such practice, or have been parties to any transaction of the kind, and this defendant also denies that there was any difficulty in the way of complainant ascertaining from the Erie Despatch, and through that Association from the various companies represented in said Erie Despatch, a full history of every car ever dispatched by the said Association, over the lines of the Philadelphia & Reading Railroad, as to which there was the least suspicion of "underbilling."

And defendant avers that the practice of "underbilling" on the part of the shippers is one that the Erie Despatch has taken every reasonable precaution, in protection of the interest of the carriers, to prevent; that there being no law directly prohibiting such a practice by shippers, and the keeping of weighing facilities at all shipping stations being impracticable, it has been and is very difficult to wholly prevent it; but the Erie Despatch has, as is well known by the complainant, been ever ready and willing to investigate every case of "underbilling" brought to its knowledge, and to join with honest merchants and shippers to put down a practice which is quite as injurious to the Erie Despatch as to the honest shippers themselves, and this defendant insists that if complainant would discipline its members for such unmercantile conduct, and had been willing to join their efforts to those of the Erie Despatch to prevent such practices, this prac-

Further answering to the allegation in the petition that the complainant has been unable to give a large specification of cars, which were "underbilled" because the transportation companies were parties to such "underbilling," and, therefore, interested to keep such "underbilling" a secret, the Erie Despatch avers that the conduct of the Erie Despatch in relation to such investigations was directly the reverse of said allegations, as was well known to said complainant before the filing of the petition herein setting out correspondence on the subject. Defendant, desirous of a thorough investigation, has at great labor and expense attempted to locate the specified cars, and with the result of such investigation answers to the specifications of said petition as follows, on information and belief (setting out the cars by number respectively and the facts connected with the billing thereof):

Defendant denies complainant's charge that the weight upon the bill of lading for ascertainment of the freight charges was in any of the above specified cases willfully and knowingly false, and that said underbilling was so done for the purpose and with the intent to charge, demand, collect and receive from the persons paying the same a less compensation for the transportation thereof than was specified in the then established and published schedule of rates and charges, contrary to the true intent and meaning, and in violation of the Act to Regulate Commerce; and further denies that it was done for the purpose and with the intent to give an undue and unreasonable preference and advantage to the particular persons trading in that grain or feed.

This defendant avers that the underbilling in the cases above mentioned was the result of shippers furnishing incorrect weights and of consignees paying the carriers on weights which they knew were not correct, thus defrauding the carrier out of its correct freight charges, and that the defendant was willing and anxious to investigate and make all corrections in its power as to all of said cases or any others brought to its attention; but said complainant refused to furnish any specific information. Defendant also avers that the magnitude of its business is such that it is impracticable to weigh car load freight at all points where it is received and delivered, and must, to a considerable extent, rely upon the representations of, and accept the weights furnished by, many shippers if it has no reason to doubt them, and the defendant denies that the amount claimed to have been underbilled on any of the cars in question was in anyway the result of any understanding or agreement between this defendant or any of the members of said Erie Despatch and either shippers or consignees, or with any party or parties, interested directly or indirectly in said shipments, and avers that all such underbilling was without defendant's knowledge.

(The other defendants set up the same general defense.)

UNITED STATES SUPREME COURT.

George A. BOWMAN *et al.*, *Piffs. in Err.*,
v.

CHICAGO AND NORTHWESTERN RAIL-
WAY COMPANY.

(From Lawyers' ed. U. S. Reports, Bk. 31.)

1. Section 1553 of the Iowa Code, as amended by the Act of April 5, 1886, forbidding any common carrier to bring within that State any intoxicating liquors, from any other State or Territory, without first having the certificate therein required, is a regulation of commerce among the States and is void, as repugnant to the Constitution of the United States.
2. Such statute is not an inspection law, nor a quarantine or sanitary law, and is not a legitimate exercise of police power by the State.
3. Such statute constitutes no defense to an action brought against a railroad company for refusing to carry beer into the State of Iowa from another State.

Submitted Jan. 10, 1887. Decided March 19, 1888.

IN ERROR to the Circuit Court of the United States for the Northern District of Illinois, to review a judgment against the plaintiffs, in an action brought for a refusal to receive for transportation at Chicago and to carry certain barrels of beer into the State of Iowa. *Reversed.*

Statement by *Mr. Justice Matthews*:

This action was begun in the Circuit Court of the United States for the Northern District of Illinois, June 15, 1886, on which day the plaintiffs filed their declaration, as follows:

"George A. Bowman, a citizen of the State of Nebraska, and Fred. W. Bowman, a citizen of the State of Iowa, copartners, doing business under the name, firm and style of Bowman Bros., at the City of Marshalltown, State of Iowa, plaintiffs in this suit, by Blum & Blum, their attorneys, complain of the Chicago & Northwestern Railway Company, a citizen of the northern district of the State of Illinois, having its principal office at the City of Chicago, in said State, defendant in this suit, of a plea of trespass on the case.

"For that whereas the defendant, on May 20, 1886, and for a long time previous thereto and thereafter, was possessed of and using and operating a certain railway, and was a common carrier of goods and chattels thereon for hire, to wit, from the City of Chicago, in the State of Illinois, to the City of Council Bluffs, in the State of Iowa.

"That said defendant was at said time and is now a corporation existing under and by virtue of the laws of the State of Illinois, and that it was and is the duty of said defendant to carry from and to all stations upon its line of railway all freight tendered it for shipment.

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"That upon May 20, 1886, defendant for said defendant for a line of railway, and directed Marshalltown, Iowa, five thousand barrels of beer, which they had procured from Chicago, to be shipped from the City of Marshalltown, in the State of Iowa, which is a station lying on defendant's line of railroad between the City of Chicago and Council Bluffs, Iowa, and there refused to receive or any part thereof, for shipment of the plaintiffs of ten thousand barrels and therefore they bring this action.

"And for that the plaintiffs, Fred. W. Bowman, is a hotel keeper, a keeper of a house, grocery, or confectionery, on the first day of July, 1884, and upon the first day thereafter, presented to the board of Marshall County, Iowa, signed by a majority of the board, a resolution, Marshall County Court stated that said Fred. W. Bowman was a good moral character, an elector, and believe said plaintiffs to be of good moral character, and each of them to be qualified to buy and sell intoxicating liquors for the purposes named in section 1553 of the Iowa Code; that at said time and on several occasions thereafter they and the said plaintiffs, filed a bond in the sum of five thousand dollars with two sureties, which was approved by the auditor of the State of Iowa, as is provided by section 1552 of the Iowa Code; that thereupon said board refused to grant such permission to the said plaintiffs, or to them jointly, to buy and sell intoxicating liquors for the purposes named in section 1553 of the Iowa Code.

"And for that whereas the defendant, on May 20, 1886, and for a long time previous thereto and thereafter, was possessed of and using and operating a certain railway and was a common carrier of goods and chattels thereon for hire, to wit, from the City of Chicago, in the State of Illinois, to the City of Council Bluffs, in the State of Iowa.

"That said defendant is a corporation existing under and by virtue of the laws of the State of Illinois; that it was the duty of said defendant to carry from and to all stations upon its line of railway all freight tendered it for shipment, and that it was the duty of said defendant to transport from the City of Chicago to said City of Council Bluffs, Iowa, five thousand barrels of beer, which hereinafter mentioned, which was requested it so to transport; that on the first day of May, 1886, the defendant, at the City of Chicago, refused to receive or any part thereof, for shipment of the plaintiffs of ten thousand barrels and therefore they bring this action.

the State of Iowa, and requested said defendant to ship said beer over its road, with which request the defendant refused to comply, and declined to ship or receive said beer or any part thereof for shipment as aforesaid, the said defendant, by its duly authorized agent, then and there stating that the said defendant Company declined to receive said goods for shipment and would continue to decline to receive said goods or any goods of like character for shipment into the State of Iowa; that on said day, to wit, May 20, 1886, and for a long time theretofore and since, the plaintiffs were unable to purchase beer in the State of Iowa; that said plaintiffs, at said time, could procure no other means of transportation for said beer than said defendant, and that, by reason of the defendant's refusal to transport said beer, plaintiffs were compelled to sell said beer in the City of Chicago at \$6.50 per barrel.

"That by reason of said refusal of said defendant to ship said beer plaintiffs have been damaged in the sum of ten thousand dollars, and therefore they bring their suit," etc.

To this declaration the defendant filed the following plea:

"Now comes the said defendant, by W. C. Goudy, its attorney, and defends the wrong and injury, when, etc., and says *actio non*, etc., because it says that the beer in said five thousand barrels in the plaintiffs' declaration and in each count thereof mentioned was, at the several times in said declaration mentioned, and still is, intoxicating liquor, within the meaning of the Statute of Iowa hereinafter set forth; that the City of Marshalltown in said declaration mentioned is within the limits of the State of Iowa; that the said City of Chicago in the said declaration mentioned is in the State of Illinois; that the said beer in said declaration mentioned was offered to this defendant to be transported from the State of Illinois to the State of Iowa.

"That heretofore, to wit, on the 5th day of April, A. D. 1886, the General Assembly of the State of Iowa passed an Act entitled 'An Act Amendatory of Chapter 143 of the Acts of the Twentieth General Assembly Relating to Intoxicating Liquors and Providing for the More Effectual Suppression of the Illegal Sale and Transportation of Intoxicating Liquors and Abatement of Nuisances,' which Act is chapter 66 of the laws of Iowa, passed at the Twenty First General Assembly of said State, and which is printed and published in the laws of Iowa for the year 1886, at page—; to which Act this defendant hereby refers and makes the same a part of this plea.

"That in and by the tenth section of said Act it was and is provided as follows, to wit:

"That section 1553 of the Code, as amended and substituted by chapter 143 of the Acts of the Twentieth General Assembly, be, and the same is hereby, repealed, and the following enacted in lieu thereof:

"Sec. 1553. If any express company, railway company, or any agent or person in the employ of any express company or railway company, or if any common carrier or any person in the employ of any common carrier, or any person, knowingly bring within this State for any person or persons or corporation, or shall knowingly transport or convey be-

tween points or from one place to another in this State for any other person or persons or corporations, any intoxicating liquors without first having been furnished a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed, or delivered is authorized to sell such intoxicating liquors in such county, such company, corporation or person so offending, and each of them, and any agent of such company, corporation or person so offending, shall, upon conviction thereof, be fined in the sum of one hundred dollars for each offense, and pay costs of prosecution; and the costs shall include a reasonable attorney fee, to be assessed by the court, which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid. The offense herein defined shall be held to be complete, and shall be held to have been committed in any county of the State through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation, or in which said liquors are conveyed from place to place or delivered. It shall be the duty of the several county auditors of this State to issue the certificate herein contemplated to any person having such permit; and the certificate so issued shall be truly dated when issued, and shall specify the date at which the permit expires, as shown by the county records."

"And the defendant avers that at the several times mentioned in said declaration, and each of them, the aforesaid section was the law of the State of Iowa in full force and wholly unrepealed, and that the said plaintiffs did not at any time furnish this defendant with a certificate from and under the seal of the county auditor of the County of Marshall, the same being the county in which said City of Marshalltown is located, and the county to which said beer was offered to be transported, certifying that the person for or to whom the said beer was to be transported was authorized to sell intoxicating liquors in said County of Marshall; nor was this defendant furnished with any such certificate by any person whatsoever.

"And the defendant avers that it could not receive said beer for transportation in the manner named and specified in the plaintiffs' declaration without violating the law of the State of Iowa above specified, and without subjecting itself to the penalties provided in said Act, and that this defendant assigned at the time the said beer was offered to it for transportation as aforesaid, as a reason why it could not receive the same, the aforesaid Statute of Iowa, which prohibited this defendant from receiving said beer to be transported into the State of Iowa or from transporting the said beer into the State of Iowa.

"And this the said defendant is ready to verify. Wherefore it prays judgment," etc.

To this plea the plaintiffs filed a general demurrer, and for cause of demurrer assigned that the Statute of Iowa referred to and set out in the plea was unconstitutional and void. The demurrer was overruled, and judgment

inspector—his compensation and expenses being paid by said company. Said company was a foreign fire insurance company, incorporated in and by the State of Maryland, and not licensed, and having no authority from the insurance commissioner to do business in Pennsylvania, and had not complied with the laws of Pennsylvania relating to foreign insurance companies.

"On the 19th day of February, 1887, said defendant visited the City of Pittsburgh and delivered to business men in said city his card, announcing himself as inspector, together with said company's form of premium note and its financial statement to December 31, 1886, and also a list of its official directors and committee, which card and statement lists are hereto attached and made a part of this statement of facts. He afterward visited C. F. Wells, in the City of Pittsburgh, and inquired when his policies of insurance would expire in companies in which said Wells was already insured, and requested permission to inspect the premises of said Wells, and this for the purpose of enabling said Mutual Fire Insurance Company of Baltimore, Md., to place a policy or policies of insurance thereon. Prior to the visit of defendant to the City of Pittsburgh, Messrs. Reed and Edwards received a letter from the secretary of the company, dated February 8, 1887, which letter is hereto attached and made a part of this statement of facts. Defendant was sent to the City of Pittsburgh by the said company for the purpose of inspecting buildings, ascertaining their exposures, and making diagrams of the same, with respect to their desirability as insurance risks for acceptance by said Mutual Fire Insurance Company of Baltimore, Maryland, and that he went to the said Wells and others in the City of Pittsburgh for said purpose.

"It is further admitted that on the day and year last aforesaid the defendant inspected the Franklin Glue Works, a building in the County of Allegheny, in the State of Pennsylvania, for the purpose aforesaid; that he promptly thereafter transmitted a report of said inspection to said company, which company immediately thereafter, for a premium paid to it, placed upon the said glue works said company's policy

of insurance against loss by fire; that in pursuance of said employment as inspector, on the day and year last aforesaid, defendant was engaged in the City of Pittsburgh in inspecting risks for the purpose aforesaid, and transmitted reports of his inspection to said company in Baltimore. It is further admitted that his actions were confined entirely to the said business of inspection, and that he did not negotiate or solicit within this State any contract of insurance, or pretend to effect the same, or receive or transmit any offer or offers of insurance, or receive or deliver a policy, or in any manner aid in the business of placing insurance, except as hereinbefore set forth in this statement of facts."

The following points were presented by the defendant to the court, *COLLIER, J.*:

1. "That if they find from all the evidence in this case that the only business transacted by defendant, G. B. List, for an insurance company of another State consisted in making an examination and inspection of buildings, with reference to their desirability as risks, and reporting the facts, there can be no conviction under the law, and it is their duty to acquit the defendant."

Refused. [3]

2. "That if the jury find from all the evidence in the case that the defendant did not quote rates, or solicit insurance, or receive premiums, or forward the same, or perform any of the duties of an insurance agent, but that defendant's action was confined wholly to inspecting and examining the physical and material condition of buildings, such action was not the 'aiding in the placing of insurance' prohibited by the law, and there can be no conviction."

Refused. [4]

3. "That there can be no conviction in this case, for the reason that the Act of Assembly under which the indictment is framed is obnoxious to the Constitution of the United States, being an attempt on the part of the State to regulate commerce among the several States, which is in conflict with article 1, § 8, declaring that 'Congress shall have power to regulate commerce among the several States,' also with article 4, § 2, declaring that 'Citizens of each State shall be entitled to all the privi-

of every such company or association authorized to transact business in this State, to make report to the commissioner in the month of January of each year, under oath of the president or secretary thereof, showing the entire amount of premiums of every character and description received by said company or association in this State, during the year or fraction of a year, ending with the 31st day of December preceding, whether said premiums were received in money, or in the form of notes, credits or any substitute for money, and pay into the state treasury a tax of 2 per centum upon said premiums; and the commissioner shall not have power to grant a renewal of the certificate of said company or association until the tax aforesaid is paid into the state treasury.

"Section 11. Companies to which certificates of authority are issued, as provided in the preceding section, shall from time to time certify to the commissioner the names of the agents appointed by them to solicit risks in this State; and no such agent shall transact business until he has procured from the commissioner a certificate showing that the company has complied with the requirements of this Act, and that the person named in said certificate has been duly appointed its agent."

"Section 14. That any person or persons or corporation receiving premiums or forwarding applications, or in any other way transacting business

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Boff v. State, Id. 536; *State v. Donahay*, 9 Iowa, 310; *State v. Wheeler*, 25 Conn. 290; *Reynolds v. Geary*, 26 Conn. 179; *Oviatt v. Pond*, 29 Conn. 479; *People v. Gallagher*, 4 Mich. 244; *Gill v. Parker*, 21 Vt. 610; *Mahmeyer v. State*, 11 Ind. 493; *Vanderbilt v. Adams*, 7 Cow. 351.

A state law prohibiting the manufacture and sale of intoxicating liquor is not repugnant to any clause of the Constitution of the United States.

Boston Beer Co. v. Mass. 97 U. S. 33, (24:303); *Post v. Kan.* 112 U. S. 206, (29: 650); *Littleton v. Frits*, 65 Iowa, 489.

The Legislature cannot part with any of the police powers of the State.

Farmers L. & T. Co. v. Stone, 20 Fed. Rep. 270; *Alterton v. Chicago*, 6 Fed. Rep. 553; *Re Wong Yung Guy*, 2 Fed. Rep. 634.

States may exclude pestilence either to the body or mind.

Helmes v. Jennison, 39 U. S. 14 Pet. 565, (10: 393); *Gibbons v. Ogden*, and *Mayor of N. Y. v. Miln*, *supra*.

Mr. Justice Matthews delivered the opinion of the court:

It is not denied that the declaration sets out a good cause of action. It alleges that the defendant was possessed of and operated a certain railway, by means of which it became and was a common carrier of goods and chattels thereon for hire, from the City of Chicago, in the State of Illinois, to the City of Council Bluffs, in the State of Iowa, and that, as such, it was its duty to carry from and to all stations upon its line of railway all goods and merchandise that might be entrusted to it for that purpose. This general duty was imposed upon it by the common law as adopted and prevailing in the States of Illinois and Iowa. The single question, therefore, presented upon the record, is whether the statute of the State of Iowa, set out in the plea, constitutes a defense to the action.

The section of the statute referred to, being section 1553 of the Iowa Code as amended by the Act of April 5, 1886, forbids any common carrier to bring within the State of Iowa, for any person or persons or corporation, any intoxicating liquors from any other State or Territory of the United States, without first having been furnished with a certificate, under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, certifying that the consignee or person to whom said liquor is to be transported, conveyed, or delivered is authorized to sell intoxicating liquors in such county.

This statutory provision does not stand alone, and must be considered with reference to the system of legislation of which it forms a part. The Act of April 5, 1886, in which it is contained, relates to the sale of intoxicating liquors within the State of Iowa, and is amendatory of chapter 143 of the Acts of the Twentieth General Assembly of that State "relating to intoxicating liquors and providing for the more effectual suppression of the illegal sale and transportation of intoxicating liquors and abatement of nuisances." The original section 1553 of the Iowa Code contains a similar provision in respect to common carriers. By

section 1533 of the Code, the manufacture and sale of intoxicating liquors, except as thereafter provided, is made unlawful; and the keeping of intoxicating liquor with intent to sell the same within the State, contrary to the provisions of the Act, is prohibited; and the intoxicating liquor so kept, together with the vessels in which it is contained, is declared to be a nuisance, to be forfeited and dealt with as thereafter provided. Section 1534 excepts from the operation of the law sales by the importer thereof of foreign intoxicating liquor, imported under the authority of the laws of the United States regarding the importation of such liquors and in accordance with such laws; provided that the said liquor at the time of said sale by said importer remains in the original casks or packages in which it was by him imported, and in quantities of not less than the quantities in which the laws of the United States require such liquors to be imported, and is sold by him in said original casks or packages and in said quantities only. The law also permits the manufacture, in the State, of liquors for the purpose of being sold, according to the provisions of the statute, to be used for mechanical, medicinal, culinary or sacramental purposes; and for these purposes only any citizen of the State, except hotel keepers, keepers of saloons, eating houses, grocery keepers, and confectioners, is permitted within the county of his residence to buy and sell intoxicating liquors, provided he shall first obtain permission from the board of supervisors of the county in which such business is conducted. It also declares the building or erection of whatever kind, or the ground itself in or upon which intoxicating liquor is manufactured or sold, or kept with intent to sell, contrary to law, to be a nuisance, and that it may be abated as such. The original provisions of the Code (section 1555) excluded from the definition of intoxicating liquors, beer, cider from apples, and wine from grapes, currants and other fruits grown in the State; but by an amendment that section was made to include alcohol, ale, wine, beer, spirituous, vinous and malt liquors, and all intoxicating liquors whatever. It thus appears that the provisions of the statute set out in the plea, prohibiting the transportation by a common carrier of intoxicating liquor from a point within any other State for delivery at a place within the State of Iowa, is intended to more effectually carry out the general policy of the law of that State with respect to the suppression of the illegal manufacture and sale of intoxicating liquor within the State as a nuisance. It may, therefore, fairly be said that the provision in question has been adopted by the State of Iowa, not expressly for the purpose of regulating commerce between its citizens and those of other States, but as subservient to the general design of protecting the health and morals of its people, and the peace and good order of the State, against the physical and moral evils resulting from the unrestricted manufacture and sale within the State of intoxicating liquors.

We have had recent occasion to consider state legislation of this character in its relation to the Constitution of the United States. In the case of *Mugler v. Kansas*, 123 U. S. 623 (31: 205), it was said: "That legislation by a

States under their Constitution and laws, by virtue of their being citizens. Special privileges enjoyed by citizens in their own State are not secured by it in other States.

"The issuing of a policy of insurance is not a transaction of commerce within the meaning of the latter of the two clauses, even though the parties be domiciled in different States, but is a simple contract of indemnity against loss."

In the case of *Ducat v. Chicago*, 77 U. S. 10 Wall. 410 [19 L. ed. 972], the foregoing case was reaffirmed and followed, and the court in the opinion said: "The power of the State to discriminate between her own domestic corporations and those of other States desirous of transacting business within her jurisdiction, is clearly established in the case we have referred to [*Paul v. Virginia*], as it also had been in the previous case of *Bank of Augusta v. Earle*, 38 U. S. 18 Pet. 519 [10 L. ed. 274]."

The opinion in the case of *Paul v. Virginia* is so conclusive and exhaustive that it is only necessary to refer to it; no other opinion could be anything more than a repetition of it.

In this court in the case of *Thorne v. Travelers Ins. Co.* 80 Pa. 28, the same doctrine was announced. We there said: "There can be no doubt of the constitutional power of the Legislature to prescribe the conditions under which a foreign corporation shall transact business in this State and the manner in which its agents shall be qualified before entering on their duties." See also, to the same effect *Germania Life Ins. Co. v. Commonwealth*, 85 Pa. 513.

It cannot be doubted that the plaintiff in error brought himself within the words as well as the spirit of the Act of 1873, although he called himself an inspector. He was certainly an agent of his company, and he certainly did take action relating to risks; and these are the words which define the prohibited acts and subject the party to the penalties of the law in question. We do not consider it necessary to prolong the discussion.

Judgment affirmed.

THE INTERSTATE COMMERCE COMMISSION.

RIDDLE, DEAN & CO.

v.

NEW YORK, LAKE ERIE & WESTERN
R. R. CO. and Pittsburgh & Lake Erie R.
R. Co.

(No. 99.)

1. In view of the fact that by an agreement between the N. Y., L. E. & W. R. R. Co., extending (over the leased line of the N. Y., P. & O. R. R. Co.) to Dayton, Ohio, and the C., C., C. & I. R. Co. extending from Dayton to Cincinnati, the N. Y., L. E. & W. Co. is considered an initial road at Cincinnati, with the right to make rates thereto and therefrom on its own responsibility, held, that Cincinnati must be treated as a point upon the line by the N. Y., L. E. & W. Co., for the purposes of a proceeding against that Company under the Act to Regulate Commerce, for unjust discrimination in furnishing coal cars.
2. It is the duty of a common carrier to provide adequate equipment for the business of its line; if in time of special pressure some one must wait, the annoyance must be distributed with all possible equality, and in this respect regular customers are not entitled to preference over occasional customers.
3. It is not necessary for a shipper to make a special contract with a common carrier, in order to entitle himself to transportation for his goods.
4. Common carriers have no right, by issuing a prohibitory tariff or otherwise, to withdraw from the transportation of any articles not dangerous to handle and which are ordinarily the subject of transportation by them; less desirable traffic must be accepted upon reasonable terms, as well as that which is more desirable.
5. When the equipment of a carrier usu-

ally applied to the transportation of a particular article (here, gondola cars for the transportation of coal) is not equal to the demand made upon it, it is its duty to appropriate other cars to such service or to obtain cars elsewhere.

6. A carrier is not justified in refusing to furnish any cars for the transportation of coal to a certain point on its line, by the fact that it could at the time make more money by using its regular coal cars on another portion of its line, where return loads were obtainable and more frequent trips could be made, thus enabling it to serve a larger number of customers with a smaller number of cars.
7. The mere fact that at a given time an article cannot be profitably shipped at the existing tariff rate is by no means conclusive evidence that such rate is unreasonable.
8. The Commission will not make an award of damages in a case where the defendant is entitled to have the amount of damages assessed by a jury.

(Heard Jan. 31, Decided Feb. 24, 1888.)

COMPLAINT charging unjust discrimination in the matter of furnishing coal cars.

Mr. J. L. Black, for complainants.

Mr. James A. Buchanan, for New York, Lake Erie & Western R. R. Co.

Mr. J. H. Reed, for Pittsburgh & Lake Erie R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

Walker, Commissioner:

Riddle, Dean & Company, the complainants, of Pittsburgh, Pennsylvania, are a firm who act as sales agents for various mines, and are engaged in selling coal upon commission. Coal mined in the vicinity of Pittsburgh is sold at Cincinnati, in the State of Ohio, the usual

plan of regulations, but by as many as the legislative discretion of the several States should deem applicable to the local peculiarities of the ports within their limits; and to this it may be added that it was a subject imperatively demanding positive regulation. The absence of legislation on the subject, therefore, by Congress, was evidence of its opinion that the matter might be best regulated by local authority, and proof of its intention that local regulations might be made.

It may be argued, however, that, aside from such regulations as these, which are purely local, the inference to be drawn from the absence of legislation by Congress on the subject excludes state legislation affecting commerce with foreign Nations more strongly than that affecting commerce among the States. Laws which concern the exterior relations of the United States with other Nations and governments are general in their nature, and should proceed exclusively from the legislative authority of the Nation. The organization of our state and federal system of government is such that the people of the several States can have no relations with foreign powers in respect to commerce or any other subject, except through the Government of the United States and its laws and treaties. *Henderson v. Mayor of N. Y.* 92 U. S. 259, 273 [23: 548, 549].

The same necessity perhaps does not exist equally in reference to commerce among the States. The power conferred upon Congress to regulate commerce among the States is indeed contained in the same clause of the Constitution which confers upon it power to regulate commerce with foreign Nations. The grant is conceived in the same terms, and the two powers are undoubtedly of the same class and character and equally extensive. The actual exercise of its power over either subject is equally and necessarily exclusive of that of the States, and paramount over all the powers of the States; so that state legislation, however legitimate in its origin or object, when it conflicts with the positive legislation of Congress, or its intention reasonably implied from its silence, in respect to the subject of commerce of both kinds, must fail. And yet in respect to commerce among the States, it may be for the reason already assigned that the same inference is not always to be drawn from the absence of congressional legislation as might be in the case of commerce with foreign Nations. The question, therefore, may be still considered in each case as it arises, whether the fact that Congress has failed in the particular instance to provide by law a regulation of commerce among the States is conclusive of its intention that the subject shall be free from all positive regulation, or that, until it positively interferes, such commerce may be left to be freely dealt with by the respective States.

We have seen that in the case of the *State Freight Tax*, 82 U. S. 15 Wall. 232 [21: 146], a tax imposed by one State upon freight transported to or from another State was held to be void as a regulation of commerce among the States, on the ground that the transportation of passengers or merchandise through a State, or from one State to another, was in its nature

national, so that it should be uniform system or plan of the control of one regulating case the tax was not imposed of regulating interstate commerce to raise a revenue, and was legitimate exercise of an administrative State if it had not been exercised as a regulation of interstate commerce. Any other regulation of interstate commerce applied as the tax was in that equally within the rule of its State has not power to tax freighters passing through it, or to or into another State, much less the power directly to regulate interstate commerce, or to forbid it altogether. In the case of the law of Iowa operating on the sale of foreign merchandise sought to be brought into its limits, there could be no doubt that it would be a regulation of interstate commerce among the States and repugnant to the Constitution of the United States. However, it applies only to one of a particular kind, and its production into the State upon interstate commerce. It remains for us to consider the grounds are sufficient to justify the rule from the rule which would otherwise exist.

It may be material also to mention that Congress had in the general subject of interstate commerce means of railroads prior to the transaction on which the present case is based. Section 5358 of the Revised Statutes provides that "Every railroad in the United States whose road is owned by its successors and assigns, is authorized to carry upon and over its bridges, and ferries, all passenger and government supplies, mails, freight on their way from any one State, and to receive compensation for and to connect with roads of other States as to form continuous lines for the transportation of the same to the place of destination." In the case of *Railroad Company v. United States*, 86 U. S. 19 Wall. 584, [22: 1] then constituting a part of the Act of June 15, 1866, was considered in this Act and the Act of July 1, 1866, authorizing the construction of the Mississippi River, the court said that the Act was passed under the power of Congress to regulate commerce among the States, and were designed to regulate interstate commerce upon transportation between the States which had previously existed as a creation of such trammels and to facilitate railway transportation of the construction of bridgeable waters of the Mississippi intended to reach trammel state enactments or by existing laws. * * * The power to regulate among the several States was exercised in order to secure equal in commercial intercourse and to regulate state legislation."

Congress had also legislated on the transportation of passenger and freight in chapter 6, title 4

Statutes; sections 4252 to 4289, inclusive, having reference, however, mainly to transportation in vessels by water. But sections 4278 and 4279 relate also to the transportation of nitro-glycerine and other similar explosive substances by land or water, and either as a matter of commerce with foreign countries or among the several States. Section 4280 provides that "The two preceding sections shall now be so construed as to prevent any State, Territory, district, city or town within the United States from regulating or from prohibiting the traffic in or transportation of those substances between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction thereof into such limits for sale, use or consumption therein."

So far as these regulations made by Congress extend they are certainly indications of its intention that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself, or by the States in particular cases by the express permission of Congress. On this point the language of this court in the case of *Mobile County v. Kimball*, 102 U. S. 691, 697 [26: 238, 289], is applicable. Repeating and expanding the idea expressed in the opinion in the case of *Cooley v. Port Wardens*, 53 U. S. 12 How. 299 [13: 996], this court said: "The subjects, indeed, upon which Congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the States; others are local, or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. In the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in the transportation, purchase, sale and exchange of commodities. Here there can of necessity be only one system or plan of regulations, and that Congress alone can prescribe. Its non-action in such cases with respect to any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity, or by that means of transportation, shall be free. There would, otherwise, be no security against conflicting regulations of different States, each discriminating in favor of its own products and against the products of citizens of other States. And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign Nations and among the States was to insure uniformity of regulation against conflicting and discriminating state legislation." Also 102 U. S. 702 [26: 241]: "Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities. For the regulation of commerce as thus defined, there can be only one system of rules, applicable alike to the whole country; and the authority which can

act for the whole country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible."

The principle thus announced has a more obvious application to the circumstances of such a case as the present, when it is considered that the law of the State of Iowa under consideration, while it professes to regulate the conduct of carriers engaged in transportation within the limits of that State, nevertheless materially affects, if allowed to operate, the conduct of such carriers, both as respects their rights and obligations, in every other State into or through which they pass in the prosecution of their business of interstate transportation. In the present case, the defendant is sued as a common carrier in the State of Illinois, and the breach of duty alleged against it is a violation of the law of that State in refusing to receive and transport goods which, as a common carrier, by that law, it was bound to accept and carry. It interposes as a defense a law of the State of Iowa, which forbids the delivery of such goods within that State. Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery, and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of this court in the case of *Hall v. DeCuir*, 95 U. S. 485, 488 [24: 547, 548], is exactly in point. It was there said: "But we think it may safely be said that state legislation, which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the State, but directly upon the business as it comes into the State from without or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up within to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up within and put down without. A passenger in the cabin set apart for the use of whites without the State must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards, if the law is enforced. It was to meet just such a case that the commercial clause in the Constitution was adopted. The River Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship.

Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be governed within the State, in respect to passengers and property brought from without. On one side, of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a state line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by state lines, has been vested with the exclusive legislative power of determining what such regulations shall be."

It is impossible to justify this Statute of Iowa by classifying it as an inspection law. The right of the States to pass inspection laws is expressly recognized in article I, § 10, of the Constitution, in the clause declaring that "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws. * * * And all such laws shall be subject to the revision and control of the Congress." The nature and character of the inspection laws of the States, contemplated by this provision of the Constitution, were very fully exhibited in the case of *Turner v. Maryland*, 107 U. S. 38 [27:370]. "The object of inspection laws," said Chief Justice Marshall in *Gibbons v. Ogden*, 23 U. S. 9 Wheat. 1, 208 [6: 23, 71], "is to improve the quality of articles produced by the labor of a country; to fit them for exportation or, it may be, for domestic use. They act upon the subject, before it becomes an article of foreign commerce, or of commerce among the States, and prepare it for that purpose." They are confined to such particulars as, in the estimation of the Legislature and according to the customs of trade, are deemed necessary to fit the inspected article for the market, by giving to the purchaser public assurance that the article is in that condition, and of that quality, which makes it merchantable and fit for use or consumption. They are not founded on the idea that the things, in respect to which inspection is required, are dangerous or noxious in themselves. As was said in *Turner v. Maryland*, 107 U. S. 38, 55 [27: 370, 376]. "Recognized elements of inspection laws have always been quality of the article, form, capacity, dimensions, and weight of package, mode of putting up, and marking and branding of various kinds, all these matters being supervised by a public officer having authority to pass or not pass the article as lawful merchandise, as it did or did not answer the prescribed requirements. It has never been regarded as necessary, and it is manifestly not necessary, that all of these elements should coexist in order to make a valid inspection law. Quality alone may be the subject of inspection, without other requirement, or the inspection may

be made to extend to all of the above matters." It has never been regarded as within the legitimate scope of inspection laws to forbid trade in respect to any known article of commerce, irrespective of its condition and quality, merely on account of its intrinsic nature and the injurious consequences of its use or abuse.

For similar reasons the Statute of Iowa under consideration cannot be regarded as a regulation of quarantine or a sanitary provision for the purpose of protecting the physical health of the community, or a law to prevent the introduction into the State of disease, contagious, infectious or otherwise. Doubtless the States have power to provide by law suitable measures to prevent the introduction into the States of articles of trade, which, on account of their existing condition, would bring in and spread disease, pestilence, and death, such as rags or other substances infected with the germs of yellow fever or the virus of small-pox, or cattle or meat or other provisions that are diseased or decayed, or otherwise, from their condition and quality, unfit for human use or consumption. Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life. The self protecting power of each State, therefore, may be rightfully exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the Constitution. Upon this point, the observations of Mr. Justice Catron in *the License Cases*, 46 U. S. 5 How. 504, 599 [12: 256, 299] are very much to the point. Speaking of the police power, as reserved to the States, and its relation to the power granted to Congress over commerce, he said: "The assumption is that the police power was not touched by the Constitution, but left to the States, as the Constitution found it. This is admitted; and whenever a thing, from character or condition, is of a description to be regulated by that power in the State, then the regulation may be made by the State, and Congress cannot interfere. But this must always depend on facts subject to legal ascertainment, so that the injured may have redress. And the fact must find its support in this: whether the prohibited article belongs to, and is subject to be regulated as a part of, foreign commerce, or of commerce among the States. If, from its nature, it does not belong to commerce, or if its condition, from putrescence or other cause, is such, when it is about to enter the State, that it no longer belongs to commerce, or in other words is not a commercial article, then the state power may exclude its introduction. And as an incident to this power, a State may use means to ascertain the fact. And here is the limit between the sovereign power of the State and the federal power. That is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State; and that which does belong to commerce is within the jurisdiction of the United States. And to this limit must all the general views come, as I suppose, that were suggested in the reasoning of this court in the cases of *Gibbons v. Ogden*, *Brown v. Maryland*,

and *New York v. Miln*. What, then, is the assumption of the state court? Undoubtedly, in effect, that the State had the power to declare what should be an article of lawful commerce in the particular State; and having declared that ardent spirits and wines were deleterious to morals and health, they ceased to be commercial commodities there, and that then the police power attached, and consequently the powers of Congress could not interfere. The exclusive state power is made to rest, not on the fact of the state or condition of the article, nor that it is properly usually passing by sale from hand to hand, but on the declaration found in the state laws, and asserted as the state policy, that it shall be excluded from commerce. And by this means the sovereign jurisdiction in the State is attempted to be created in a case where it did not previously exist. If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation: for it takes from Congress, and leaves with the States, the power to determine the commodities, or articles of property, which are the subjects of lawful commerce. Congress may regulate, but the States determine what shall or shall not be regulated. Upon this theory the power to regulate commerce, instead of being paramount over the subject, would become subordinate to the state police power; for it is obvious that the power to determine the articles which may be the subjects of commerce, and thus to circumscribe its scope and operation, is, in effect, the controlling one. The police power would not only be a formidable rival, but, in a struggle, must necessarily triumph over the commercial power, as the power to regulate is dependent upon the power to fix and determine upon the subjects to be regulated. The same process of legislation and reasoning adopted by the State and its courts could bring within the police power any article of consumption that a State might wish to exclude, whether it belonged to that which was drank, or to food and clothing; and with nearly equal claims to propriety, as malt liquors and the produce of fruits other than grapes stand on no higher ground than the light wines of this and other countries, excluded, in effect, by the law as it now stands. And it would only be another step to regulate real or supposed extravagance in food and clothing."

This question was considered in the case of *Railroad Company v. Husen*, 95 U. S. 465 [24: 527], in which this court declared an Act of the Legislature of Missouri, which prohibited driving or conveying any Texas, Mexican or Indian cattle into the State, between the first day of March and the first day of November in each year, to be in conflict with the constitutional provision investing Congress with power to regulate commerce among the several States, holding that such a statute was more than a quarantine regulation, and not a legitimate exercise of the police power of the State. In that case it was said, p. 472 [530]. "While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons and animals suffering under

contagious or infectious diseases, or convicts, etc., from entering the State; while for the purpose of self protection it may establish quarantine and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self protection. It may not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce. * * * The reach of the statute was far beyond its professed object, and far into the realm which is within the exclusive jurisdiction of Congress. * * * The police power of a State cannot obstruct foreign commerce or interstate commerce beyond the necessity for its exercise; and, under color of it, objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. And as its range sometimes comes very near to the field committed by the Constitution to Congress, it is the duty of the courts to guard vigilantly against any needless intrusion."

The same principles were declared in *Henderson v. Mayor of New York*, 92 U. S. 259 [23: 543], and *Chy Lung v. Freeman*, 92 U. S. 275 [23: 550]. In the latter case, speaking of the right of the State to protect itself from the introduction of paupers and convicted criminals from abroad, the court said: "Such a right can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity." "It may also be admitted," as was said in the case of *Railroad Company v. Husen*, 95 U. S. 465, 471 [24: 527, 530], "that the police power of a State justifies the adoption of precautionary measures against social evils. Under it a State may legislate to prevent the spread of crime or pauperism, or disturbance of the peace. It may exclude from its limits convicts, paupers, idiots, and lunatics, and persons likely to become a public charge, as well as persons afflicted by contagious or infectious diseases; a right founded, as intimated in the *Passenger Cases*, 48 U. S. 7 How. 283 [12: 703], by Mr. Justice Grier, in the sacred law of self-defense. Vide, 8 Sawy. 144. The same principle, it may also be conceded, would justify the exclusion of property dangerous to the property of citizens of the State; for example, animals having contagious or infectious diseases. All these exertions of power are in immediate connection with the protection of persons and property against noxious acts of other persons, or such a use of property as is injurious to the property of others. They are self defensive. But whatever may be the nature and reach of the police power of a State, it cannot be exercised over a subject confided exclusively to congress by the Federal Constitution. It cannot invade the domain of the National Government. * * * Neither the unlimited powers of a State to tax, nor any of its large police powers, can be exercised to such an extent as to work a practical assumption of the powers properly conferred upon Congress by the Constitution."

It is conceded, as we have already shown, that for the purposes of its policy a State has legislative control, exclusive of Congress, within its territory of all persons, things, and transactions of strictly internal concern. For the

purpose of protecting its people against the evils of intemperance it has the right to prohibit the manufacture within its limits of intoxicating liquors; it may also prohibit all domestic commerce in them between its own inhabitants, whether the articles are introduced from other States or from foreign countries; it may punish those who sell them in violation of its laws; it may adopt any measures tending, even indirectly and remotely, to make the policy effective until it passes the line of power delegated to Congress under the Constitution. It cannot, without the consent of Congress, expressed or implied, regulate commerce between its people and those of the other States of the Union in order to effect its end, however desirable such a regulation might be.

The Statute of Iowa under consideration falls within this prohibition. It is not an inspection law; it is not a quarantine or sanitary law. It is essentially a regulation of commerce among the States within any definition heretofore given to that term, or which can be given; and although its motive and purpose are to perfect the policy of the State of Iowa in protecting its citizens against the evils of intemperance, it is none the less on that account a regulation of commerce. If it had extended its provisions so as to prohibit the introduction into the State from foreign countries of all importations of intoxicating liquors produced abroad, no one would doubt the nature of the provision as a regulation of foreign commerce. Its nature is not changed by its application to commerce among the States.

Can it be supposed that by omitting any express declarations on the subject, Congress has intended to submit to the several States the decision of the question in each locality of what shall and what shall not be articles of traffic in the interstate commerce of the country? If so, it has left to each State, according to its own caprice and arbitrary will, to discriminate for or against every article grown, produced, manufactured, or sold in any State and sought to be introduced as an article of commerce into any other. If the State of Iowa may prohibit the importation of intoxicating liquors from all other States, it may also include tobacco, or any other article, the use or abuse of which it may deem deleterious. It may not choose, even, to be governed by considerations growing out of the health, comfort, or peace of the community. Its policy may be directed to other ends. It may choose to establish a system directed to the promotion and benefit of its own agriculture, manufactures or arts of any description, and prevent the introduction and sale within its limits of any or of all articles that it may select as coming into competition with those which it seeks to protect. The police power of the State would extend to such cases, as well as to those in which it was sought to legislate in behalf of the health, peace, and morals of the people. In view of the commercial anarchy and confusion that would result from the diverse exertions of power by the several States of the Union, it cannot be supposed that the Constitution or Congress have intended to limit the freedom of commercial intercourse among the people of the several States. "It cannot be too strongly insisted upon," said this court in *Wabash*,

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St. L. & P. R. Co. v. Illinois, 118 U. S. 557, 573 [30: 244, 249]. "that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the States might choose to impose upon it, that the commerce clause was intended to secure. This clause, giving to Congress the power to regulate commerce among the States and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution. *Cook v. Pa.* 37 U. S. 566, 574 [24: 1015, 1018]; *Brown v. Md.* 25 U. S. 12 Wheat. 419, 446 [6: 678, 688]. And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States, which was deemed essential to a more perfect union by the framers of the Constitution, if, at every stage of the transportation of goods and chattels through the country, the State, within whose limits a part of the transportation must be done, could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce."

In *Brown v. Houston*, 114 U. S. 623, 630 [29: 257, 260], it was declared that the power of Congress over commerce among the States "is certainly so far exclusive that no State has power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the States, as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other States, coming or brought within its jurisdiction. All laws and regulations are restrictive of natural freedom to some extent; and, where no regulation is imposed by the government which has the exclusive power to regulate, it is an indication of its will that the matter shall be left free. So long as Congress does not pass any law to regulate commerce among the several States, it thereby indicates its will that that commerce shall be free and untrammelled; and any regulation of the subject by the States is repugnant to such freedom. This has frequently been laid down as law in the judgments of this court."

The present case is concluded, we think, by the judgment of this court in *Walling v. Michigan*, 116 U. S. 446 [29: 691]. In that case an Act of the Legislature of the State of Michigan, which imposed a tax upon persons who, not residing or having their principal place of business within the State, engaged there in the business of selling or soliciting the sale of intoxicating liquors to be shipped into the State from places without it, but did not impose a similar tax upon persons selling or soliciting the sale of intoxicating liquors manufactured in the State, was declared to be void on the ground that it was a regulation in restraint of commerce repugnant to the Constitution of the United States. In that case it was said, p. 459 [695]: "It is suggested by the learned judge, who delivered the opinion of the Supreme Court of Michigan in this case, that the tax imposed by the Act of 1875 is an exercise, by the Legislature of Michigan, of the police power of the State for the discouragement of the use of intoxicating liquors, and the preser-

vation of the health and morals of the people. This would be a perfect justification of the Act, if it did not discriminate against the citizens and products of other States as a matter of commerce between the States, and thus usurp one of the prerogatives of the National Legislature. The police power cannot be set up to control the inhibitions of the Federal Constitution, or the powers of the United States Government created thereby."

It would be error to lay any stress on the fact that the statute passed upon in that case made a discrimination between citizens and products of other States in favor of those of the State of Michigan, notwithstanding the intimation on that point in the foregoing extract from the opinion. This appears plainly from what was decided in the case of *Robbins v. Shelby County Taxing District*, 120 U. S. 489 [30: 694]. It was there said, p. 497 [697]: "It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers—those of Tennessee and those of other States; that all are taxed alike. But that does not meet the difficulty. Interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State. This was decided in the case of the *State Freight Tax*, 82 U. S. 15 Wall. 282 [21: 146.]"

In answer to another suggestion in the opinion of the Supreme Court of Michigan, that the regulation contained in the Act did not amount to a prohibition, this court said: "We are unable to adopt the views of that learned tribunal as here expressed. It is the power to regulate commerce among the several States which the Constitution in terms confers upon Congress; and this power, as we have seen, is exclusive in cases like the present, where the subject of regulation is one that admits and requires uniformity, and where any regulation affects the freedom of traffic among the States."

The relation of the police powers of the State to the powers granted to Congress by the Constitution over foreign and interstate commerce, was stated by this court in the opinion in the case of *Robbins v. Shelby Taxing District*, 120 U. S. 489, 493 [30: 694, 696], as follows: "It is also an established principle, as already indicated, that the only way in which commerce between the States can be legitimately affected by state laws is when, by virtue of its police power, and its jurisdiction over persons and property within its limits, a State provides for the security of the lives, limbs, health and comfort of persons, and the protection of property; or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries and other commercial facilities; the passage of inspection laws to secure the due quality and measure of products and commodities; the passage of laws to regulate or restrict the sale of articles deemed injurious to the health or morals of the community; the imposition of taxes upon persons residing within the State or belonging to its population, and upon avocations and employments pursued therein, not directly connected with foreign or interstate commerce, or with some other employment or business

exercised under authority of the Constitution and laws of the United States; and the imposition of taxes upon all property within the State mingled with and forming part of the great mass of property therein. But in making such internal regulations the State cannot impose taxes upon persons passing through the State, or coming into it merely for a temporary purpose, especially if connected with interstate or foreign commerce; nor can it impose such taxes upon property imported into the State from abroad or from another State, and not yet become a part of the common mass of property therein; and no discrimination can be made by any such regulations adversely to the persons or property of other States; and no regulations can be made directly affecting interstate commerce. Any taxation or regulation of the latter character would be an unauthorized interference with the power given to Congress over the subject. * * * In a word, it may be said that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems. The doctrine of the freedom of that commerce, except as regulated by Congress, is so firmly established that it is unnecessary to enlarge further upon this subject."

The section of the Statute of Iowa, the validity of which is drawn in question in this case, does not fall within this enumeration of legitimate exertions of the police power. It is not an exercise of the jurisdiction of the State over persons and property within its limits. On the contrary, it is an attempt to exert that jurisdiction over persons and property within the limits of other States. It seeks to prohibit and stop their passage and importation into its own limits, and is designed as a regulation for the conduct of commerce before the merchandise is brought to its border. It is not one of those local regulations designed to aid and facilitate commerce; it is not an inspection law to secure the due quality and measure of a commodity; it is not a law to regulate or restrict the sale of an article deemed injurious to the health and morals of the community; it is not a regulation confined to the purely internal and domestic commerce of the State; it is not a restriction which only operates upon property after it has become mingled with and forms part of the mass of the property within the State. It is, on the other hand, a regulation directly affecting interstate commerce in an essential and vital point. If authorized, in the present instance, upon the grounds and motives of the policy which have dictated it, the same reason would justify any and every other state regulation of interstate commerce upon any grounds and reasons which might prompt in particular cases their adoption. It is, therefore, a regulation of that character which constitutes an unauthorized interference with the power given to Congress over the subject. If not in contravention of any positive legislation by Congress, it is nevertheless a breach and interruption of that liberty of trade which Congress ordains as the national policy, by willing that it shall be free from restrictive regulations.

It may be said, however, that the right of the State to restrict or prohibit sales of intori-

inspector—his compensation and expense being paid by said company. Said company was a foreign fire insurance company, incorporated in and by the State of Maryland, and not licensed, and having no authority from the insurance commissioner to do business in Pennsylvania, and had not complied with the laws of Pennsylvania relating to foreign insurance companies.

"On the 13th day of February, 1897, said defendant visited the City of Pittsburgh and delivered to business men in said city his card, announcing himself as inspector, together with said company's form of premium note and its financial statement to December 31, 1896, and also a list of its official directors and committee, which card and statement lists are hereto attached and made a part of this statement of facts. He afterward visited C. F. Wells, in the City of Pittsburgh, and inquired when his policies of insurance would expire in companies in which said Wells was already insured, and requested permission to inspect the premises of said Wells, and this for the purpose of enabling said Mutual Fire Insurance Company of Baltimore, Md., to place a policy or policies of insurance thereon. Prior to the visit of defendant to the City of Pittsburgh, Messrs. Reed and Edwards received a letter from the secretary of the company, dated February 8, 1897, which letter is hereto attached and made a part of this statement of facts. Defendant was sent to the City of Pittsburgh by the said company for the purpose of inspecting buildings, ascertaining their exposures, and making diagrams of the same, with respect to their desirability as insurance risks for acceptance by said Mutual Fire Insurance Company of Baltimore, Maryland, and that he went to the said Wells and others in the City of Pittsburgh for said purpose.

"It is further admitted that on the day and year last aforesaid the defendant inspected the Franklin Glue Works, a building in the County of Allegheny, in the State of Pennsylvania, for the purpose aforesaid; that he promptly thereafter transmitted a report of said inspection to said company, which company immediately thereafter, for a premium paid to it, placed upon the said glue works said company's policy

of insurance against loss by fire; that in pursuance of said employment as inspector, on the day and year last aforesaid, defendant was engaged in the City of Pittsburgh in inspecting risks for the purpose aforesaid, and transmitted reports of his inspection to said company in Baltimore. It is further admitted that his actions were confined entirely to the said business of inspection, and that he did not negotiate or solicit within this State any contract of insurance, or pretend to effect the same, or receive or transmit any offer or offers of insurance, or receive or deliver a policy, or in any manner aid in the business of placing insurance, except as hereinbefore set forth in this statement of facts."

The following points were presented by the defendant to the court, COLLIER, J.:

1. "That if they find from all the evidence in this case that the only business transacted by defendant, G. B. List, for an insurance company of another State consisted in making an examination and inspection of buildings, with reference to their desirability as risks, and reporting the facts, there can be no conviction under the law, and it is their duty to acquit the defendant."

Refused. [3]

2. "That if the jury find from all the evidence in the case that the defendant did not quote rates, or solicit insurance, or receive premiums, or forward the same, or perform any of the duties of an insurance agent, but that defendant's action was confined wholly to inspecting and examining the physical and material condition of buildings, such action was not the 'aiding in the placing of insurance' prohibited by the law, and there can be no conviction."

Refused. [4]

3. "That there can be no conviction in this case, for the reason that the Act of Assembly under which the indictment is framed is obnoxious to the Constitution of the United States, being an attempt on the part of the State to regulate commerce among the several States, which is in conflict with article 1, § 8, declaring that 'Congress shall have power to regulate commerce among the several States,' also with article 4, § 2, declaring that 'Citizens of each State shall be entitled to all the privi-

of every such company or association authorized to transact business in this State, to make report to the commissioner in the month of January of each year, under oath of the president or secretary thereof, showing the entire amount of premiums of every character and description received by said company or association in this State, during the year or fraction of a year, ending with the 31st day of December preceding, whether said premiums were received in money, or in the form of notes, credits or any substitute for money, and pay into the state treasury a tax of 3 per centum upon said premiums; and the commissioner shall not have power to grant a renewal of the certificate of said company or association until the tax aforesaid is paid into the state treasury.

"Section 11. Companies to which certificates of authority are issued, as provided in the preceding section, shall from time to time certify to the commissioner the names of the agents appointed by them to solicit risks in this State; and no such agent shall transact business until he has procured from the commissioner a certificate showing that the company has complied with the requirements of this Act, and that the person named in said certificate has been duly appointed its agent."

"Section 14. That any person or persons or corporation receiving premiums or forwarding applications, or in any other way transacting business

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[20: 600]— run upon the acknowledged right of the States of the Union to control their purely internal affairs, and, in so doing, to protect the health, morals and safety of their people by regulations that do not interfere with the execution of the powers of the General Government, or violate rights secured by the Constitution. The power to establish such regulations, as was said in *Gibbons v. Ogden*, 22 U. S. 9 Wheat. 1, 208 [6: 39, 71], reaches everything within the territory of a State not surrendered to the National Government." 120 U. S. 659 [31: 310] Referring to the suggestion that no government could lawfully prohibit a citizen from manufacturing for his own use, or for export or storage, any article of food or drink, not endangering or affecting the rights of others, the court said: "But by whom, or by what authority, is it to be determined whether the manufacture of particular articles of drink, either for general use or for the personal use of the maker, will injuriously affect the public? Power to determine such questions, so as to bind all, must exist somewhere, else society will be at the mercy of the few, who, regarding only their own appetites or passions, may be willing to imperil the peace and security of the many, provided only they are permitted to do as they please. Under our system that power is lodged with the legislative branch of the government. It belongs to that department to exert what are known as the police powers of the State, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety." 120 U. S. 660, 661 [31: 310].

But it is contended that a statute forbidding the introduction of intoxicating liquors from other States does infringe rights secured by the Constitution, of the United States, and that view is sustained by the opinion and judgment in this case. The decision is placed upon the broad ground that intoxicating liquors are merchantable commodities, or known articles of commerce, and that, consequently, the Constitution, by the mere grant to Congress of the power to regulate commerce operates, in the absence of legislation, to establish unrestricted trade, among the States of the Union, in such commodities or articles. To this view we cannot assent. In *Mugler's Case* (*supra*) the court said that it could not "shut out of view the fact, within the knowledge of all, that the public health, the public morals, and the public safety may be endangered by the general use of intoxicating drinks; nor the fact, established by statistics accessible to every one, that the idleness, disorder, pauperism, and crime existing in the country are, in some degree at least, traceable to this evil." The court also said, that "If, in the judgment of the legislature [of a State] the manufacture of intoxicating liquors for the maker's own use, as a beverage, would tend to cripple, if not defeat, the effort to guard the community against the evils attending the excessive use of such liquors, it is not for the courts, upon their view as to what is best and safest for the community, to disregard the legislative deter-

mine anyone's constitutional rights or property, when it determines that the manufacture and sale of intoxicating drinks for general or individual use, as a beverage, are or may become hurtful to society, and constitute, therefore, a business in which no one may lawfully engage." 120 U. S. 662, 663 [31: 311].

In *Gibbons v. Ogden*, 22 U. S. 9 Wheat. 308, 305 [6: 71, 73], Chief Justice Marshall said that "inspection laws, quarantine laws, and health laws of every description" were component parts of that mass of legislation "not surrendered to the General Government," which "can be most advantageously exercised by the States themselves;" that such laws "are considered as flowing from the acknowledged power of a State to provide for the health of its citizens." To this doctrine the court has steadily adhered. In *Gilman v. Philadelphia*, 70 U. S. 3 Wall. 730 [18: 101], after observing that a state law, requiring an importer to pay for and take out a license before he should be permitted to sell a bale of goods imported from a foreign country, is void—*Brown v. Maryland*, 25 U. S. 19 Wheat. 419 [6: 677],—and that a state law which requiring the master of a vessel, engaged in foreign commerce, to pay a certain sum to a state officer on account of each passenger brought from a foreign country, is also void—*Passenger Cases*, 49 U. S. 7 How 288 [13: 709],—the court said: "But a State, in the exercise of its police power, may forbid spirituous liquor, imported from abroad or from another State, to be sold by retail or to be sold at all without a license; and it may visit the violation of the prohibition with such punishment as it may deem proper. Under quarantine laws, a vessel registered, or enrolled and licensed, may be stopped before entering her port of destination, or be afterwards removed and detained elsewhere for an indefinite period; and a bale of goods, upon which the duties have or have not been paid, laden with infection, may be seized under 'health laws,' and, if it cannot be purged of its poison, may be committed to the flames." In *American v. Aling*, 98 U. S. 90, 108 [20: 619, 620], it was said that "In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country." In *Headral & St. J. Railroad Company v. Huss*, 95 U. S. 465, 471 [24: 537, 538], the court adjudged that a Statute of Missouri, prohibiting the introduction into that State of all Texas, Mexican or Indian cattle between May 1 and November 1 of each year, whether diseased or not, and which imposed burdensome conditions upon their transportation through the State, was void because a regulation of interstate commerce. But it was distinctly declared that the delegation to Congress of the power to regulate commerce with foreign Nations and among the States "was not a surrender of that which may properly be denominated police power," which included, the court said, the power in each State, to adopt "precautionary,

States under their Constitution and laws, by virtue of their being citizens. Special privileges enjoyed by citizens in their own State are not secured by it in other States.

"The issuing of a policy of insurance is not a transaction of commerce within the meaning of the latter of the two clauses, even though the parties be domiciled in different States, but is a simple contract of indemnity against loss."

In the case of *Ducat v. Chicago*, 77 U. S. 10 Wall. 410 [19 L. ed. 972], the foregoing case was reaffirmed and followed, and the court in the opinion said: "The power of the State to discriminate between her own domestic corporations and those of other States desirous of transacting business within her jurisdiction, is clearly established in the case we have referred to [*Paul v. Virginia*], as it also had been in the previous case of *Bank of Augusta v. Earle*, 38 U. S. 13 Pet. 519 [10 L. ed. 274]."

The opinion in the case of *Paul v. Virginia* is so conclusive and exhaustive that it is only necessary to refer to it; no other opinion could be anything more than a repetition of it.

In this court in the case of *Thorne v. Travelers Ins. Co.* 80 Pa. 28, the same doctrine was announced. We there said: "There can be no doubt of the constitutional power of the Legislature to prescribe the conditions under which a foreign corporation shall transact business in this State and the manner in which its agents shall be qualified before entering on their duties." See also, to the same effect *Germania Life Ins. Co. v. Commonwealth*, 85 Pa. 513.

It cannot be doubted that the plaintiff in error brought himself within the words as well as the spirit of the Act of 1873, although he called himself an inspector. He was certainly an agent of his company, and he certainly did take action relating to risks; and these are the words which define the prohibited acts and subject the party to the penalties of the law in question. We do not consider it necessary to prolong the discussion.

Judgment affirmed.

THE INTERSTATE COMMERCE COMMISSION.

RIDDLE, DEAN & CO.

v.

NEW YORK, LAKE ERIE & WESTERN R. R. CO. and Pittsburgh & Lake Erie R. Co.

(No. 99.)

1. In view of the fact that by an agreement between the N. Y., L. E. & W. R. R. Co., extending (over the leased line of the N. Y., P. & O. R. R. Co.) to Dayton, Ohio, and the C., C., C. & I. R. Co. extending from Dayton to Cincinnati, the N. Y., L. E. & W. Co. is considered an initial road at Cincinnati, with the right to make rates thereto and therefrom on its own responsibility, held, that Cincinnati must be treated as a point upon the line by the N. Y., L. E. & W. Co., for the purposes of a proceeding against that Company under the Act to Regulate Commerce, for unjust discrimination in furnishing coal cars.
2. It is the duty of a common carrier to provide adequate equipment for the business of its line; if in time of special pressure some one must wait, the annoyance must be distributed with all possible equality, and in this respect regular customers are not entitled to preference over occasional customers.
3. It is not necessary for a shipper to make a special contract with a common carrier, in order to entitle himself to transportation for his goods.
4. Common carriers have no right, by issuing a prohibitory tariff or otherwise, to withdraw from the transportation of any articles not dangerous to handle and which are ordinarily the subject of transportation by them; less desirable traffic must be accepted upon reasonable terms, as well as that which is more desirable.
5. When the equipment of a carrier usu-

ally applied to the transportation of a particular article (here, gondola cars for the transportation of coal) is not equal to the demand made upon it, it is its duty to appropriate other cars to such service or to obtain cars elsewhere.

6. A carrier is not justified in refusing to furnish any cars for the transportation of coal to a certain point on its line, by the fact that it could at the time make more money by using its regular coal cars on another portion of its line, where return loads were obtainable and more frequent trips could be made, thus enabling it to serve a larger number of customers with a smaller number of cars.
7. The mere fact that at a given time an article cannot be profitably shipped at the existing tariff rate is by no means conclusive evidence that such rate is unreasonable.
8. The Commission will not make an award of damages in a case where the defendant is entitled to have the amount of damages assessed by a jury.

(Heard Jan. 31, Decided Feb. 24, 1888.)

COMPLAINT charging unjust discrimination in the matter of furnishing coal cars.
Mr. J. L. Black, for complainants.
Mr. James A. Buchanan, for New York, Lake Erie & Western R. R. Co.
Mr. J. H. Reed, for Pittsburgh & Lake Erie R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

Walker, Commissioner:

Riddle, Dean & Company, the complainants, of Pittsburgh, Pennsylvania, are a firm who act as sales agents for various mines, and are engaged in selling coal upon commission. Coal mined in the vicinity of Pittsburgh is sold at Cincinnati, in the State of Ohio, the usual

be, as it often is, made in reference to powers that all concede to be vital to the public safety. But it does not disprove their existence. This court said that the judicial tribunals were not to be misled by mere pretenses, and were under a solemn duty to look at the substance of things whenever it became necessary to inquire whether the Legislature had transcended the limits of its authority, and that "If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." 123 U. S. 661 [81: 210]. In view of these principles, the court said it was difficult to perceive any ground for the judiciary to declare that the prohibition by a State of the manufacture or sale, within her limits, of intoxicating liquors for general use there as a beverage, is not fairly adapted to the end of protecting the community against the evils which confessedly result from the excessive use of ardent spirits. *Id.* 669 [210]. In the same case the court sustained, without qualification, the authority of Kansas to declare, not only that places where such liquors were manufactured, sold, bartered or given away, or were kept for sale, barter or delivery, in violation of her statutes, should be deemed common nuisances, but to provide for the forfeiture, without compensation, of the intoxicating liquors found in such places and the property used in maintaining said nuisances.

Now, can it be possible that the framers of the Constitution intended—whether Congress chose or not to act upon the subject—to withhold from a State authority to prevent the introduction into her midst of articles or commodities, the manufacture of which, within her limits, she could prohibit, without impairing the constitutional rights of her own people? If a State may declare a place where intoxicating liquors are sold for use as a beverage to be a common nuisance, subjecting the person maintaining the same to fine and imprisonment, can her people be compelled to submit to the sale of such liquors, when brought there from another State for that purpose? This court has often declared that the most important function of government was to preserve the public health, morals, and safety; that it could not divest itself of that power, nor, by contract, limit its exercise; and that even the constitutional prohibition upon laws impairing the obligation of contracts does not restrict the power of the State to protect the health, the morals, or the safety of the community, as the one or the other may be involved in the execution of such contract. *Stone v. Miss.* 101 U. S. 814, 816 [25: 1079], *Butchers Union Co. v. Crescent City Co.* 111 U. S. 746, 751 [28: 566, 567], *N. O. Gas Co. v. La. Light Co.* 118 U. S. 650, 679 [20: 516, 521], *Mugler v. Kansas*, 123 U. S. 664 [81: 211]. Does the mere grant of the power to regulate commerce among the States invest individuals of one State with the right, even without the express sanction of Congressional legislation, to introduce among the people of another State articles which, by statute, they have declared to be deleterious to their health

and dangerous to their safety? In our opinion, these questions should be answered in the negative. It is inconceivable that the well being of any State is at the mercy of the liquor manufacturers of other States.

These views are sustained by *Walling v. Michigan*, 116 U. S. 446 [29: 691]. It was there held that a Statute of Michigan which imposed a tax upon persons who, not residing or having their principal place of business in that State, engaged there in the business of selling or soliciting the sale of intoxicating liquors to be shipped into Michigan from other States, but which did not impose a similar tax upon persons selling or soliciting the sale of intoxicating liquors manufactured in that State, was a discrimination against the products of other States, and void as a regulation in restraint of commerce. In reference to the suggestion by the state court that the statute was an exercise by the Legislature of the police power for the discouragement of the use of intoxicating liquors, and the preservation of the health and morals of the people, this court said: "This would be a perfect justification of the Act if it did not discriminate against the citizens and products of other States in a matter of commerce between the States, and thus usurp one of the prerogatives of the National Legislature." The clear implication from this language is that the state law would have been sustained if it had applied the same rule to the products of Michigan which it attempted to apply to the products of other States.

At the argument it was insisted that the contention of the plaintiffs was supported by *Brown v. Maryland*, 25 U. S. 12 Wheat. 419, 426 [8: 678, 684], where the question was whether the Legislature of a State could constitutionally require an importer of foreign articles or commodities to take out a license from the State before he should be permitted to sell a bale or package so imported. The indictment in that case charged Brown with having sold one package of foreign "dry goods" without having such a license. The court held the State regulation to be repugnant to that clause of the Constitution declaring that no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, as well as to that clause which clothes Congress with power to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes. Among other things, it said that the right to sell articles imported from foreign countries is connected with the law permitting importation, as an inseparable incident; observing, at the close of the opinion that it supposed the principle laid down to apply equally to importations from a sister State. It is however, clear from the whole opinion that the court in that observation had reference to commerce in articles having no connection whatever with the health, morals, or safety of the people, and that it had no purpose to withdraw or qualify the explicit declaration, in *Gibbons v. Ogden*, 22 U. S. 9 Wheat. 1 [6: 20], that the health laws of the States were a component part of that mass of legislation, the power to enact which remained with the States, because never surrendered to the General Government.

In behalf of Maryland it was insisted that the constitutional prohibition of state imposts or duties upon imports ceased the instant the goods entered the country; otherwise, it was argued, the importer "may introduce articles, as gunpowder, which endanger a city, into the midst of its population; he may introduce articles which endanger the public health, and the power of self preservation is denied." To this argument *Chief Justice Marshall* replied: "The power to direct the removal of gunpowder is a branch of the police power, which unquestionably remains, and ought to remain, with the States. If the possessor stores it himself out of town, the removal cannot be a duty on imports, because it contributes nothing to the revenue. If he prefers placing it in a public magazine, it is because he stores it there, in his own opinion, more advantageously than elsewhere. We are not sure that this may not be classed among inspection laws. The removal or destruction of infectious or unsound articles is undoubtedly an exercise of that power, and forms an express exception to the prohibition we are considering. Indeed, the laws of the United States expressly recognize the health laws of a State." This, we understand to have been a distinct adjudication that the police power, so far as it involves the public health, the public morals, or the public safety, remains with the States, and is not overridden by the National Constitution.

In *Gibbons v. Ogden*, 23 U. S. 9 Wheat. 211 [6: 78], it was said by counsel that the Constitution does not confer the right of intercourse between State and State, and that such right has its source in those laws whose authority is acknowledged by civilized man throughout the world. *Chief Justice Marshall* said: "This is true. The Constitution found it an existing right, and gave to Congress the power to regulate it." In the same case he said that this power is "the power to regulate; that is, to prescribe the rule by which commerce is to be governed." p. 196 [70]. It may be said, generally, that free commercial intercourse exists among the several States, by force of the Constitution. But as, by the express terms of that instrument, the powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people; and as, by the repeated adjudications of this court, the States have not surrendered, but have reserved, the power to protect by police regulations, the health, morals and safety of their people, Congress may not prescribe any rule to govern commerce among the States which prevents the proper and reasonable exercise of this reserved power. Even if Congress, under the power to regulate commerce, had authority to declare what shall or what shall not be subjects of commerce among the States, that power would not fairly imply authority to compel a State to admit within her limits that which, in fact is, or which, upon reasonable grounds, she may declare to be destructive of the health, morals and peace of her people. The purpose of committing to Congress the regulation of commerce was to insure equality of commercial facilities, by preventing one State from building up her own trade at the expense of sister States. But that purpose is not defeated when a State employs

appropriate means to prevent into her limits of what she and her own people from Maryland was not meant to give citizens greater rights in Iowa than have.

But if this be not a violation of the Constitution, liquors are entitled to the same treatment as the National Government's merchandise entering into commerce with the States; if Congress, under the power to regulate commerce, may, in its discretion, prohibit commerce among the States, or prohibit commerce among the States in the sale of intoxicating liquors; and if, in the exercise of that power, as the health, morals and safety of the people may be involved, Congress may, in its discretion, prohibit commerce among the States, can be overborne by the States. The former declaration would seem to show that the States are valid, even when their commercial intercourse among the States is displaced by federal legislation. Such was the doctrine in *Wilson v. Blackbird Creek*, 12 Pet. 250 [7: 414]. That the validity of an Act of the Legislature, authorizing a dam to be built across a navigable stream, in which the water flowed, and in which there was a public way in the nature of a river, was not a ground for objection, speaking by *Chief Justice Marshall*, "The Act of Assembly, by which the Legislature were authorized to construct a dam across the Delaware, up which the water flows, at some distance. The value of the land on its banks must be enhanced by the water from the marsh, and inhabitants probably imputed to produce these they do not come into collision with the powers of the General Government within those which a State. But the measure a State stops a navigable creek, and thus it is argued, posed to abridge the rights of the State, which has been accustomed to use it." The court insisted that the statute was within the power of Congress to regulate commerce with foreign Nations and among the several States, the court said that it had passed any Act which interfered with the power of Congress to regulate commerce, the object of which was to regulate state legislation over small streams into which the tide flows, and throughout the Middle and Western States we should not feel much doubt that a state law coming in conflict with the Act would be void. But Congress has no such Act. The repugnance of the Act to the Constitution on its repugnance to the power of Congress to regulate commerce with foreign Nations and among the several States; a power which has been exercised as to affect the question of principle is announced in *Gilman v. Philadelphia*, 70 U. S. 96; *Esanaba Co. v. Chicago*, 107 U. S. 27; *Cardwell v. An*

INTER 8.

INTERSTATE COMMERCE REPORTS.

VOL. I. APPENDIX I.

RULES OF PRACTICE ADOPTED BY THE COMMISSION.

The Interstate Commerce Commission adopted the following rules of practice in cases and proceedings before it:

1. When at Washington the Commission will hold its general sessions at 11 o'clock A. M., daily, except Saturdays and Sundays, for the reception and hearing of petitions and complaints and for the transaction of such other business as may be brought before it. The sessions will be held at the office of the Commission in *The Sun* building, No. 1815 F. Street, northwest. When special sessions are held at other places such regulations as may be necessary will be made by the Commission. Daily sessions at Washington.

2. Applications under the fourth section of the Act for authority to charge less for longer than for shorter distances for the transportation of passengers or property must be made by petition addressed to the Commission by the carrier or carriers desiring relief. The petition must state with particularity the extent of the relief desired and the points at and between which authority is asked to charge less for longer distances; the reasons for the relief sought must also be set forth, and the facts upon which the application is founded. The petition must be verified by some officer or agent of the carrier in whose behalf it is presented, to the effect that the allegations of the petition are true to the knowledge or belief of the affiant. Notice must be published by a petitioner in not less than two newspapers along the line of the road having general circulation, for at least ten days prior to the presentation of a petition, stating briefly the nature of the relief intended to be applied for and the time when the application will be presented, and proof of each publication must be filed with the petition. Applications under section 4; petition; verification; notice.

3. Upon the presentation of a petition for relief an investigation will be made by the Commission at a time and place to be designated, when testimony will be received for and against the prayer of the petition. After investigation the Commission will make such order as may appear to be just and appropriate upon the facts and circumstances of the case. Investigation by Commission.

4. Complaints, under section 13 of the Act, of anything done or omitted to be done by any common carrier subject to the provisions of the Act, in contravention of the provisions thereof, must be made by petition, which must briefly state the facts which are claimed to constitute a violation of the Act, and must be verified by the petitioner, or by some officer or agent of the corporation, society, or other body or organization making the complaint, to the effect that the allegations of the petition are true to the knowledge or belief of the affiant. Complaints under section 13.

The complainant must furnish as many written or printed copies of the complaint or petition as there may be parties complained against to be served. Copies of complaint.

When a complaint is made, the name of the carrier complained against must be set forth in full, and the address of the petitioner and the name and address of his attorney or counsel, if any, must be indorsed upon the complaint. Names and addresses to be set forth.

The Commission will cause a copy of the complaint to be served upon each common carrier complained against, by mail or personally, in its discretion, with notice to the carrier or carriers to satisfy the complaint or to answer the same in writing within the time specified. Service of copies.

5. A carrier complained against must answer the complaint made within twenty days from date of notice, unless the Commission shall in particular cases prescribe a shorter time for the answer to be served, and in such cases the answer must be made within the time prescribed. The original answer must be filed Answers within twenty days; filing; verification.

with the Commission at its office in Washington, and a copy thereof must at the same time be served upon the complainant by the party answering, personally or by mail. The answer must admit or deny the material allegations of fact contained in the complaint, and may set forth any additional facts claimed to be material to the issue. The answer must be verified in the same manner as the complaint. If a carrier complained against shall make satisfaction before answering, a written acknowledgment of satisfaction must be filed with the Commission, and in that case the fact of satisfaction without other matter may be set forth in the answer filed and served on the complainant. If satisfaction be made after the filing and service of an answer, a supplemental answer, setting forth the fact of satisfaction, may be filed and served.

Hearing on complaint without answer.

6. If a carrier complained against shall deem the complaint insufficient to show a breach of legal duty, it may, instead of filing an answer, serve on the complainant notice for a hearing of the case on the complaint; and in case of the service of such notice the facts stated in the complaint will be taken as admitted. The filing of an answer will not be deemed an admission of the sufficiency of the complaint, but a motion to dismiss for insufficiency may be made at the hearing.

Adjournment and extension of time.

7. Adjournments and extensions of time may be granted upon the application of parties in the discretion of the Commission.

Hearing on issue joined.

8. Upon issue being joined by the service of answer, the Commission, upon request of either party, will assign a time and place for hearing the same, which will be at its office in Washington, unless otherwise ordered. Witnesses will be examined orally before the Commission, except in cases when special orders are made for the taking of testimony otherwise. The petitioner or complainant must in all cases prove the existence of the facts alleged to constitute a violation of the Act, unless the carrier complained of shall admit the same or shall fail to answer the complaint. Facts alleged in the answer must also be proved by the carrier, unless admitted by the petitioner on the hearing.

Failure to answer.

In cases of failure to answer, the Commission will take such proof of the charge as may be deemed reasonable and proper, and make such order thereon as the circumstances of the case appear to require.

Subpenas.

9. Subpenas requiring the attendance of witnesses will be issued by any member of the Commission in all cases and proceedings before it, and witnesses will be required to obey the subpenas served upon them requiring their attendance, or the production of any books, papers, tariffs, contracts, agreements, or documents relating to any matter under investigation or pending before the Commission.

Depositions.

Upon application to the Commission authority may be given, in the discretion of the Commission, to any party to take the deposition of any witnesses who may be shown for some sufficient reason to be unable to attend in person.

Amendments.

10. Upon application by any petitioner or party, amendments may be allowed by the Commission, in its discretion, to any petition, answer or other pleading, in any proceeding before the Commission.

Copies.

11. Copies of any petition, complaint or answer in any matter or proceeding before the Commission, or of any order, decision or opinion, by the Commission, will be furnished upon application by any person or carrier desiring the same, upon payment of the expense thereof.

Affidavits, before whom taken.

12. Affidavits to a petition, complaint or answer may be taken before any officer of the United States, or of any State or Territory, authorized to administer oaths.

Promulgated May 25, 1887

also be lawful for the said attorney-general, or lord advocate, to apply in like manner to any such court or judge; and in either of such cases it shall be lawful for such court or judge to hear and determine the matter of such complaint; and for that purpose, if such court or judge shall think fit, to direct and prosecute, in such mode and by such engineers, barristers, or other persons, as they shall think proper, all such inquiries as may be deemed necessary to enable such court or judge to form a just judgment on the matter of such complaint; and if it be made to appear to such court or judge on such hearing, or on the report of any such person, that anything has been done or omission made in violation or contravention of this Act by such company or companies, it shall be lawful for such court or judge to issue a writ of injunction or interdict, restraining such company or companies from further continuing such violation or contravention of this Act, and enjoining obedience to the same; and in case of disobedience of any such writ of injunction or interdict, it shall be lawful for such court or judge to order that a writ or writs of attachment, or any other process of such court, incident or applicable to writs of injunction or interdict, shall issue against any one or more of the directors of any company, or against any owner, lessee, contractor, or other person, failing to obey such writ of injunction or interdict; and such court or judge may also, if they or he shall think fit, make an order directing the payment by any one or more of such companies of such sum of money as such court or judge shall determine, not exceeding for each company the sum of £200 for every day, after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict; and such moneys shall be payable as the court or judge may direct, either to the party complaining, or into court to abide the ultimate decision of the court, or to Her Majesty; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by decree or judgment in any superior court at Westminster or Dublin, in England or Ireland, and in Scotland by such diligence as is competent on an extracted decree of the court of session; and in any such proceeding as aforesaid, such court or judge may order and determine that all or any costs thereof or thereon incurred shall and may be paid by or to the one party or the other, as such court or judge shall think fit; and it shall be lawful for any such engineer, barrister, or other person, if directed so to do by such court or judge, to receive evidence on oath relating to the matter of any such inquiry, and to administer such oath.

4. It shall be lawful for the said court of common pleas at Westminster, or any three of the judges thereof, of whom the Chief Justice shall be one, and it shall be lawful for the said courts in Dublin, or any nine of the judges thereof, of whom the Lord Chancellor, the Master of the Rolls, the Lords Chief Justice of the Queen's Bench and Common Pleas, and the Lord Chief Baron of the Exchequer, shall be five, from time to time to make all such

general rules and orders as to the forms of proceedings and process, and all other matters and things touching the practice and otherwise in carrying this Act into execution before such courts and judges as they may think fit, in England or Ireland; and in Scotland it shall be lawful for the court of session to make such acts of *cederunt* for the like purpose as they shall think fit.

5. Upon the application of any party aggrieved by the order made upon any such motion or summons as aforesaid, it shall be lawful for the court or judge, by whom such order was made, to direct, if they think fit so to do, such motion or application on summons to be reheard before such court or judge, and upon such rehearing to rescind or vary such order.

6. No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided; but nothing herein contained shall take away or diminish any rights, remedies, or privileges of any person or company against any railway or canal or railway and canal company, under the existing law.

7. Every such company as aforesaid shall be liable for the loss of, or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto or in any wise limiting such liability; every such notice, condition or declaration being hereby declared to be null and void; *Provided always*, That nothing herein contained shall be construed to prevent the said companies from making such condition with respect to receiving, forwarding, and delivering of any of the said animals, articles, goods, or things as shall be adjudged by the court or judge before whom any question relating thereto shall be tried, to be just and reasonable; *Provided always*, That no greater damages shall be recovered for the loss of, or for any injury done to, any of such animals beyond the sums hereinafter mentioned (that is to say): for any horse, £50; for any neat cattle, per head, £15; for any sheep or pigs, per head, £3; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above mentioned, in which case it shall be lawful for such company to demand and receive, by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge; and such percentage or increased rate of charge shall be notified in the manner prescribed in the Statute 11 Geo. 4, and 1 Wm. 4, c. 68, and shall be binding upon such company in the manner therein mentioned; *Provided, also*, That the proof of the value of such animals, articles, goods, and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury; *Provided, also*, That no special contract between such company and any other

mails, articles, goods or things respectively for carriage. *Provided, also,* That nothing herein contained shall alter or affect the rights, privileges or liabilities of any such company under the said Act of the 11 Geo. 4 & 1 Wm. 4, c. 68, with respect to articles of the description mentioned in the said Act.

8. This Act may be cited for all purposes as the "Railway and Canal Traffic Act, 1854."

THE REGULATION OF RAILWAYS ACT, 1858.

(11 & 12 Vict. c. 119.)

Interpretation of Terms.

Sec. 2. In this Act the term "railway" means the whole or any portion of a railway or tramway, whether worked by steam or otherwise.

The term "company" means a company incorporated either before or after the passing of this Act for the purpose of constructing, maintaining, or working a railway in the United Kingdom (either alone or in conjunction with any other purpose), and includes, except when otherwise expressed, any individual or individuals not incorporated who are owners or lessees of a railway in the United Kingdom, or parties to an agreement for working a railway in the United Kingdom.

The term "person" includes a body corporate.

Provision for Securing Equality of Treatment where Railway Company Works Steam Vessels.

Sec. 16. Where a company is authorized to build, or buy, or hire, and to use, maintain, and work, or to enter into arrangements for using, maintaining, or working, steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels, then and in every such case tolls shall be at all times charged to all persons equally and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favor of or against any person using the steam vessels in consequence of his having traveled or being about to travel on the whole or any part of the company's railway, or not having traveled or not being about to travel on any part thereof, or in favor of or against any person using the railway in consequence of his having used or being about to use, or his not having used or not being about to use, the steam vessels, and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

The provisions of the Railway and Canal Traffic Act, 1854, so far as the same are applicable, shall extend to the steam vessels and to the traffic carried on thereby.

ing into effect the Railway and Canal Traffic Act, 1854, and for other purposes connected therewith. (31st July, 1878.)

Be it enacted as follows:

Preliminary.

1. This Act may be cited as the Regulation of Railways Act, 1878.

2. This Act shall, except as herein is otherwise expressly provided, come into operation on the first day of September, 1878, which date is in this Act referred to as the commencement of this Act.

3. In this Act the term "railway company" includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament.

The term "canal company" includes any person being the owner or lessee of, or working, or entitled to charge tolls for the use of any canal in the United Kingdom constructed or carried on under the powers of any Act of Parliament.

The term "person" includes a body of persons corporate or unincorporate.

The term "railway" includes every station, siding, wharf, or dock of or belonging to such railway and used for the purposes of public traffic.

The term "canal" includes any navigation which has been made under or upon which tolls may be levied by authority of Parliament, and also the wharves and landing places of and belonging to such canal or navigation, and used for the purposes of public traffic.

The term "traffic" includes not only passengers and their luggage, goods, animals, and other things conveyed by any railway company or canal company, but also carriages, wagons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company.

The term "mails" includes mail bags and post letter bags.

The term "special act" means a local or local and personal act, or an act of a local and personal nature, and includes a provisional order of the board of trade confirmed by Act of Parliament, and a certificate granted by the board of trade under the Railways Construction Facilities Act, 1864.

The term "the treasury" means the commissioners of Her Majesty's treasury for the time being.

The term "superior court" means in England any of Her Majesty's courts at Westminster; in Ireland, any of Her Majesty's superior courts at Dublin, and in Scotland, the court of session.

Appointment and Duties of Railway Commissioners.

4. For the purpose of carrying into effect the provisions of the Railway and Canal Traffic Act, 1854, and of this Act, it shall be lawful for Her Majesty, at any time after the passing of this Act, by warrant under the royal sign

States of New York and Pennsylvania by the consolidation of the Western New York & Pennsylvania Railway Company of New York, with the Western New York & Pennsylvania Railway Company of Pennsylvania, and that those two corporations were organized under the laws of the States of New York and Pennsylvania respectively, September 15, 1887, by the purchasers of the franchises and property of the Buffalo, New York & Philadelphia Railroad Company, under sales made pursuant to decrees of foreclosure of mortgages; and that this respondent took possession and began to operate the said property and franchises, December 1, 1887.

This respondent has, since December 1, 1887, established and maintained a local rate of thirty-four cents per barrel on oil in barrels shipped in car load lots at Titusville, Pennsylvania, for Buffalo, New York; and during the same time on some occasions oil in barrels has been shipped by the petitioners at Titusville for Perth Amboy, New Jersey, by way of Buffalo, and such oil has been carried over this respondent's road to Buffalo, and thence by the Lehigh Valley Railroad to Perth Amboy, New Jersey; and the through rate on such oil has been, and is, fifty-two cents per barrel from Titusville to Perth Amboy, which has been divided between the several carriers in such proportions that this respondent has received twelve cents per barrel, the Lehigh Valley Railroad Company forty cents per barrel, and such traffic has been and is carried almost entirely in cars furnished by the Lehigh Valley Railroad Company, and not in the cars of this respondent; and this respondent denies that the said rate, or that the proportion thereof received by this respondent, affords a sufficient or reasonable compensation for the transportation of such oil from Titusville to Perth Amboy, and alleges that such rate has been accepted by the several carriers because it is the highest rate they could get.

Perth Amboy is situated on New York Harbor; the Standard Oil Company referred to in the petition controls or operates a continuous line of pipes from the oil regions of Western Pennsylvania, in which Titusville is situated, to the Harbor of New York, and carries its oil in such pipes at a cost of about forty cents per barrel—and the oil of the petitioners and other producers or refiners would be entirely shut out from the New York market, unless the railroad companies fixed such rates as would enable them to compete with the Standard Oil Company.

From Titusville, or other points in Western Pennsylvania, the only means of transportation is by railroad; and there is no line of water transportation. Beside this respondent, the Dunkirk, Alleghany Valley & Pittsburgh Railroad Company, the Lake Shore & Michigan Southern Railway Company, the New York, Lake Erie & Western Railway Company, are engaged in the transportation of oil from the said oil regions to Buffalo; and their respective rates are, as this respondent is informed and believes, substantially the same as this respondent's rates. Said rates are based upon the freight classification adopted by and in force, among all railroads east of the Mississippi and north of the Ohio, in which

classification refined petroleum is reckoned as fifth class freight; and such classification is, so far as the shipper is concerned, reasonable and just, although in this respondent's judgment, too low to afford adequate remuneration to the carrier. The said rate on local shipments from Titusville to Buffalo is just and reasonable, and does not discriminate against the petitioners or any other refiners or producers, nor in favor of the Standard Oil Company or any other refiners or producers, nor in favor of New York or other seaboard points, against Buffalo or other interior points, and affords to the railroad no more than, but, on the contrary, less than, a fair compensation for the service performed.

The answer of the defendant, G. Clinton Gardner, Receiver of the Buffalo, New York & Philadelphia R. R. Co., filed March 23, 1888, admits his appointment as such Receiver, May 20, 1885, and that he operated said railroad in that capacity up to December 1, 1887, since which time the Western New York & Pennsylvania R. R. Co. has been in possession of the same, and says that from that date he is a stranger to all the allegations in said complaint contained relating to matters subsequent to said date, and as to matters prior thereto, submits that the Commission is without jurisdiction to entertain the same. The other statements contained in the defendant's answer are substantially embraced in the foregoing answer of the W. N. Y. & P. R. R. Co.

MICHIGAN CONGRESS WATER CO.

v.

CHICAGO & GRAND TRUNK R. CO.

(No. 128.)

ABSTRACT of Complaint filed March 26, 1888, charging the imposition of an unjust and exorbitant rate upon mineral water in tank cars, and an improper classification of mineral water.

Mr. William S. Edwards, attorney for complainant:

Complainant is a corporation engaged for seven years last past in bottling and barreling Americanus, or Michigan Congress Natural Mineral Water, from the great artesian well in Lansing, Michigan, and shipping the same in iron tanks in bulk, bottles and jugs packed in barrels, cases and hampers, from said City of Lansing to points on the eastern seaboard, to wit: New York, Philadelphia, Baltimore, Washington, New Orleans, and west to Chicago, St. Louis, Cincinnati, and to other points east and west from said point of shipment.

Defendant is a common carrier engaged with other common carriers in the transportation of property to said points; and complainant from time to time has given, and is now giving, to defendant its said mineral water for shipment thereto, and at its own expense has provided a siding along defendant's track at Lansing, iron tank cars for loading on such siding, an annex tank for loading and unloading cars, and all the labor necessary therefor, and that the same is shipped at complainant's risk of loss or damage and without special risk, labor or expense

ively, and for the return of carriages, trucks, boats, and other vehicles, and that no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, or shall subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, and that every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway, or canal, or railway and canal communication, or which have the terminus, station, or wharf of the one, near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways or canals all the traffic arriving by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals, or railways and canals as a continuous line of communication, and so that all reasonable accommodation may by means of the railways and canals and of the several companies be at all times afforded to the public in that behalf:

And, whereas, it is expedient to explain and amend the said enactment, *Be it therefore enacted, that—*

Subject as hereinafter mentioned, the said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding, and delivering by every railway company and canal company and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares (in this Act referred to as through rates).

Provided as follows:

(1.) The company requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding company, stating both its amount and its apportionment, and the route by which the traffic is proposed to be forwarded.

(2.) Each forwarding company shall, within the prescribed period after the receipt of such notice, by written notice, inform the company requiring the traffic to be forwarded whether they agree to the rate and route; and, if they object to either, the grounds of the objection.

(3.) If at the expiration of the prescribed period no such objection has been sent by any forwarding company, the rate shall come into operation at such expiration.

(4.) If any objection to the rate or route has been sent within the prescribed period, the matter shall be referred to the commissioners for their decision.

(5.) If an objection be made to the granting of the rate or to the route, the commissioners shall consider whether the granting of the rate is a due and reasonable facility, in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly.

(6.) If the objection be only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the commissioners as to its apportionment shall be retrospective; in any other case the operation of the rate shall be suspended until the decision is given.

(7.) The commissioners, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expenses incurred in respect of the construction, maintenance or working of the route, or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof.

(8.) It shall not be lawful for the commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route.

(9.) The prescribed period mentioned in this section shall be ten days, or such longer period as the commissioners may from time to time, by general order, prescribe.

Where a railway company or canal company use, maintain, or work, or are party to an arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels and to the traffic carried thereby.

12. Subject to the provisions in the last preceding section contained, the commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly.

13. A complaint of a contravention of section 2 of the Railway and Canal Traffic Act, 1854, as amended by this Act, may be made to the commissioners by a municipal or other public corporation, local or harbor board, without proof that the complainants are aggrieved by the contravention. *Provided*, That a complaint shall not be entertained by the commissioners in pursuance of this section unless such complaint is accompanied by a certificate of the board of trade to the effect that in their opinion the case, in respect of which the complaint is made, is a proper one to be submitted for adjudication to the commissioners by such municipal or other public corporation, local or harbor board.

14. Every railway company and canal company shall keep at each of their stations and wharves a book or books showing every rate for the time being charged for the carriage of traffic other than passengers and their luggage, from that station or wharf to any place to which they book, including any rates charged under any special contract, and stating the distance from that station or wharf of every station, wharf, siding, or place to which any such rate is charged.

Every such book shall, during all reasonable

paid by the corporation to the distance which passengers are carried through this State does not relieve it of the objection; for the tax it assumes to levy is upon interstate commerce, and not upon the internal commerce of the State. The tax cannot be sustained upon the ground that the carrier can be compelled to pay a tax upon its gross earnings for the privilege of doing a local business in the State.

2. A State has power to prescribe the terms upon which a foreign corporation may do business within its territory, unless the corporation is engaged in the business of interstate commerce. If it is not engaged in transacting business of that kind, the State may levy a tax upon its receipts within the State, and enforce collection.

(Decided March 2, 1883.)

A PPEAL from a judgment of the Marion Circuit Court, Ayres, J., against the plaintiff in a suit against a sleeping-car company for failure to comply with the statute requiring it to return a statement of its earnings for taxation. *Affirmed.*

The facts are stated in the opinion.

Messrs. Louis T. Michener, Atty. Gen., and John H. Gillett, for the State:

Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right. Nothing but express constitutional limitation upon legislative authority can exclude anything, to which the authority extends, from the grasp of the taxing power, if the Legislature, in its discretion, shall at any time select it for revenue purposes.

Cooley, Tax. p. 5; Desty, Tax. § 24.

While the State, in the exercise of this inherent and necessary function, must yield to the limitations imposed by the Federal Constitution, yet it is to be remembered that, beyond the scope of these constitutional restrictions, and the implied exemption of the instruments of the Federal government, the State has absolute power to tax anything and everything within its limits.

In the case of *Wheeling, P. & C. Transp. Co. v. Wheeling*, 99 U. S. 273 (25 L. ed. 414), the court says: "Power to tax for the support of the State governments exists in the States independently of the National government; and it may well be assumed that where there is no cessation of contradictory or inconsistent jurisdiction in the United States, nor any restraining compact in the Constitution, the power in the States to tax for the support of the State authority reaches all the property within the state which is not properly regarded as the instruments or means of the Federal government."

Osborne v. Mobile, 83 U. S. 16 Wall. 479, 481 (21 L. ed. 478).

The Legislature has power to prescribe not only the property to be taxed, but the mode and agencies by which the tax may be ascertained and enforced; and it is no objection that the methods prescribed are different for different classes of property.

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Wagoner v. Loomis, 37 Ohio St. 571.

The mode of taxing corporations is discretionary with the Legislature.

Porter v. Rockford, R. I. & St. L. R. Co. 76 Ill. 561. See *Anderson v. Kerns Draining Co.* 14 Ind. 199; *Louisville & N. A. R. Co. v. State*, 25 Ind. 177; *Bright v. McCullough*, 27 Ind. 223; *Cooley, Tax. p. 378 et seq.*

"Nothing can be more certain in legal decision than that the privileges and franchises of a private corporation, and all trades and avocations by which the citizens acquire a livelihood, may be taxed by a State for the support of the State government. Authority to that effect resides in the State, independent of the Federal government, and is wholly unaffected by the fact that the corporation or individual has or has not made investment in federal securities."

Society for Savings v. Coite, 73 U. S. 6 Wall. 594 (18 L. ed. 897).

The State may exclude foreign corporations entirely; it may restrict them to particular localities, or exact such security for the performance of their contracts as will best promote the public interest. The whole matter rests in its discretion.

Paul v. Virginia, 75 U. S. 8 Wall. 168 (19 L. ed. 357).

Upon the proposition that it is competent for the State to tax the occupation or privilege of a corporation doing a local as well as interstate business, by requiring it to pay a certain per cent of its gross receipts, not only upon local business, but upon business originating in and terminating out of, or originating out of and terminating within, the State, the case of *Western Union Tel. Co. v. Mayer*, 28 Ohio St. 521, is exactly in point.

See also *Western Union Tel. Co. v. Richmond*, 26 Gratt. 1; *Western Union Tel. Co. v. State*, 55 Tex. 814.

Rev. Stat. § 6355, does not amount to an interference with interstate commerce.

See *Delaware R. Tax*, 85 U. S. 18 Wall. 281 (21 L. ed. 896); *Erie R. Co. v. Pennsylvania*, 88 U. S. 21 Wall. 492 (22 L. ed. 595); *Western Union Tel. Co. v. Richmond*, 26 Gratt. 1; *Western Union Tel. Co. v. Mayer*, 28 Ohio St. 521; *Western Union Tel. Co. v. State*, 55 Tex. 814; *Wheeling, P. & C. Transp. Co. v. Wheeling*, 9 W. Va. 170; *State v. Philadelphia, W. & B. R. Co.* 45 Md. 861.

The vehicles of commerce may be taxed.

See cases cited in note to *State v. Pullman Palace Car Co.* 16 Fed. Rep. 201.

The inability of a State to tax a ship arises from other and express prohibitions contained in the Federal Constitution; but even in this case the capital stock of the company owning the ship may be taxed.

Hayes v. Pacific Mail S. S. Co. 58 U. S. 17 How. 596 (15 L. ed. 254); *State Tonnage Tax Cases*, 79 U. S. 13 Wall. 204 (20 L. ed. 870); *Wheeling, P. & C. Transp. Co. v. Wheeling*, 99 U. S. 273 (25 L. ed. 412).

Can this defendant claim an exemption from taxation on the privilege of carrying passengers between the same points, merely because it is doing an interstate business as well? No such position will be taken, for not only reason but the authorities are against it.

Thomson v. Pacific R. Co. 76 U. S. 9 Wall. 579, 521 (19 L. ed. 792); *Louisville Nat. Bank v. Ken-*

APPENDIX IV.

NOTE ON DECISIONS AFFECTING THE ACT TO REGULATE APPROVED FEBRUARY 4, 1887; AND REFERENCES TO CONSTRUCTIONS OF THE ENGLISH UPON THE SUBJECT OF COMMERCE.

(PREPARED BY ALBERT B. GUILBERT.)

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CONSTITUTIONALITY; POWER OF CONGRESS.

The United States Constitution provides: "

"The Congress shall have power * * * to regulate commerce with foreign Nations and among the States and with the Indian Tribes."

Art. 1, § 8, cl. 8.

"Congress shall have power * * * to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested in this Constitution in the Government of the United States, or in any department or office thereof."

Art. 1, § 8, cl. 18.

"No tax or duty shall be laid on articles exported from any State."

Art. 1, § 9, cl. 5.

"No preference shall be given by any regulation of commerce, or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another."

Art. 1, § 9, cl. 6.

"No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for

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the use of the Treasury or and all such laws shall be on and control of the Cor Art. 1, § 10, cl. 8.

The previous Acts of commerce are:

The Act of March 8, 1839, regulating the trade in stock, held constitutional

U. S. v. Boston & A. R. Co. 1840; U. S. v. Louisville & N. R. Co. 1840; U. S. v. East Tenn V. R. Co. 1842.

The Act of June 15, 1834, providing that railroads may be used for transportation is constitutional in:

Dubuque & S. C. R. Co. v. U. S. 19 Wall. 534 (23 1 Bluffs v. Kansas City, St. Louis, 1883; Hardy v. Atch. Co. 32 Kan. 698.

In the report of the Secretary on interstate commerce, 18, 1836, pp. 28-33, the Act is predicated upon the following provisions:

Cooley v. Board of Wardens, 13 L. ed. 996; Hall, 102 U. S. 691 (26 L.

Ferry Co. v. Pa. 114 U. S. 196 (30 L. ed. 158); 1 Intern. Com. Rep. 399; *Brown v. Houston*, 114 U. S. 692 (30 L. ed. 257); *Gibbons v. Ogden*, 22 U. S. 9 Wheat. 1 (6 L. ed. 25); *Pa. v. Wheeling & B. Bridge Co.* 54 U. S. 18 How. 518 (14 L. ed. 949).

Marshall, C. J., in *Gibbons v. Ogden*, 22 U. S. 9 Wheat. 196, 197 (6 L. ed. 70) says:

"It is the power to regulate, that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution * * * If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign Nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its Constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States."

The power of Congress to regulate commerce is not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but keeps pace with the progress of the country and adapts itself to new developments of time and circumstances.

Pensacola Tel. Co. v. W. U. Tel. Co. 98 U. S. 1 (34 L. ed. 706); *W. U. Tel. Co. v. Texas*, 106 U. S. 460 (36 L. ed. 1067).

The constitutional power is necessarily exclusive whenever the subjects are national in character, and admit only of one uniform system or plan of regulation.

Robbins v. Taxing Dist. of Shelby Co. 120 U. S. 469 (30 L. ed. 694); 1 Intern. Com. Rep. 45; *Phila. & S. M. Steamship Co. v. Pa.* 123 U. S. 326 (30 L. ed. 1900); 1 Intern. Com. Rep. 308; *Wabash, St. L. & P. R. Co. v. Ill.* 116 U. S. 557 (30 L. ed. 244); 1 Intern. Com. Rep. 81; *Gloucester Ferry Co. v. Pa.* 114 U. S. 196, 203 (30 L. ed. 158, 161); *Mobile Co. v. Kimball*, 103 U. S. 691, 697 (36 L. ed. 238, 239); *The Case of the State Freight Tax*, 83 U. S. 15 Wall. 299 (31 L. ed. 146); *Henderson v. Mayor of N. Y.* 83 U. S. 260 (30 L. ed. 843).

The nonexercise of the power in respect to the regulation of commerce between the States is equivalent to a declaration that such commerce shall be free and untrammelled except in matters of local concern.

Walton v. Mo. 91 U. S. 375 (30 L. ed. 347); *Brown v. Houston*, 114 U. S. 692 (30 L. ed. 257); *Pickard v. Pullman B. Car Co.* 117 U. S. 34 (30 L. ed. 785); *Wabash, St. L. & P. R. Co. v. Ill.* 116 U. S. 557 (30 L. ed. 244); 1 Intern. Com. Rep. 81; *Walling v. Mich.* 116 U. S. 446 (30 L. ed. 691); *Corsun v. Md.* 120 U. S. 509 (30 L. ed. 699); 1 Intern. Com. Rep. 60; *Hall v. DeCuir*, 95 U. S. 435 (34 L. ed. 547); *Hannibal & St. J. R. Co. v. Hueso*, 95 U. S. 465 (34 L. ed. 537); *Robbins v. Shelby Co. Taxing Dist.* 120 U. S. 469 (30 L. ed. 694); 1 Intern. Com. Rep. 45; *Gloucester Ferry Co. v. Pa.* 114 U. S. 196 (30 L. ed. 158); 1 Intern. Com. Rep. 382; *Phila. & S. M. Steamship Co. v. Pa.* 123 U. S. 326 (30 L. ed. 1900); 1 Intern. Com. Rep. 308; *State R. Comra. v. R. Co.* 29 S. C. 220.

The regulation of fares and freights receivable for transportation of persons and goods

between different States, and between the States and foreign countries, is within the power of Congress equally with the regulation of transportation itself.

Phila. & S. M. Steamship Co. v. Pa. 123 U. S. 326 (30 L. ed. 1900); 1 Intern. Com. Rep. 308.

The power to regulate interstate and foreign commerce vested in Congress is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted; to determine when it shall be free from, and when subject to, duties or other exactions.

Gloucester Ferry Co. v. Pa. 114 U. S. 196 (30 L. ed. 158); 1 Intern. Com. Rep. 382.

Freedom of transportation implies exemption from charges other than such as are imposed by way of compensation for the use of the property employed, or for facilities afforded for its use, or as ordinary taxes upon the value of the property within the jurisdiction of the State. *Id.*

Power of Congress over bridges and navigable rivers.

Pa. v. Wheeling & B. Bridge Co. 59 U. S. 18 How. 429 (15 L. ed. 436); *The Clinton Bridge*, 77 U. S. 10 Wall. 454 (19 L. ed. 969); *Miller v. Mayor of N. Y.* 10 Fed. Rep. 518; *S. C.* 100 U. S. 385 (27 L. ed. 971); *Newport & C. Bridge Co. v. U. S.* 105 U. S. 470 (36 L. ed. 1143); *Canada B. R. Co. v. Internat. Bridge Co.* 8 Fed. Rep. 190; *S. C. v. Ga.* 95 U. S. 4 (36 L. ed. 789); *Stockton v. Balt. & N. Y. R. Co. (U. S. C. C.)* 1 Intern. Com. Rep. 411.

The Act of Congress, approved June 16, 1880, entitled "An Act to Authorize the construction of a Bridge across the Staten Island Sound, Known as Arthur Kill," etc., is valid and constitutional under the power of Congress to regulate commerce among the States.

Stockton v. Balt. & N. Y. R. Co. (U. S. C. C.); 1 Intern. Com. Rep. 411; *Decker v. Sams*, 1 Intern. Com. Rep. 434. (See full reports of briefs of counsel in these cases.)

Said Act is not permissive merely, but gives authority and power to build such bridge, without reference to any authority or consent from the State on whose land under navigable water the bridge is to rest, and without compensation to the State.

Stockton v. Balt. & N. Y. R. Co. (U. S. C. C.) 1 Intern. Com. Rep. 411.

When the United States does not seek to acquire exclusive jurisdiction over land within a State, it may condemn such land for its purposes without the consent of the State. *Id.*

Congress has the power to fix the maximum compensation for transportation between States and foreign countries.

Canada B. R. Co. v. Internat. Bridge Co. 8 Fed. Rep. 190; *Louisville & N. R. Co. v. Tennessee R. Commission*, 19 Fed. Rep. 679.

The power of Congress to regulate commerce with the Indian Tribes is exclusive.

Worcester v. Ga. 31 U. S. 6 Pat. 515 (3 L. ed. 453); *U. S. v. Holliday*, 70 U. S. 3 Wall. 407 (18 L. ed. 182); *U. S. v. 43 Gallons of Whiskey*, 98 U. S. 189 (33 L. ed. 846).

It may also extend its regulations to Territories in proximity to that occupied by Indians.

U. S. v. 43 Gallons of Whisky, 98 U. S. 189 (33 L. ed. 846).

pany, or corporation, incorporated under the laws of any other State, and conveying to, from, and through this State, or any part thereof, passengers and travelers in palace cars, drawing-room cars, sleeping-cars, or chair cars, on contract with any railroad company or the manager, lessee, agent, or receiver thereof, shall be held and deemed to be a sleeping-car company. Every such sleeping-car company doing business in this State shall annually, between the 1st day of April and the 1st day of June, report to the auditor of state, under the oath of an officer or agent of such corporation, the gross amount of all its receipts within or without the State, for fares earned or business done by such company within this State, for the year then next preceding the 1st day of April of the current year; and in computing such gross receipts the same shall be in the proportion that the distance traversed in this State bears to the whole distance paid for. At the time of making such report, such company shall pay into the treasury of the State the sum of \$2 on every \$100 of such receipts. Every sleeping-car company failing or refusing, for more than thirty days after the 1st day of June, to render an accurate account of such gross receipts, as above provided, and to pay the required tax thereon, shall forfeit \$25 for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana, on the relation of the auditor of state, in any court of competent jurisdiction; and the attorney-general shall conduct such prosecution; and such sleeping-car company so failing or refusing shall be prohibited from carrying on such business until such payment is made. All railroad companies in this State, or the persons managing or operating the same, are prohibited from hauling any cars of any sleeping-car company while so in default, and for each violation of this prohibition shall be liable to pay to the State of Indiana the sum of \$100, to be recovered in the proper action by the State; and it shall be the duty of the attorney-general, at the request of the auditor of state, to prosecute all such suits."

It is firmly established that a State has power to prescribe the terms upon which a foreign corporation may do business within its territory, unless the corporation is engaged in the business of interstate commerce. If it is not engaged in transacting business of that kind, the State may levy a tax upon its receipts within this State and enforce collection. *Phania Ins. Co. v. Burdett*, 11 West. Rep. 259, 112 Ind. 204; *Doyle v. Continental Ins. Co.* 94 U. S. 535 (24 L. ed. 148); *Ducat v. Chicago*, 77 U. S. 10 Wall. 410 (19 L. ed. 972); *La Fayette Ins. Co. v. French*, 59 U. S. 18 How. 404 (15 L. ed. 840); *Goldsmith v. Home Ins. Co.* 62 Ga. 379; *Phania Ins. Co. v. Welch*, 29 Kan. 672; *People v. Fire Assn.* 93 N. Y. 311; *S. C. 44 Am. Rep.* 380.

In the cases referred to, this principle is explicitly and strongly asserted; and in many cases it has been assumed without discussion and applied as a settled rule of law. *North America Ins. Co. v. Brim*, 9 West. Rep. 330, 111 Ind. 281; *Granite State Mut. Assn. v. Porter*, 58 Vt. 581; *Ohio v. Moore*, 39 Ohio St. 486; *State v. New York L. Ins. Co.* 81 Mo. 89; *State v. Farmers & M. Mut. Ben. Assn.* 18 Neb. 276; *S. C.* 15 Ins.

L. J. 321; *Ehrman v. Teutonia Ins. Co.* 1 McCrary, 126; *Mutual Benefit L. Ins. Co. v. Bales*, 92 Pa. 352.

We cannot, therefore, assent to the argument of counsel which assumes that a State may not classify and regulate foreign corporations, even though they are not engaged in the affairs of interstate commerce.

We do affirm, however, that in matters of commerce between the States, the power of the Federal government is exclusive and supreme. The later decisions of the Supreme Court of the United States close the question to us and to all State courts; for it is a Federal question, and on such questions the decisions of that high tribunal are final. Its earlier decisions were not harmonious,—there was much of conflict and more of confusion; but the later cases have carried the doctrine to the utmost length. These decisions have much restricted, if, indeed, they have not completely annulled, the police power of the States where interstate questions are involved, and they have in effect swept away all State lines. In a very late case it was said by *Mr. Justice Bradley*, speaking for the court, that, "in a word, it may be said that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems." *Robbins v. Shelby County*, 120 U. S. 489 (30 L. ed. 694).

Although the chief justice and two of the associate justices, in a vigorous opinion, dissented, the decision is to us as law. But there are other decisions of that court which, while not going so far as the decision in the case from which we have quoted, go quite far enough to require us to decide that the State has no power to levy a tax upon the earnings of a sleeping-car company engaged in the business of transporting passengers from one State to another. *Philadelphia & S. S. Co. v. Pennsylvania*, 123 U. S. 326 (30 L. ed. 1200); *Western Union Tel. Co. v. Pendleton*, 123 U. S. 347 (30 L. ed. 1187); *Wabash, St. L. & P. R. Co. v. Illinois*, 118 U. S. 557 (30 L. ed. 244); *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196 (29 L. ed. 158); *Parkersburg & O. R. Transp. Co. v. Parkersburg*, 107 U. S. 691 (27 L. ed. 584); *Western Union Tel. Co. v. Texas*, 105 U. S. 460 (26 L. ed. 1067); *Pensacola Tel. Co. v. Western Union Tel. Co.* 96 U. S. 1 (24 L. ed. 708); *Welton v. Missouri*, 91 U. S. 375 (23 L. ed. 347).

In the case first cited, one of the points decided in the case of *State Freight Tax Cases*, 82 U. S. 15 Wall. 282 (21 L. ed. 164), was declared to be wrongly decided, and it was held that "a tax upon freights and fares is virtually a tax upon the transportation itself," and this tax no State can levy. The rule as established by the recent decisions, which stand as law to us, is thus stated in *Robbins v. Shelby County*, *supra*. "As before said, the State may tax its own internal commerce, but that does not give it any right to tax interstate commerce."

The attorney-general ably and ingeniously argues that the statute is valid because it is competent for the State to "tax the local occupation of appellant by the measure of its gross receipts for the proportionate amount of travel in this State." But this argument, while not without plausibility, is radically unsound. Under the law as authoritatively declared by the

mitted by the examining magistrate to the custody of the sheriff to answer an indictment for that alleged offense. The ground of the application for discharge upon the writ of *habeas corpus* in the City Court of Mobile was that the Act of the General Assembly of the State of Alabama, for the violation of which he was held, was in contravention of that clause of the Constitution of the United States which confers upon Congress power to regulate commerce among the States.

The facts, as they appeared upon the hearing upon the return of the writ, are as follows: the petitioner at the time of his arrest on July 16, 1887, within the County of Mobile, was a locomotive engineer in the service of the Mobile and Ohio Railroad Company, a corporation owning and operating a line of railroad forming a continuous and unbroken line of railway from Mobile, in the State of Alabama, to St. Louis, in the State of Missouri, and as such was then engaged in handling, operating, and driving a locomotive engine, attached to a regular passenger train on the Mobile and Ohio Railroad, within the county and State, consisting of a postal car carrying the United States mail to all parts of the Union, a southern express car containing perishable freight, money packages, and other valuable merchandise destined to Mississippi, Tennessee, Kentucky, and other States, passenger coaches, and a Pullman palace sleeping car occupied by passengers to be transported by said train to the States of Mississippi, Tennessee, and Kentucky. The petitioner's run, as a locomotive engineer in the service of the Mobile and Ohio Railroad Company, was regularly from the City of Mobile, in the State of Alabama to Corinth, in the State of Mississippi, sixty miles of which run was in the State of Alabama, and two hundred and sixty-five miles in the State of Mississippi; and he never handled and operated an engine pulling a train of cars whose destination was a point within the State of Alabama when said engine and train of cars started from a point within that State. His train started at Mobile, and ran through without change of coaches or cars on one continuous trip. His employment as locomotive engineer in the service of said company also required him to take charge of and handle, drive, and operate an engine drawing a passenger train which started from St. Louis, in the State of Missouri, destined to the City of Mobile, in the State of Alabama, said train being loaded with merchandise and occupied by passengers destined to Alabama and other States; this engine and train he took charge of at Corinth, in Mississippi, and handled, drove and operated the same along and over the Mobile and Ohio Railroad through the States of Mississippi and Alabama to the City of Mobile. It frequently happened that he was ordered by the proper officers of the said company to handle, drive and operate an engine drawing a passenger train loaded with merchandise, carrying the United States mail, and occupied by passengers from the City of Mobile, in Alabama, to the City of St. Louis, in Missouri, being allowed two lay-overs; said train passing through the States of Alabama, Mississippi, Tennessee, Illinois, and into the State of Missouri.

It was admitted that the petitioner had not obtained the license required by the Act of the

General Assembly of the State of Alabama of February 28, 1887, and had not applied to the board of examiners, or any of its members, for such license, and that more than three months had elapsed since the appointment and qualification of said board of examiners, the same having been duly appointed by the Governor of the State under the provisions of said Act.

The Statute of Alabama, the validity of which is thus drawn in question, as being contrary to the Constitution of the United States, and the validity of which has been affirmed by the judgment of the Supreme Court of Alabama now in review, is as follows:

"AN ACT to Require Locomotive Engineers in this State to be Examined and Licensed by a Board to be Appointed by the Governor for That Purpose.

"Section 1. *Be it enacted by the General Assembly of Alabama*, That it shall be unlawful for the engineer of any railroad train in this State to drive or operate or engineer any train of cars or engine upon the main line or roadbed of any railroad in this State which is used for the transportation of persons, passengers, or freight, without first undergoing an examination and obtaining a license as hereinafter provided.

"Sec. 2. *Be it further enacted*, That before any locomotive engineer shall operate or drive an engine upon the main line or roadbed of any railroad in this State used for the transportation of persons or freight, he shall apply to the board of examiners hereinafter provided for in this Act, and be examined by said board or by two or more members thereof, in practical mechanics, and concerning his knowledge of operating a locomotive engine and his competency as an engineer.

"Sec. 3. *Be it further enacted*, That upon the examination of any engineer as provided in this Act, if the applicant is found competent, he shall, upon payment of five dollars, receive a license, which shall be signed by each member of the board, and which shall set forth the fact that the said engineer has been duly examined as required by law and is authorized to engage as an engineer on any of the railroads in this State.

"Sec. 4. *Be it further enacted*, That in addition to the examination provided for in section two (2), it shall be the duty of said board of examiners, before issuing the license provided for in this Act, to inquire into the character and habits of all engineers applying for license; and in no case shall a license be issued if the applicant is found to be of reckless or intemperate habits.

"Sec. 5. *Be it further enacted*, That any engineer who, after procuring a license as provided in this Act, shall at any time be guilty of any act of recklessness, carelessness, or negligence while running an engine, by which any damage to persons or property is done, or who shall within six hours before, or during the time he is engaged in running an engine, be in a state of intoxication, shall forfeit his license, with all the rights and privileges acquired by it, indefinitely or for a stated period, as the board may determine after notifying such engineer to appear before the board, and inquiring into his act or conduct. It shall be the duty of the board to determine whether the

L. ed. 357); *Liverpool Ins. Co. v. Mass.* 77 U. S. 10 Wall. 566 (19 L. ed. 1039); *Phila. Fire Assn. v. N. Y.* 119 U. S. 110 (30 L. ed. 343); *List v. Pa.* 1 Intern. Com. Rep. 784; *Norfolk & W. R. Co. v. Com. (Pa.)* 5 Cent. 240; *Phoenix Ins. Co. v. Burdett (Ind.)* 11 West. Rep. 339, *Doyle v. Continental Ins. Co.* 94 U. S. 535 (24 L. ed. 148); *Ducat v. Chicago*, 77 U. S. 10 Wall. 410 (19 L. ed. 972); *LaFayette Ins. Co. v. French*, 60 U. S. 18 How. 404 (15 L. ed. 451); *Goldsmith v. Home Ins. Co.* 63 Ga. 379; *Phoenix Ins. Co. v. Welch*, 29 Kan. 672, *People v. Fire Assn.* 93 N. Y. 311; 44 Am. Rep. 380, *Indiana v. Woodruff & P. Coach Co.* 1 Intern. Com. Rep. 798; but cannot exclude foreign corporations, engaged in interstate commerce.

Ind. v. Pullman Palace Car Co. 16 Fed. Rep. 198; *Cooper Mfg. Co. v. Ferguson*, 118 U. S. 727 (36 L. ed. 1137); *Paul v. Va.* 76 U. S. 8 Wall. 163 (19 L. ed. 357).

A local corporation which contributes only its own local right of traffic to a system of through traffic by means of contract engagements cannot be permitted to exercise its corporate franchise within a foreign jurisdiction, free of such burdens as may be imposed by such foreign jurisdiction upon the theory that it is engaged in interstate commerce.

Norfolk & W. R. Co. v. Com. (Pa.) 5 Cent. Rep. 240.

The provision of article 936 of the Louisiana Constitution, which provides that no foreign corporation shall do business in that State without having one or more places of business, and an authorized agent or agents in the State upon whom process may be served is null and void, as being an attempt on the part of the State to interpose a restriction on navigation, and therefore in conflict with the Act of Congress approved February 18, 1793, 1 Stat. at L. 505.

N. O. & M. Packet Co. v. James, Planters Transp. Co. v. Same, and Greenville & N. O. Packet Co. v. Same (U. S. C. C.) 1 Intern. Com. Rep. 599.

State regulations upon commerce between States by fixing railroad fares and rates or imposing other restrictions are void.

Wabash, St. L. & P. R. Co. v. Ill. 118 U. S. 557 (30 L. ed. 244); *State R. Comr. v. R. Co.* 23 S. C. 220, *Ill. Cent. R. Co. v. Stone*, 20 Fed. Rep. 468; *Chicago & N. W. R. Co. v. Fuller*, 94 U. S. 17 Wall. 560 (21 L. ed. 710); *Rae v. Grand Trunk R. Co.* 14 Fed. Rep. 401; *Wabash, St. L. & P. R. Co. v. Ill.* 118 U. S. 557 (30 L. ed. 244).

A State may limit the amount of charges made by railroad companies, unless restrained by charter.

Munn v. Ill. 94 U. S. 113 (24 L. ed. 77); *Chicago, B. & Q. R. Co. v. Iowa*, 94 U. S. 155 (24 L. ed. 94), *Peik v. Chicago & N. W. R. Co.* 94 U. S. 164 (24 L. ed. 97); *Helserman v. Burlington, C. R. & N. R. Co.* 63 Iowa, 732; *Ruggles v. People*, 91 Ill. 256, 8 C. 108 U. S. 536 (27 L. ed. 613); *Stone v. Farmers L. & T. Co.* 116 U. S. 307 (29 L. ed. 636), *Killmer v. N. Y. C. & H. R. R. Co. (N. Y.)* 1 Cent. Rep. 537; *Little Rock & F. S. R. Co. v. Hanniford (S. C. of Ark.)* 1 Intern. Com. Rep. 580; *Providence Coal Co. v. Providence & W. R. Co. (R. I.)* 2 New Eng. Rep. 505.

But such statutes cannot in any way extend to interstate commerce.

Wabash, St. L. & P. R. Co. v. Ill. 118 U. S. 557 (30 L. ed. 244).

A State has no authority to regulate the charges which a railway company may make for carrying goods from a point without the State to a point within, or vice versa; and an order of the railroad commissioners of the State designed to regulate such charges is void, as being in conflict with article 1, § 8, U. S. Const.

State v. Chicago & N. W. R. Co. 70 Iowa, 169; *McGwigan v. Wilmington & W. R. Co.* 95 N. C. 428, *McLean v. Charlotte, C. & A. R. Co.* 96 N. C. 1.

A state board of railroad commissioners has no power to regulate the transportation of persons or merchandise between ports in that State and any other States.

Pacific Coast S. S. Co. v. R. Comr. 13 Fed. Rep. 10.

The Statute of Indiana, which attempts to regulate the mode in which messages sent by telegraphic companies doing business in said State shall be delivered in other States, is void, and an interference with the freedom of interstate commerce.

W. U. Tel. Co. v. Pendleton, 123 U. S. 847 (30 L. ed. 1167), 1 Intern. Com. Rep. 306.

The power of Congress to regulate navigation does not interfere with the power of the States to protect and regulate the fisheries within their limits.

McCready v. Va. 94 U. S. 591 (24 L. ed. 246); *Smith v. Md.* 59 U. S. 18 How. 71 (15 L. ed. 269); *Green v. The Helen*, 1 Fed. Rep. 916.

It is stated in the Report of the Senate Select Committee on Interstate Commerce, submitted January 18, 1896, page 65, that of the forty-six States and Territories, twenty-five have railroad commissions; five legislative regulations; and the remaining sixteen have "no regulation in force or practically very little." On the same page is given a list of States having railroad commissions, showing when established, the names of the commissioners and secretaries, the location of their offices and the salaries paid. The operation of some of the commissions is discussed by Mr. Hadley, in his *Railroad Transportation, its History and its Laws*, pp. 135-140. The various decisions upon state legislation are referred to therein.

State lien laws for supplies furnished to vessels are valid.

The Lottawanna, 66 U. S. 21 Wall. 538 (23 L. ed. 654).

Congress cannot exercise police powers for the protection of the inhabitants of a State. This is a domestic matter to be governed and regulated by state laws. A State is not prohibited from enacting police regulations which operate upon instrumentalities of commerce, provided no discriminations are made against classes, and no restriction placed on commercial intercourse.

Brechtell v. Randall (Ind.) 2 West. Rep. 781.

A State may pass laws for the inspection of vessels, quarantine, health laws of every description as well as laws for regulating the internal commerce of a State.

Gibbons v. Ogden, 23 U. S. 9 Wheat. 1 (6 L. ed. 23); *Southern Steamship Co. v. Port Wardens*, 78 U. S. 6 Wall. 31 (15 L. ed. 749); *Chicago & N. W. R. Co. v. Fuller*, 94 U. S. 17 Wall.

580 (21 L. ed. 710); *Morgan's L. & T. R. Co. v. La. Board of Health*, 118 U. S. 455 (30 L. ed. 287); *Hannibal & St. J. R. Co. v. Husen*, 95 U. S. 465 (24 L. ed. 527); *Turuer v. Md.* 107 U. S. 88 (27 L. ed. 870); *Mayor of N. Y. v. Miln*, 86 U. S. 11 Pet. 102 (9 L. ed. 648); *Henderson v. Mayor of N. Y.* 92 U. S. 259 (23 L. ed. 543); *Chy Lung v. Freeman*, 92 U. S. 275 (23 L. ed. 550).

A charge to a vessel for officers' service in examining her sanitary condition is not invalid as a tonnage tax, but is a proper part of a quarantine system.

Morgan's L. & T. R. Co. v. La. Board of Health, 118 U. S. 455 (30 L. ed. 287).

But a statute requiring the payment of a fee to port wardens, whether called upon to perform any service or not, is void.

Southern Steamship Co. v. Port Wardens, 78 U. S. 6 Wall. 81 (18 L. ed. 749).

Prohibition of sale of and the authorizing of seizures of intoxicating liquors during transportation may be justified under state statutes.

State v. O'Neil (Vt.) 1 New Eng. Rep. 775.

The Georgia local option law, which exempts from its provisions domestic wines, but prohibits the sale of spirituous liquors including wines, *held*, an unlawful discrimination between wines made in Georgia and the wines of other States and foreign wines.

Weil v. Calhoun, 25 Fed. Rep. 865.

It has been held in Rhode Island that the provision of R. I. Pub. Stat. chap. 634, of May 4, 1887, § 1, which prohibits any person from keeping any intoxicating liquors "for sale," is not, for the reason that it may incidentally interfere with foreign or interstate commerce, obnoxious to the Federal Constitution.

State v. Fitzpatrick (R. I.) 5 New Eng. Rep. 673; 1 Inters. Com. Rep. 718.

Iowa Statute forbidding any common carrier to bring within that State any intoxicating liquors from any other State or Territory, without first having the certificate therein required is a regulation of commerce among the States and void.

Bowman v. Chicago & N. W. R. Co. 124 U. S. (31 L. ed. —); 1 Inters. Com. Rep. 823.

The Statute of Alabama requiring locomotive engineers to be examined and licensed is not a regulation of interstate commerce.

Smith v. Ala. (U. S. S. C.) 1 Inters. Com. Rep. 804; *McDonald v. State*, 81 Ala. 279.

COMMON CARRIERS.

A common or public carrier is one who undertakes as a business to carry from one place to another the goods of all persons who may apply for such carriage, provided the goods are of the kind which he professes to carry, and the persons so applying will agree to have them carried upon the terms prescribed by the carrier, and who, if he refuses to carry such goods for those who are willing to comply with his terms, becomes liable to an action by the party aggrieved by such refusal.

2 Am. & Eng. Encyclopedia of Law, Title, *Carriers*; *Redfield*, *Railway Carriers*, 1; *Hutchinson*, *Carriers*, § 47; *Dwight v. Brewster*, 1 Pick. 50; *The Niagara v. Cordes*, 62 U. S. 21 How. 7 (16 L. ed. 41); *Glabourn v. Hurst*, 1 Salk. 249; *Gordon v. Hutchinson*, 1 Watts & S. 285; *Orange Bank v. Brown*, 3 Wend. 161;

INTER S.

Piedmont Mfg. Co. v. Columbia & G. R. Co. 19 S. O. 355.

Railroad companies are common carriers.

Chicago, B. & Q. R. Co. v. Iowa, 94 U. S. 155 (24 L. ed. 94); *Scotfield v. L. S. & M. S. R. Co.* (Ohio) 1 West. Rep. 812.

So are receivers operating a railroad:

Blumenthal v. Brainerd, 38 Vt. 402; *Paige v. Smith*, 99 Mass. 395; *Nichols v. Smith*, 115 Mass. 332.

And trustees of mortgage and bond holders operating railway:

Sprague v. Smith, 29 Vt. 421; *Rogers v. Wheeler*, 2 Lans. 486; 43 N. Y. 598.

One railroad transporting cars of another:

Mallory v. Tioga R. Co. 89 Barb. 488; 32 How. Pr. 616; *N. J. R. & Transp. Co. v. Pa. R. Co.* 3 Dutch. (N. J.) 100; *Vt. & M. R. Co. v. Fitchburg R. Co.* 14 Allen, 462; *Peoria, P. N. R. Co. v. Chicago, R. I. & P. R. Co.* 109 Ill. 135.

Transportation and despatch companies and fast freight lines:

Mercantile Mut. Ins. Co. v. Chase, 1 E. D. Smith, 115; *Read v. Spaulding*, 5 Bosw. 395, affd. 80 N. Y. 630; *Angell*, *Carriers*, § 76; *Redfield*, *Carriers*, 179; *Hutchinson*, *Carriers*, § 72; *Boston & A. R. Co. v. Boston & L. R. Co.* 1 Inters. Com. Rep. 571.

As to sleeping car companies see:

Pickard v. Pullman S. Car Co. 117 U. S. 84 (29 L. ed. 785); *Nevin v. Pullman Palace Car Co.* 11 Am. & Eng. R. R. Cas. 92; *Indiana v. Pullman Palace Car Co.* 16 Fed. Rep. 193; *S. C.* 11 Biss. 561.

Express companies.

Southern Express Co. v. Crook, 44 Ala. 468; *Southern Express Co. v. Newby*, 76 Ga. 635; *Buckland v. Adams Express Co.* 97 Mass. 124; *Gulliver v. Adams Express Co.* 38 Ill. 503.

An express business conducted by a railroad company is within the Interstate Commerce Act; *aliter* as to independent express companies.

Re Express Companies, 1 Inters. Com. Rep. 677. See also Annual Report of Interstate Commerce Commission, 1 Inters. Com. Rep. 657.

Draymen, cartmen, and porters who undertake to carry goods for hire as a common employment:

Robertson v. Kennedy, 2 Dana (Ky.) 431; *Powers v. Davenport*, 7 Blackf. (Ind.) 497; *Campbell v. Morse*, *Harper* (S. C.) 468; *Richards v. Weacott*, 2 Bosw. (N. Y.) 589; *Lecky v. McDermott*, 8 Serg. & R. 500.

Ferrymen:

Richards v. Fuqua, 28 Miss. 798; *Self v. Dunn*, 42 Ga. 528; *Clark v. Union Ferry Co.* 35 N. Y. 485; *Ferris v. Union Ferry Co.* 36 N. Y. 313; *Wyckoff v. Queens Co. Ferry Co.* 52 N. Y. 32.

Wagoners, omnibus proprietors, owners of canal boats, tow boats:

2 Am. & Eng. Encyclopedia of Law, Title, *Carriers*, p. 786.

Telegraph and Telephone Companies:

State, *Webster*, *v. Nebraska Tel. Co.* 17 Neb. 126; *State*, *Am. U. Tel. Co. v. Bell Tel. Co.* 36 Ohio St. 296; *Chesapeake & P. Tel. Co. v. Balt. & O. Tel. Co.* 6 Cent. Rep. 472, 35 Alb. L. J. 271; *W. U. Tel. Co. v. Pendleton*, 122 U. S. 347 (30 L. ed. 1187); 1 Inters. Com. Rep. 306; *Hockett v. State* (Ind.) 2 West. Rep. 764; *Cent. U. Tel. Co. v. State* (Ind.) 2 West. Rep. 778.

COMMON—LAW DUTIES OF CARRIERS.

At common law, a common carrier was bound to make only reasonable charges.

Great Western R. Co. v. Sutton, L. R. 4 Eng. & Irish App. (H. L.) 236-237; Angell, Carriers, § 124; Johnson v. Pensacola & P. R. Co. 16 Fla. 693; Baxendale v. Eastern Counties R. Co. 4 C. B. (N. S.) 68; Branley v. South Eastern R. Co. 13 C. B. (N. S.) 68; Fitchburg R. Co. v. Gage, 13 Gray, 398; Ex parte Benson, 18 S. C. 86; S. C. 44 Am. Rep. 564; Menacho v. Ward, 37 Fed. Rep. 581; S. C. 23 Am. & Eng. R. R. Cas. 647; 34 Alb. L. J. 44; Messenger v. Pa. R. Co. 66 N. J. L. 407; McDuffee v. Portland & R. R. Co. 53 N. H. 430; Mun v. Ill. 94 U. S. 113-124 (94 L. ed. 77-87); Sandford v. Catawissa, W. & E. R. Co. 34 Pa. 379; Shipper v. Pa. R. Co. 47 Pa. 338-341; Audenried v. Phila. & R. R. Co. 66 Pa. 370; Chicago B. & Q. R. Co. v. Parks, 18 Ill. 460; Chicago & A. R. Co. v. People, 67 Ill. 11; Scofield v. Lake Shore & M. S. R. Co. 1 West. Rep. 813, 43 Ohio St. 571; New England Express Co. v. M. C. R. Co. 57 Maine, 186; Hays v. Pa. Co. 13 Fed. Rep. 300; Hollister v. Nowlen, 19 Wend. 309; Smith v. Chicago & N. W. R. Co. 49 Wis. 443; Brown v. Adams Express Co. 15 W. Va. 621; Killmer v. N. Y. Cent. & H. R. R. Co. 1 Cent. Rep. 525, 100 N. Y. 305.

But he was not obliged to transport goods for all persons for the same compensation.

Great Western R. Co. v. Sutton, L. R. 4 Eng. & Irish App. (H. L.) 236-237; Baxendale v. Eastern Counties R. Co. 4 C. B. (N. S.) 68; Branley v. South Eastern R. Co. 13 C. B. (N. S.) 68; Fitchburg R. Co. v. Gage, 13 Gray, 398; Spofford v. Boston & M. R. Co. 128 Mass. 326; Sargent v. Boston & L. R. Corp. 115 Mass. 423; Johnson v. Pensacola & P. R. Co. 16 Fla. 693; Ex parte Benson, 18 S. C. 86; S. C. 44 Am. Rep. 564; Menacho v. Ward, 37 Fed. Rep. 520-531; S. C. 23 Am. & Eng. R. R. Cas. 647; 34 Alb. L. J. 44; Killmer v. N. Y. Cent. & H. R. R. Co. 1 Cent. Rep. 525, 100 N. Y. 305.

The weight of American authority is that the common law requires that the charges must be equal to all for the same services under like circumstances.

St. Louis, A. & T. H. R. Co. v. Hill, 14 Bradw. (Ill. App.) 570; Messenger v. Pa. R. Co. 66 N. J. L. 407; S. C. 37 N. J. L. 531; Shipper v. Pa. R. Co. 47 Pa. 338; Audenried v. Phila. & R. R. Co. 66 Pa. 370; Chicago B. & Q. R. Co. v. Parks, 18 Ill. 460-464; Chicago & A. R. Co. v. People, 67 Ill. 11; Scofield v. Lake Shore & M. S. R. Co. 1 West. Rep. 813, 43 Ohio St. 571; New England Express Co. v. Maine Cent. R. Co. 57 Maine, 186; Hays v. Pa. Co. 13 Fed. Rep. 300; State, Webster, v. Nebraska Telephone Co. 17 Neb. 126; State, Mattoon, v. Republican Valley R. Co. 17 Neb. 647; Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co. 110 U. S. 667 (98 L. ed. 301); Munhall v. Pa. R. Co. 93 Pa. 150.

At common law discriminations based solely upon the amounts of freight shipped without reference to the actual cost of transportation are not sanctioned.

Hays v. Pa. Co. 13 Fed. Rep. 300; Scofield v. Lake Shore & M. S. R. Co. 1 West. Rep. 813, 43 Ohio St. 571; Mo. Pac. R. Co. v. Texas & P. R. Co. 30 Fed. Rep. 2.

Railroads are bound at common law to receive and haul cars of other roads.

Mackin v. Boston & A. R. Co. 185 Mass. 301; Peoria & P. U. R. Co. v. Chicago, R. I. & P. R. Co. 109 Ill. 186, Note, 10 Cent. L. J. 111, Note, 18 Am. & Eng. R. R. Cas. 508.

LINE WHOLLY WITHIN A STATE; "COMMON CONTROL, MANAGEMENT OR ARRANGEMENT FOR CONTINUOUS CARRIAGE;" INTERSTATE COMMERCE ACT, § 1; ENGLISH RAILWAYS REGULATION, ACT 1873, § 11.

Provisions of section 11, of the Regulation of Railways Act, 1873, apply whenever there is an arrangement with the proprietors of steam vessels for the conveyance of passengers or goods to and from any port or town with which there is railway communication, provided the railway company party to the arrangement owned or worked or was otherwise immediately interested in some portion or other of the line of railway communication.

Caledonian R. Co. v. Greenock & W. B. R. Co. 4 R. & Can. Traf. Cas. 185; Greenock & W. B. R. Co. v. Caledonian R. Co. 3 Nev. & Mac. R. Cas. 337.

An agreement between a steamboat company and railway company that the vessels of the former shall be run at certain times, regard being had to the convenience of the railway company and to the times of the arrival and departure of its trains, as an arrangement within the meaning of section 11 of the Regulation of Railways Act, 1873.

Belfast etc. R. Co. v. G. N. R. Co. 4 R. & Can. Traf. Cas. 379.

But the mere existence of through bookings is not such an arrangement as that contemplated by section 11.

Ayr Harbour Trustees v. Glasgow R. Co. 4 R. & Can. Traf. Cas. 81.

The Interstate Commerce Act does not include or apply to all carriers engaged in interstate commerce, but only to such as use a railway, or a railway and water craft "under common control, management or arrangement for a continuous carriage or shipment" of property from one State to another; nor does it apply to the carriage of property by rail wholly within the State, although shipped from or destined to a place without the State, so that such place is not in a foreign country.

Ex parte Koehler (U. S. C. C.) 1 Intern. Com. Rep. 28; Mo. & I. R. T. & Lumber Co. v. Cape Girardeau & S. W. R. Co. 1 Intern. Com. Rep. 607.

The knowledge of a carrier whose line is wholly within one State that the ultimate destination of freight is without the State will not make it subject to the Interstate Commerce Act.

Mo. & I. R. T. & Lumber Co. v. Cape Girardeau & S. W. R. Co. 1 Intern. Com. Rep. 607.

In Ex parte Koehler, 1 Intern. Com. Rep. 28, Dundy, J., says: "The mere fact that a railway wholly within a State, and a vessel running between said State and another, meet at a point within the railway State, and thus form a continuous line of transportation between the two States, by the one taking up the goods delivered by the other at its terminus, and carrying them thence to their destination, does not bring the carriers who so use the rail-

way and steamer within the Act. So long as the railway and steamer are each operated under a separate and distinct control, making its own rates, and only liable for the carriage and safe delivery of the goods at the end of its own route, the Act does not apply to the transaction. To make these carriers subject to the Act, the railway and vessel must, as therein provided, be operated or used under a 'common control'—a control to which each is alike subject, and by which rates are prescribed and bills of lading given for the carriage of goods over both routes as one."

Where a railway company made a contract applicable to all routes which it might thereafter control, and acquired the majority of stock of another railway company and the same persons were elected respectively president and vice president of both companies, *held*, that the contracting company had not acquired "control" of the other railway within the meaning of the terms of the contract.

Pullman Palace Car Co. v. Mo. P. R. Co. 11 Fed. Rep. 634.

A railroad wholly within one State, used as a means of conducting interstate traffic in coal by companies owning connecting interstate roads, is subject to the provisions of the Act to Regulate Commerce; and it must be accessible to all interstate shippers on equal and reasonable terms.

Heck v. East Tenn. V. & G. R. Co. 1 Inters. Com. Rep. 775.

A carrier is not responsible for rates made by a connecting road because of its giving them in connection with its own rates to parties desiring to make through shipments.

Crews v. Richmond & D. R. Co. 1 Inters. Com. Rep. 703.

So far as a railroad company, whose line is entirely within one State, issues through bills of lading over its connecting lines to points in other States, and makes through rates, it falls under the Interstate Commerce Act.

Re Annapolis, W. & B. R. Co. 1 Inters. Com. Rep. 815.

Several railroad companies uniting in an arrangement under which a fast freight line violates the Interstate Commerce Act are responsible therefor.

Boston & A. R. Co. v. Boston & L. R. Co. 1 Inters. Com. Rep. 571.

The Illinois Statute regulating the transportation of goods under one contract to points beyond the State is unconstitutional.

Wabash, St. L. & P. R. Co. v. Ill. 118 U. S. 557 (30 L. ed. 244); 1 Inters. Com. Rep. 31.

A statute regulating the transmission of telegraph messages beyond the State is void.

W. U. Tel. Co. v. Pendleton, 123 U. S. 347 (30 L. ed. 1187); 1 Inters. Com. Rep. 306.

DISCRIMINATION.

Statutory Provisions. Section 3, par. 1, of the Interstate Commerce Act is an almost literal copy of a portion of section 2 of the English Railway and Canal Traffic Act of 1854.

The object of section 3 is to apply to cases not within section 2, since section 2 is limited to cases of "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances."

Section 3, par. 2, of the Act of Congress, is also a copy of a portion of section 2 of the English Railway & Canal Traffic Act of 1854; the changes in the Act of Congress are shown by the words between brackets in italics as follows: "Every railway company, canal company, and railway and canal company [every common carrier subject to the provisions of this Act] shall, according to their respective powers, afford all reasonable [proper and equal] facilities for the [interchange of traffic between their respective lines and for the] receiving and ["and" omitted] forwarding and delivering of (English Statute: "Traffic upon and from the several railways and canals belonging to or worked by such companies respectively," American Act: "Passengers and property to and from their several lines and those connecting therewith.")"

Section 7 of the American Act contains provisions similar to section 2 of the Railway & Canal Traffic Act of 1854.

General Rules.

To constitute an unreasonable preference, there must be inequality in the charge for traveling over the same line, or the same portion of the line.

Caterham R. Co. v. London, B. & S. C. R. Co. 1 C. B. (N. S.) 410; 1 Nev. & Mac. 32; *Finnie v. Glasgow & S. W. R. Co.* 2 Macq. 177; *S. C.* 26 L. T. 14.

The relative reasonableness of rates on shipments from western points to cities on the Atlantic seaboard is to be determined by all the circumstances and conditions that affect the traffic to the respective points between which the rates are questioned, and not solely by one standard of comparison.

Boston Chamber of Commerce v. Lake Shore & M. S. R. Co. 1 Inters. Com. Rep. 754.

What amounts to an undue preference is a question of fact and not of law.

Diphwys etc. Co. v. Festiniog R. Co. 2 Nev. & Mac. 73; *Watkinson v. Wrexham etc. R. Co.* 3 Nev. & Mac. R. Cas. 5; *Denaby Main Colliery Co. v. Manchester etc. R. Co.* 3 Nev. & Mac. 441.

The burden of proof is on petitioner charging unreasonable rates.

Harding v. Chicago, St. P. M. & O. R. Co. 1 Inters. Com. Rep. 375.

The burden is on the carrier to justify any departure from the rules prescribed by the statute.

Re Southern R. & Steamship Asso., and Re Louisville & Nashville R. Co. 1 Inters. Com. Rep. 278.

As to sufficiency of evidence to establish charge of excessive rates, see:

Great Western R. Co. v. Sutton, L. R. 4 Eng. & Irish App. H. L. 226; *Ransome v. Eastern Counties R. Co.* 1 C. B. N. S. 437; *S. C.* 26 L. J. C. P. 91; 1 Nev. & Mac. 63; *Baxendale v. Great Western R. Co.* 5 C. B. N. S. 336; *S. C.* 28 L. J. C. P. 81; *Nicholson v. Great Western R. Co.* 5 C. B. N. S. 366; *S. C.* 28 L. J. C. P. 89; 1 Nev. & Mac. 121.

As to the manner of determining what are reasonable charges, see:

Louisville & N. R. Co. v. Tennessee R. Com-

mission, 19 Fed. Rep. 679; Canada S. R. Co. v. Internat. Bridge Co. 8 Fed. Rep. 190; Internat. Bridge Co. v. Canada S. R. Co. L. R. 8 App. Cas. 723; Riley v. Horne, 5 Bing. 217; Manchester, S. & L. R. Co. v. Brown, L. R. 8 App. Cas. 703; Chicago & A. R. R. Co. v. People, 67 Ill. 11; Stone v. Farmers L. & T. Co. 116 U. S. 307-336 (29 L. ed. 636-646); Baxendale v. Eastern Counties R. Co. 4 C. B. (N. S.) 68.

A charter right to make such charges as the company might see fit is not contravened by the statute requiring charges to all persons to be equal.

Great Western R. Co. v. Sutton, L. R. 4 Eng. & Irish App. H. L. 226; Baxendale v. Great Western R. Co. 14 C. B. N. S. 1; *S. C.* 16 C. B. N. S. 187; Crouch v. Great Northern R. Co. 9 Exch. 557.

For a Complete Digest of English Decisions and Index thereto see Appendix to Am. & Eng. R. Cases, Vol. 27, by Adelbert Hamilton, Esq.

Against Localities.

Preferences to localities in furnishing facilities or rates for the shipment of goods are prohibited.

Hozier v. Caledonian R. Co. 17 Scas. 702; *S. C.* 24 L. T. 839; 1 Nev. & Mac. 27; Jones v. Eastern Counties R. Co. 8 C. B. N. S. 718; 1 Nev. & Mac. 45; Nicholson v. Great Western R. Co. 5 C. B. N. S. 866; Richardson v. Midland R. Co. 4 R. & Can. Traf. Cas. 1; Girardot v. Midland R. Co. 4 R. & Can. Traf. Cas. 291.

A railway company must give equal facilities and similar rates to all persons in receiving and delivering goods.

Cooper v. London & S. W. R. Co. 4 C. B. N. S. 788; *S. C.* 27 L. J. C. P. 324; 1 Nev. & Mac. 185; Bell v. London etc. R. Co. 2 Nev. & Mac. 185.

It is not ground of complaint against a railroad that it equalizes its rates as between small and large towns, even though the effect may be prejudicial to the large towns which before had been specially favored.

Crews v. Richmond & D. R. Co. 1 Inters. Com. Rep. 703.

and Boston, on traffic originating west of Buffalo, have not been shown to be unjust and unreasonable or to constitute unjust discrimination against Boston.

Boston Chamber of Commerce v. Lake Shore & M. S. R. Co. 1 Inters. Com. Rep. 754.

The fact that the export rates through Boston, and the rates on merchandise intended for coastwise points east of Portland, and the west bound rates from Boston have been made by the carriers the same as corresponding New York rates in order to put Boston on an equality with New York and other seaboard cities wherever Boston is a competitor with those cities, is not controlling in determining the reasonableness of the east bound local rates in a traffic in which there is no competition by other cities. *Id.*

A manufactory of plaintiff was situated twelve miles from the seaport of Swansea, and on the defendant's railway from the seaport to Liverpool. The defendant charged the plaintiff 12s 6d per ton for the carriage of iron and tin plates over its line from his manufactory to Liverpool, while other manufacturers of iron and tin plates whose works were situated within a radius of six miles of the seaport of Swansea, and therefore further from Liverpool than the plaintiff's works, were charged by the defendant, for the carriage of their plates from Swansea to Liverpool, 11s 4d per ton only. There is a communication by sea from Swansea to Liverpool, and the rate of 11s 4d was fixed by the defendant as the charge for the carriage of the goods of these manufacturers within the six miles' radius in order to enable the defendant to compete with the sea carriage; and by reason of the lesser charge, those manufacturers who were thus favored were enabled to sell their plates at a lower price per ton, delivered at Liverpool, than the plaintiff. *Held*, that the charging of a lower rate to the manufacturers within the six miles' radius, for the carriage of their goods a longer distance than the plaintiff's was an undue and unreasonable preference and advantage granted to them by the defendant, and was in contravention of section 2 of the Railway & Canal Traffic Act of 1844.

Lloyd v. Northampton etc. R. Co. 3 Nev. & Mac. 259.

Grouping rates for collieries working the same bed of coal, where the coal field extends twenty miles, may result in an unreasonable preference.

Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. 3 Nev. & Mac. 426; 4 R. & Can. Traf. Cas. 23, 450; Broughton etc. Coal Co. v. G. W. R. Co. 4 R. & Can. Traf. Cas. 191.

Where a petition complained of discrimination against the Town of Opelika, Ala., but the order which was prayed would, if granted, increase the discriminations against other local points, leave was given to amend the petition so as to set out the effects with reference to other local points and to afford opportunity of notice to them.

Harwell v. Columbus & W. R. Co. 1 Inters. Com. Rep. 631.

Where on evidence, the Commission found that cotton offered for shipment at Opelika for New Orleans was unjustly and unreasonably refused by the defendant company, in violation of the third section of the statute, while taken by it at other points similarly situated, and that connecting lines were ready and willing to unite in a reasonable adjustment of rates—an order was made requiring the defendant to cease such discrimination within ten days. *Id.*

A petition charging unjust discrimination in rates between Waterville and Mankato, and that such rates were higher than rates between Chicago and Waterville, disposed of by report of Commission that the respondent company has conceded the relief sought and had made and published a tariff of the rates in accordance with the prayer of the petition.

Manufacturer's & Jobbers Union v. Minneapolis & St. L. R. Co. 1 Inters. Com. Rep. 630.

An index of all proceedings and decisions by the Interstate Commerce Commission relating to discrimination against localities will be found in the index to this volume, under title "Charges and Discrimination."

Against Specific Articles.

Under Railways Clauses Act, 1845, § 90, 8 & 9 Vict., the charge must be the same to all for the same services performed in the same manner for carrying goods for the same distance, and for similar services rendered in any other way.

London & N. W. R. Co. v. Evershed, L. R. 3 App. Cas. 1020; S. C. 39 L. T. N. S. 806.

Under the Illinois Statute a charge of two cents more per 100 pounds for carrying grain than charged to others, held unjust discrimination.

St. Louis, A. & T. H. R. Co. v. Hill, 14 Bradw. 579.

Rates are so related to each other that the instances are very frequent where a change of rate upon one important article of commerce involves a consideration of the relative rates on other articles; it appearing that the defendant company has made a change and general reduction on lines of freight, and it appearing that during the next season it is intended to make a further reduction, and that rates on wheat from Walla Walla, Washington Terri-

tory, to Portland, Oregon, were charged at a higher relative rate than was just, it was ordered that the defendant cease to charge more than 23½ cents per 100 pounds or \$4.70 per ton on wheat thus transported.

Evans v. Oregon R. & Nav. Co. and Reed v. Oregon R. & Nav. Co. 1 Inters. Com. Rep. 641.

The relative difference in rates on pearline, and special rates on common soap on shipments from New York to Atlanta adjusted, so that the relative difference in the rates shall not exceed the difference of sixty cents per 100 pounds on pearline and thirty-three cents on common soap.

Pyle v. East Tenn. V. & G. R. Co. 1 Inters. Com. Rep. 767.

The classification of railroad ties in a different class from other lumber, thus imposing a higher rate upon ties than upon other lumber, held to be an unjust discrimination.

Reynolds v. Western N. Y. & P. R. Co. 1 Inters. Com. Rep. 685.

Classification of coals as gas coal and common coal held, under the facts, improper.

Nitschill etc. Coal Co. v. Caledonian R. Co. 2 Nev. & Mac. 39.

Rates established for the purpose of keeping up a line of road material (as railroad ties) for which the road itself has use, or to keep the price thereof low for its own advantage, cannot be justified.

Reynolds v. Western N. Y. & P. R. Co. 1 Inters. Com. Rep. 685.

Whether a special privilege, granted by railroad companies to manufacturers in a single line of trade, but not to manufacturers in general, is consistent with the rule of equity and justice which the Interstate Law undertakes to establish, is a question upon which an opinion ought to be expressed only after the most careful consideration; and the Commission ought clearly to see that duty requires an answer, before it proceeds to give one on *ex parte* application.

Re Iowa Barb Steel Wire Co. 1 Inters. Com. Rep. 605.

An index of all proceedings and decisions by the Interstate Commerce Commission relating to discriminations against specific articles will be found in the index to this volume, under title "Charges and Discrimination."

Character, Quantity, Value of Goods; Classification; Underbilling.

Making of freight rates may be affected by a variety of practical considerations, as: the sparsely settled character of the country; the articles of freight upon which the railroad must depend as compared with other roads transporting similar commodities through more populous communities; the relation of local and through freights; the mode of shipping and delivering, as wheat from elevators, and wheat in sacks; and expenses of hauling empty cars.

Evans v. Oregon R. & Nav. Co. and Reed v. Oregon R. & Nav. Co. 1 Inters. Com. Rep. 641; Hays v. Pa. Co. 12 Fed. Rep. 309; Scofield v. Lake Shore & M. S. R. Co. 1 West. Rep. 812, 43 Ohio St. 571; Mo. Pac. R. Co. v. Texas & P. R. Co. 80 Fed. Rep. 2; Girardot v. Midland

R. Co. 4 R. & Can. Traf. Cas. 301; Greenock v. S. E. R. Co. 3 Nev. & Mac. 319; Concord & P. R. R. Co. v. Forreth, 59 N. H. 123.

The length and character of the haul, the cost of service, the volume of business, the conditions of competition, the storage capacity and the geographical situation of the different terminal points are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation.

Boston Chamber of Commerce v. Lake Shore & M. S. R. Co. 1 Intern. Com. Rep. 754.

Under the Railway Clauses Consolidation Act of 1845, mere inequality in the rate of charge, when unequal distances are traversed, does not constitute a preference.

Denaby Main Colliery Co. v. Manchester S. & L. R. Co. L. R. 11 App. Cas. 97.

A difference in the cost of service will justify a carrier in making a reasonable difference in its rates.

Chicago & A. R. Co. v. People, 67 Ill. 11-34; Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. 26 Am. & Eng. R. R. Cas. 308; Nicholson v. Great Western R. Co. 5 C. B. N. S. 386; Ransome v. Eastern Counties R. Co. 3 Nev. & Mac. 303; Girardot v. R. Co. 4 R. & Can. Traf. Cas. 301; Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 101, 103; Ransome v. Eastern Counties R. Co. 1 Nev. & Mac. 68; S. C. 1 C. B. N. S. 437, 26 L. J. C. P. 91; Foreman v. Great Western R. Co. 3 Nev. & Mac. 302; Nithill etc. Coal Co. v. Caledonian R. Co. 3 Nev. & Mac. 30; Belladyke Coal Co. v. North British R. Co. 3 Nev. & Mac. 105; Bell v. London etc. R. Co. 2 Nev. & Mac. 165; Holland etc. R. Co. v. Festiniog R. Co. 3 Nev. & Mac. 287; Lotspeich v. Cent. R. & Bkg. Co. 73 Ala. 306; S. C. 18 Am. & Eng. R. R. Cas. 490; Burton Stock Car Co. v. Chicago, B. & Q. R. Co. 1 Intern. Com. Rep. 320; Providence Coal Co. v. Providence & W. R. Co. 1 Intern. Com. Rep. 353.

A railway company is justified in carrying goods for one person at a less rate than that at which it carries goods for another, only where there are circumstances which make the cost of carrying the former less than the cost of carrying the latter.

Garton v. Bristol & E. R. Co. 5 C. B. N. S. 689; S. C. 26 L. J. C. P. 306; 1 Nev. & Mac. 218; Oxlade v. North Eastern R. Co. 1 C. B. N. S. 454; S. C. 26 L. J. C. P. 120; 1 Nev. & Mac. 72; Nithill etc. Coal Co. v. Caledonian R. Co. 3 Nev. & Mac. 30.

The difference in rates must bear some proportion to the difference of the cost to carriers.

Harris v. Cockermouth etc. R. Co. 1 Nev. & Mac. 97-102, 3 C. B. N. S. 606; Garton v. Bristol etc. R. Co. 1 Nev. & Mac. 237; 5 C. B. N. S. 639-656; Nicholson v. G. W. R. Co. 1 Nev. & Mac. 165; Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 123; Baxendale v. R. Co. 1 Nev. & Mac. 303; Ransome v. Eastern Counties R. Co. 1 Nev. & Mac. 69.

A difference in bulk will justify difference in rates.

Lotspeich v. Cent. R. & Bkg. Co. 73 Ala. 306. Or when return loads could not be had.

Chicago & A. R. Co. v. People, 67 Ill. 24; Girardot v. Midland R. Co. 4 R. & Can. Traf. Cas. 301.

Or difference in expense of loading and unloading.

Chicago & A. R. Co. v. People, 67 Ill. 26.

Different rates may be charged where shippers own private side tracks and return cars more promptly.

Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 103.

Less rates may be charged for furnishing freight in fully loaded trains at regular intervals.

Nicholson v. Great Western R. Co. 5 C. B. N. S. 386.

A difference in charge is justified where the transportation is over steep grades.

Belladyke Coal Co. v. North British R. Co. 3 Nev. & Mac. 105; Nithill Coal Co. v. Caledonian R. Co. 3 Nev. & Mac. 30.

"Goods of like description" and "goods of same description" refer not to the contents of the parcels, but to the parcels themselves, that is, like or different for the purpose of carriage.

Great Western L. Co. v. Sutton, L. R. 4 Eng. & Irish App. H. L. 226; Nithill etc. Coal Co. v. Caledonian R. Co. 3 Nev. & Mac. 30; Merry v. Glasgow R. Co. 4 R. & Can. Traf. Cas. 363.

Less desirable traffic must be accepted upon reasonable terms, as well as that which is more desirable.

Riddle v. New York, L. E. & W. R. Co. 1 Intern. Com. Rep. 787.

The N. W. Railway Company carried goods for the complainants who were brewers at B. by their railway, they charged the complainants, and the public generally, 1s per ton for the carriage of goods to and from their B. station, and 9d per ton for terminal services there. T. & Co. and C. & Co., who were also brewers at B., had breweries connected with the M. Railway Company's station at that place by continuous railway communication; the goods which they sent or received by the M. line were loaded and unloaded on their own premises by their servants, and they were consequently not charged by the M. Railway Company any rate for cartage or terminal services. The N. W. Railway Company, in order to compete with the M. Railway Company for the carriage of the goods of T. & Co. and C. & Co., exempted them from the above mentioned rates of 1s 9d respectively, carting and loading their goods gratuitously. There being nothing to show that there was a saving of cost to the company by reason of the quantity of goods carried for T. & Co. and C. & Co., to compensate for the loss of 1s, 9d per ton, and T. & Co. and C. & Co. being the only firms to whom the reduced rates were applicable, held, that there was not sufficient ground for the arrangements made in their favor, and that an injunction should issue against the N. W. Railway Company, under the third section of the Railway & Canal Traffic Act, 1854; in order to justify a difference being made by a railway company in favor of one or more individual members of its general class of customers, there must be an adequate consideration to the railway company lessening the cost to it of the services rendered to such individual members of the general class; and it is not sufficient that the railway company merely de

mitted by the examining magistrate to the custody of the sheriff to answer an indictment for that alleged offense. The ground of the application for discharge upon the writ of *habeas corpus* in the City Court of Mobile was that the Act of the General Assembly of the State of Alabama, for the violation of which he was held, was in contravention of that clause of the Constitution of the United States which confers upon Congress power to regulate commerce among the States.

The facts, as they appeared upon the hearing upon the return of the writ, are as follows: the petitioner at the time of his arrest on July 16, 1887, within the County of Mobile, was a locomotive engineer in the service of the Mobile and Ohio Railroad Company, a corporation owning and operating a line of railroad forming a continuous and unbroken line of railway from Mobile, in the State of Alabama, to St. Louis, in the State of Missouri, and as such was then engaged in handling, operating, and driving a locomotive engine, attached to a regular passenger train on the Mobile and Ohio Railroad, within the county and State, consisting of a postal car carrying the United States mail to all parts of the Union, a southern express car containing perishable freight, money packages, and other valuable merchandise destined to Mississippi, Tennessee, Kentucky, and other States, passenger coaches, and a Pullman palace sleeping car occupied by passengers to be transported by said train to the States of Mississippi, Tennessee, and Kentucky. The petitioner's run, as a locomotive engineer in the service of the Mobile and Ohio Railroad Company, was regularly from the City of Mobile, in the State of Alabama to Corinth, in the State of Mississippi, sixty miles of which run was in the State of Alabama, and two hundred and sixty-five miles in the State of Mississippi; and he never handled and operated an engine pulling a train of cars whose destination was a point within the State of Alabama when said engine and train of cars started from a point within that State. His train started at Mobile, and ran through without change of coaches or cars on one continuous trip. His employment as locomotive engineer in the service of said company also required him to take charge of and handle, drive, and operate an engine drawing a passenger train which started from St. Louis, in the State of Missouri, destined to the City of Mobile, in the State of Alabama, said train being loaded with merchandise and occupied by passengers destined to Alabama and other States; this engine and train he took charge of at Corinth, in Mississippi, and handled, drove and operated the same along and over the Mobile and Ohio Railroad through the States of Mississippi and Alabama to the City of Mobile. It frequently happened that he was ordered by the proper officers of the said company to handle, drive and operate an engine drawing a passenger train loaded with merchandise, carrying the United States mail, and occupied by passengers from the City of Mobile, in Alabama, to the City of St. Louis, in Missouri, being allowed two lay-overs; said train passing through the States of Alabama, Mississippi, Tennessee, Illinois, and into the State of Missouri.

It was admitted that the petitioner had not obtained the license required by the Act of the INTER S.

General Assembly of the State of Alabama of February 28, 1887, and had not applied to the board of examiners, or any of its members, for such license, and that more than three months had elapsed since the appointment and qualification of said board of examiners, the same having been duly appointed by the Governor of the State under the provisions of said Act.

The Statute of Alabama, the validity of which is thus drawn in question, as being contrary to the Constitution of the United States, and the validity of which has been affirmed by the judgment of the Supreme Court of Alabama now in review, is as follows:

"AN ACT to Require Locomotive Engineers in this State to be Examined and Licensed by a Board to be Appointed by the Governor for That Purpose.

"Section 1. *Be it enacted by the General Assembly of Alabama*, That it shall be unlawful for the engineer of any railroad train in this State to drive or operate or engineer any train of cars or engine upon the main line or roadbed of any railroad in this State which is used for the transportation of persons, passengers, or freight, without first undergoing an examination and obtaining a license as hereinafter provided.

"Sec. 2. *Be it further enacted*, That before any locomotive engineer shall operate or drive an engine upon the main line or roadbed of any railroad in this State used for the transportation of persons or freight, he shall apply to the board of examiners hereinafter provided for in this Act, and be examined by said board or by two or more members thereof, in practical mechanics, and concerning his knowledge of operating a locomotive engine and his competency as an engineer.

"Sec. 3. *Be it further enacted*, That upon the examination of any engineer as provided in this Act, if the applicant is found competent, he shall, upon payment of five dollars, receive a license, which shall be signed by each member of the board, and which shall set forth the fact that the said engineer has been duly examined as required by law and is authorized to engage as an engineer on any of the railroads in this State.

"Sec. 4. *Be it further enacted*, That in addition to the examination provided for in section two (2), it shall be the duty of said board of examiners, before issuing the license provided for in this Act, to inquire into the character and habits of all engineers applying for license; and in no case shall a license be issued if the applicant is found to be of reckless or intemperate habits.

"Sec. 5. *Be it further enacted*, That any engineer who, after procuring a license as provided in this Act, shall at any time be guilty of any act of recklessness, carelessness, or negligence while running an engine, by which any damage to persons or property is done, or who shall within six hours before, or during the time he is engaged in running an engine, be in a state of intoxication, shall forfeit his license, with all the rights and privileges acquired by it, indefinitely or for a stated period, as the board may determine after notifying such engineer to appear before the board, and inquiring into his act or conduct. It shall be the duty of the board to determine whether the

fer; and, therefore, it cannot be supported on that ground;

(b) That even if "quick dispatch" were made a condition of the discount, such offer would have neither justice nor reason to support it, as its limitation to consignees receiving a specified number of tons would be an unjust discrimination;

(c) That the offer of discount cannot be supported on the consideration of quantity, on the analogy of the distinction usually made in ordinary business transactions, between wholesale and retail dealers.

Providence Coal Co. v. Providence & W. R. Co. 1 *Inters. Com. Rep.* 363.

The expense of hauling Burton live stock cars in one direction unloaded (for the reason that by their construction they are not suited to carrying general freight) as compared with the greater ability to load back the ordinary railroad cattle cars, and the fact that a large percentage of the ordinary cattle cars are so back loaded upon the long hauls of western roads, are considerations which justify a difference in charge against shippers who prefer to hire the improved stock cars.

Burton Stock Car Co. v. Chicago, B. & Q. R. Co. 1 *Inters. Com. Rep.* 329.

Doubted (but not decided) whether the extra charges made to shippers of live stock in special cars (including the Burton cars) over thirty feet in length, according to the revised classification of the Western Railroad Classification Committee, put in force April 7, 1887, are not unreasonable. *Id.*

The permitting by common carriers, of the practice of underbilling the weight of freight or giving it a false classification, whereby less compensation is paid by one person than by another for "a like and contemporaneous service," is within the inhibition of the Act to Regulate Commerce.

Re Underbilling, 1 *Inters. Com. Rep.* 813.

Competition.

The fact that one shipper can go by another route and will probably do so if charged as much as the charge made to the complaining party, is not a circumstance justifying an unequal charge; nor will the fact that those charged a less rate are seeking to develop a new trade.

London & N. W. R. Co. v. Evershed, L. R. 8 App. Cas. 1029; *Denaby Main Colliery Co. v. Manchester, S. & L. R. Co.* L. R. 11 App. Cas. 97.

The lowering of rates for the purpose of developing business is an undue preference.

Oxlade v. North Eastern R. Co. 1 C. B. N. S. 454; *S. C.* 26 L. J. C. P. 129; 1 Nev. & Mac. 73.

Or making a lower rate in consequence of a threat from the owner of a colliery to construct another railway, by which traffic would be diverted.

Harris v. Cockermouth & W. R. Co. 3 C. B. N. S. 693; *S. C.* 27 L. J. C. P. 162; 1 Nev. & Mac. 97; *Diphwys Casson Slate Co. v. Festiniog R. Co.* 2 Nev. & Mac. 73.

An exceptional rebate and gratuitous cartage of goods of one customer not allowed to others, for the purpose of competing with another line, held to be undue preference.

London & M. W. R. Co. v. Evershed, L. R. 8 App. Cas. 1029.

A company made an agreement with A to carry for him coals for three years, from Petersburg to various places on its line of railway, at certain rates. B, a coal merchant at Ipswich, sent coals (which had been brought to that port by sea) to various places on the same lines of railway, and the company charged him a much larger sum in proportion to the distance over which his coals were carried than the company charged to A—the professed object of the difference being to enable A (whose coal came to Petersburg by railway) to compete in the coal trade of the district with B, who had the advantage of having had his coals brought to Ipswich by sea. *Held*, that this was giving an undue preference to A, and the company was required to carry coals for B on equal terms with A, due regard being had to any circumstance rendering the cost of carrying for one less than for the other.

Ransome v. Eastern Counties R. Co. 1 C. B. N. S. 437; *S. C.* 3 Jur. N. S. 217; 26 L. R. C. P. 91; 1 Nev. & Mac. 63.

That "Railroads have water competition and are compelled to meet it," without more, is not sufficient to justify a lesser charge for the greater distance. Dissimilar "circumstances and conditions" are made out by the existence of actual competition which is the controlling force.

Harwell v. Columbus & W. R. Co. 1 *Inters. Com. Rep.* 631; *Ex parte Koehler*, 23 Fed. Rep. 529.

In *Boston Chamber of Commerce v. Lake Shore & M. S. R. Co.* 1 *Inters. Com. Rep.* 754, the rule is stated to be: the length and character of the haul, the cost of service, the volume of business, the conditions of competition, the storage capacity and the geographical situation of the different terminal points, are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation.

The subject of competition is further considered under the title "Long and Short Haul and Operation and Suspension of Fourth Section of the Interstate Commerce Act."

Furnishing Cars.

A railway company is bound to furnish sufficient locomotive power, and to desist from unduly detaining empty or unloaded wagons; *Watkinson etc. Copper Co. v. Wrexham etc. R. Co.* 3 Nev. & Mac. 446; and to furnish sufficient cars for its traffic.

Watkinson etc. Copper Co. v. Wrexham etc. R. Co. 3 Nev. & Mac. 164; *Tharsis etc. v. London etc. R. Co.* 3 Nev. & Mac. 455; *Caterham R. Co. v. London, B. & S. C. R. Co.* 1 C. B. N. S. 410; *S. C.* 26 L. J. C. P. 161; 1 Nev. & Mac. 32; *Barrett v. Gt. North. R. Co.* 1 Nev. & Mac. 38; *Toomer v. London etc. R. Co.* 3 Nev. & Mac. 79; *Dublin etc. R. Co. v. Midland R. Co.* 3 Nev. & Mac. 379; *Riddle v. N. Y. etc. R. Co.* 1 *Inters. Com. Rep.* 787.

The character and condition of goods and the orderly prosecution of business will determine the order of shipment and the furnishing of facilities for transportation.

Galena & C. U. R. Co. v. Rae, 13 Ill. 483;

Great Western R. Co. v. Burns, 60 Ill. 284; Peet v. Chicago & N. W. R. Co. 20 Wis. 594. See note, 16 Am. L. Rev. 882.

It is properly the business of a carrier by railroad to supply the rolling stock for the freight it offers or proposes to carry; and if the diversities and peculiarities of traffic are such that this is not always practicable, and consignors are allowed to supply it for themselves, the carrier must not allow its own deficiencies in this particular to be made the means of putting at an unreasonable advantage those who make use in the same traffic of the facilities it supplies.

Rice v. Louisville & N. R. Co. 1 Inters. Com. Rep. 722.

When for a special traffic—*e. g.*, the transportation of petroleum oils—a carrier provides rolling stock for one method, but does not provide it for another for which it publishes rates, but the shippers are expected to provide the same, the terms on which such rolling stock is to be provided should be uniform and should be published with the rate sheets, and cannot lawfully be left to be the subject of bargain and of different terms in the case of different shippers. *Id.*

A railroad is not justified in refusing to furnish cars for the transportation of coal, by the fact that it could at that time make more money by using its coal cars upon other portions of its line.

Riddle v. N. Y. etc. R. Co. 1 Inters. Com. Rep. 787.

During the summer and fall of 1887, owing to high rates on lake vessels, there was an accumulation of coal and other freights along the line of defendant company. *Held*, that the proof did not sustain the charge that the company gave a preference in furnishing cars for the transportation of coke over the coal trade, or gave a preference to shippers in not requiring them to load or unload cars.

Riddle v. Pittsburgh & L. E. R. Co. 1 Inters. Com. Rep. 638.

In the absence of a custom or rule of business placing the duty upon the carrier to notify a shipper of the arrival of cars for his use, it is the duty of the shipper to make inquiry of the proper agent of the railroad company; but if the carrier undertakes to notify, it must perform its duty in this respect.

Riddle v. Balt. & O. R. Co. 1 Inters. Com. Rep. 778.

The proceedings and decisions of the Interstate Commerce Commission relating to refusal to furnish cars are referred to in the index to this volume, under title "Charges and Discrimination."

Connecting Lines; Express Companies.

At common law a railway company is bound to transport or haul upon its road the cars of any other railway company.

Vt. & M. R. Co. v. Fitchburg R. Co. 14 Allen, 462; Mackin v. Boston & A. R. Co. 185 Mass. 201.

A railroad company is bound to supply suitable vehicles of transportation and to offer their use to everybody impartially.

Ogdensburg & L. C. R. Co. v. Pratt, 89 U. S. 23 Wall. 123-133 (23 L. ed. 827-831).

In absence of a statute, a railroad is not

bound to stop its trains and exchange traffic at the junction of another road.

Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co. 110 U. S. 667 (28 L. ed. 291); and its liability terminates with its delivery to the connecting carrier.

Myrick v. Mich. Cent. R. Co. 107 U. S. 102 (27 L. ed. 325).

The use of cars upon other lines is a service incidental to the receiving, forwarding and delivering of traffic, and is within the provisions of the English Act.

Diphwys Casson Slate Co. v. Festiniog R. Co. 2 Nev. & Mac. 73; S. C. 52 L. T. (N. S.) 271.

Under the English Act it must appear that public convenience requires continuous carriage.

Barret v. Great Northern R. Co. 1 C. B. N. S. 423; S. C. 26 L. J. C. P. 83; 1 Nev. & Mac. 28; Caterham R. Co. v. London, B. & S. C. R. Co. 1 C. B. N. S. 410; S. C. 26 L. J. C. P. 161; 1 Nev. & Mac. 32; Parkinson v. Great Western R. Co. 40 L. J. C. P. 222; S. C. 24 L. T. N. S. 830; 1 Nev. & Mac. 280; Fishbourne v. Gt. S. & W. R. Co. 2 Nev. & Mac. 224; Wannan v. Scottish Cent. R. Co. 2 Sess. Cas. 1873; 1 Nev. & Mac. 237; Pickford v. Caledonian R. Co. 1 Nev. & Mac. 252; Local Board etc. v. London etc. R. Co. & S. E. R. Co. 2 Nev. & Mac. 214; Toomer v. London etc. R. Co. 3 Nev. & Mac. 79; Victoria etc. Co. v. Neath etc. R. Co. 3 Nev. & Mac. 87; James etc. v. Taff. Vale etc. R. Co. 3 Nev. & Mac. 540; Swindon etc. R. Co. v. Great Western R. Co. 4 Nev. & Mac. 849.

Where cars are dissimilar in character a railway company may refuse to forward, upon reasonable requirements.

Caledonian R. Co. v. North British R. Co. 3 Nev. & Mac. 56.

The mileage rate of three fourths of a cent per mile run, which is customary, among railroads, for freight cars of other railroad companies used upon the paying company's line, and which payment is, by the interchange of cars, practically equalized among the different roads, is not to be taken as the measure of payment for the use of cars belonging to persons other than railroad companies.

Burton Stock Car Co. v. Chicago, B. & Q. R. Co. 1 Inters. Com. Rep. 829.

The Burton Stock Car Company, which furnishes special improved live stock cars owned by it, to shippers over railroads, does not exchange with or use cars belonging to others, and is in no sense a "connecting line," entitled to equal facilities for interchange of traffic, under paragraph 2 of section 3 of the Act to Regulate Commerce. *Id.*

The Burton Stock Car Company is not entitled to claim that it is unjustly discriminated against, by a refusal on the part of railroad companies to pay it the same rate of mileage which carriers adopt as the basis in adjusting their car service accounts with each other. *Id.*

A railway company cannot make a distinction in its rates dependent upon whether the traffic is booked no further than it goes by railway or is booked to a destination beyond the limits subject to the traffic statute.

Ayr Harbour Trustees v. Glasgow R. Co. 4 R. & Can. Traf. Cas. 81.

Where one railway company works the rail

way of another company, it must give equal facilities as to through booking by the worked line as by its own and must not prefer its own route in the matter of rates.

Clonmel Traders v. Waterford R. Co. 4 R. & Can. Traf. Cas. 92.

A railway company is not bound to extend to other steamboats the same facilities as to through rates, etc., as it extends to the steamboat it selects to transact its business.

Napier v. Glasgow etc. R. Co. 1 Nev. & Mac. 292; *contra*, under the Act to Regulate Commerce. *Re* Petition of Mallory (U. S. C. C. Fla.), 1 Inters. Com. Rep. 294.

Under the charter of the Texas & Pacific Railroad Company no discrimination against connecting roads is allowed in charging for freight or passengers.

Mo. Pac. R. Co. v. Texas & P. R. Co. 30 Fed. Rep. 2.

Railway companies are not obliged, in the absence of a statute, to furnish to all independent express companies equal facilities for doing express business upon their fast trains.

Express Cases, 117 U. S. 1 (29 L. ed. 791); 28 Am. & Eng. R. R. Cas. 545, *Note*. See also New England Express Co. v. Maine Cent. R. Co. 5 Maine, 188; McDuffee v. Portland & R. R. Co. 52 N. H. 430; Sandford v. Catawissa, W. & E. R. Co. 24 Pa. 378.

The Massachusetts Statute does not render it unlawful for a railroad to carry on the express business itself, and to refuse to allow similar privileges to other parties.

Sargent v. Boston & L. R. Corp. 115 Mass. 416.

Under the Pennsylvania Statute requiring "That equal and impartial justice shall be done to all owners of property," a contract giving to one express company the exclusive right of transportation in passenger trains is unlawful and void.

Sandford v. Catawissa, W. & E. R. Co. 24 Pa. 378; Audenried v. Philadelphia & R. R. Co. 68 Pa. 370.

The English commissioners have no power to make an order on two railway companies to act jointly in doing what neither company has power to do separately.

Toomer etc. v. London etc. R. Co. 3 Nev. & Mac. 79.

Stations; Yards; Terminal Facilities.

A railway company may be required to furnish proper station facilities, and prevented from abandoning stations already established.

State v. New Haven & N. R. Co. 37 Conn. 153; 42 Conn. 56; New Haven & N. Co. v. Hammersley, 104 U. S. 1 (26 L. ed. 629); R. Comrs. v. Portland & O. C. R. Co. 63 Maine, 269; Com. v. Eastern R. Co. 103 Mass. 254; State, Moore, v. Chicago, St. P. M. & O. R. Co. 19 Neb. 476; Cincinnati Stock Yards Co. v. U. R. Stock Yards Co. 7 Cin. Week. L. Bul. 895.

A railway company is bound to establish new stations and siding accommodations for passengers and traffic, reasonably sufficient for the business.

Local Board etc. v. N. E. R. Co. 3 Nev. & Mac. 306; Harris v. London etc. R. Co. 3 Nev. & Mac. 331; Caterham R. Co. v. London, B. & S. C. R. Co. 1 C. B. N. S. 410; S. C. 26 L.

J. C. P. 161; 1 Nev. & Mac. 81; Hastings Town Council v. South Eastern R. Co. 3 Nev. & Mac. 179; South Eastern R. Co. v. Railway Comrs. L. R. 6 Q. B. Div. 586; 50 L. J. Q. B. D. 201; 3 Nev. & Mac. 464; London etc. R. Co. v. Staines etc. R. Co. 3 Nev. & Mac. 48.

A railway company may be required to provide a waiting room for passengers and to have platforms extended for the accommodation of traffic, and siding accommodations for the reception and delivery of goods without delay.

London etc. R. Co. v. Staines etc. R. Co. 3 Nev. & Mac. 48; Holyhead Local Board v. London R. Co. 4 R. & Can. Traf. Cas. 37.

But the commissioners cannot order accommodation to be provided which will require the company to take additional land which it has no immediate power to take.

Harris etc. v. London etc. R. Co. 3 Nev. & Mac. 331.

In the case of Hastings Town Council v. London etc. R. Co. (Hastings Town Council v. S. E. R. Co. 3 Nev. & Mac. 179; South Eastern R. Co. v. Railway Comrs. L. R. 6 Q. B. Div. 586; 50 L. J. Q. B. 201; 3 Nev. & Mac. 464); it was held that the commissioners had jurisdiction to require a railway company to afford cattle accommodations and better facilities for the delivery of tickets at the booking office; but that other orders, relating to the construction of platforms and the erection of a bridge and the providing of a refreshment room, were erroneous.

A railroad unjustly discriminates against a town by placing its depot a mile and one half distant at its junction with another road.

State, Mattoon, v. Republican Valley R. Co. 17 Neb. 647; State, Moore, v. Chicago, St. P. M. & O. R. Co. 19 Neb. 476.

A company has no right to afford to one coal merchant superior facilities for storing coal.

West v. London & N. W. R. Co. L. R. 5 C. P. 622; S. C. 39 L. J. C. P. 282; 23 L. T. N. S. 371; 1 Nev. & Mac. 166.

A railway company cannot bind itself to deliver to a particular stock yard all the live stock going over its line to a certain point, but is bound to transport and deliver to all stock yards on equal terms; and the performance of this duty may be compelled by injunction at the suit of the proprietor of the stock yard discriminated against.

McCoy v. Cincinnati I. St. L. & C. R. Co. 13 Fed. Rep. 8; Cincinnati Stock Yards Co. v. U. R. Stock Yards etc. Co. 7 Cin. Week. L. Bul.; Coe v. Louisville & N. R. Co. 3 Fed. Rep. 775; Keith v. Ky. Cent. R. Co. 1 Inters. Com. Rep. 601.

When a railway company has fixed its rates for the transportation of grain from a given station on its line to Chicago, it cannot charge different rates for delivery to different warehouses in Chicago, on the line of its tracks.

Vincent v. Chicago & A. R. Co. 49 Ill. 38.

Undue delay in delivering traffic is ground of complaint.

Cent. Wales R. Co. v. G. W. R. Co. 2 Nev. & Mac. 191.

An exclusive privilege or unequal rights to omnibus, cab or fly proprietors are prohibited.

Marriott v. London & S. W. R. Co. 1 C. B. N. S. 499; S. C. 26 L. J. C. P. 154; 1 Nev.

& Mac. 47; *Beadell v. Eastern Counties R. Co.* 26 L. J. C. P. 250; 1 Nev. & Mac. 56; *Painter v. London, B. & S. O. R. Co.* 2 C. B. N. S. 703; 1 Nev. & Mac. 58; *Ilfracombe etc. Co. v. London etc. R. Co.* 1 Nev. & Mac. 61.

A railway company admitting its own vans, used for the carriage of goods, to the railway station after 6:30 P. M., but excluding the vans of others, thereby gives an unreasonable preference to its own traffic.

Palmer v. London, B. & S. C. R. Co. 1 Nev. & Mac. 271; *S. C.* 40 L. J. C. P. 133; 24 L. T. N. S. 135; *Garton v. Bristol & E. R. Co.* 6 C. B. N. S. 639; *S. C.* 28 L. J. C. P. 306; 1 Nev. & Mac. 218; *Baxendale v. London & S. W. R. Co.* 12 C. B. N. S. 758; 1 Nev. & Mac. 281.

Carriage of Passengers.

A common carrier cannot refuse to carry nonunion laborers because liable to assaults of union men.

Chicago & A. R. Co. v. Pillsbury (Ill.) 6 West. Rep. 790.

Discrimination is permitted against passengers who do not purchase tickets; equal facilities being afforded to all to purchase.

Forsee v. Alabama G. S. R. Co. 63 Miss. 67. Under the Massachusetts Statute (the general Railroad Act, 1874, chap. 372), § 138, requiring equal terms for the transportation of all persons or property, *held*, that a student who had paid the regular price of a season ticket was not entitled to recover the difference between the price paid and that which the company made to students upon special application.

Spofford v. Boston & M. R. Co. 128 Mass. 326.

The Interstate Commerce Law does not permit the sale of tickets to any class of people at rates different from those established for the general public. The fact that it is very desirable for the defendant to make sale of its lands is not a reason for discriminating in favor of explorers or settlers.

Smith v. Northern P. R. Co. 1 Inters. Com. Rep. 611.

The petition alleged that the defendant railroads had, prior to the time when the Interstate Commerce Act went into effect, entered into an arrangement with petitioner to allow 150 pounds of extra free baggage to passengers presenting the "baggage indemnity certificate" issued by petitioner, and that the defendants now refuse to make such allowance of extra free baggage, *held*:

(a) That there is nothing in the facts disclosed by the evidence which involves any question of unjust discrimination or extortion, or any other matter over which the Commission has jurisdiction;

(b) That the power to enforce contracts has not been confided to the Commission; nor has it any general power or authority to manage the business of carriers, but only a limited power, expressly defined by the Act, to interfere to prevent wrong and oppression in specified cases.

Traders & Travelers Union v. Phila. & R. R. Co. 1 Inters. Com. Rep. 371.

The defendant companies, in prohibiting their agents from receiving commissions and in

refusing to sell through tickets over the roads of complainants while the latter insists on paying commissions to defendant's agents, have not contravened the provisions of the third section of the Act, which require that railroad companies shall "afford all reasonable, proper and equal facilities" to connecting lines, etc. *Morrison, C.*, dissents.

Chicago & A. R. Co. v. Pa. Co. 1 Inters. Com. Rep. 357.

In the absence of statutory authority one railroad company can sell tickets and check baggage over the road of another company only by agreement; and the Act to Regulate Commerce does not in terms require one railroad company to sell through tickets over the road of another company. *Id.*

Held, that upon the evidence offered, the Commission cannot find that \$25 per 1000 miles is an unreasonable rate for mileage tickets. *Id.*

The Commission declines, in the absence of an actual case, to pass upon the question of the propriety of railroads continuing the issuance of free passes to the United States Fish Commission and the National Museum, to enable their employees to carry on their official duty at less expense to the United States. *Id.*

Commercial travelers are not entitled to mileage tickets at lower prices than they are sold to the public generally. *Id.*

Where a railroad ticket broker, having no apparent interest in the transaction, presented a complaint alleging unjust discrimination on the part of a railroad company in permitting a certain person to transfer to another the return portion of a passage ticket, while it refused to grant the same privilege to a third person holding a ticket alleged to be similar (but which was not so in fact) *held*, that the person aggrieved, should complain in his own name, and that the complaint by the ticket broker would not be entertained.

Ottinger v. Southern P. R. Co. 1 Inters. Com. Rep. 607.

A colored passenger having purchased a first class ticket is entitled to passage in a first class car; unjust preference, under section 8 of the Interstate Commerce Act, would not result from separating white and colored passengers, by providing cars equally safe and comfortable.

Councill v. Western & A. R. Co. 1 Inters. Com. Rep. 683; *Heard v. Georgia R. Co.* 1 Inters. Com. Rep. 719.

Upon complaint to recover pecuniary damage for the ejection of a colored passenger from a first class car, the Commission has no power to award damages, since, under the amendment of the Constitution, the defendant is entitled to a trial by jury, in which case the plaintiff may recover attorney's fees under section 8 of the Act to Regulate Commerce, "to be fixed by the court."

Councill v. Western & A. R. Co. 1 Inters. Com. Rep. 688.

Railroads have a right to grant special privileges to religious teachers.

Re Religious Teachers, 1 Inters. Com. Rep. 21.

The proviso in section 22 of the Interstate Commerce Act "That nothing in this Act shall apply to * * * the issuance of mileage * * *

passenger tickets," applies only to the act of issuing or giving out such tickets; the terms, conditions and circumstances upon which the sale of such tickets is made are subject to and must be in accordance with the Act in its general provision.

Larrison v. Chicago & G. T. R. Co. 1 Inters. Com. Rep. 369.

A sale of mileage tickets to commercial travelers at a certain rate, and a refusal to sell to other passengers except at a higher rate, is an unjust discrimination, within the meaning of the Act. *Id.*

A release of liability by commercial travelers to the railroad company does not constitute a good and sufficient consideration for such discrimination; nor does the fact that they may influence business in favor of the road, etc. *Id.*

Common carriers may continue the issuance of mileage passenger tickets, the charges for which must be reasonable and just, and free from unjust discrimination or unreasonable preference. *Id.*

Persons belonging to the class known as commercial travelers are not privileged to ride over railroads at lower rates than other persons, and to make a difference in this respect is unjust discrimination; this is true whether tickets issued are mileage tickets or in some other form. *Id.*

Neglect on the part of a railroad company to publish rates for mileage tickets is a violation of the Act. *Id.*

The fact that excursion or commutation tickets are put on sale at a given rate, does not entitle the purchaser of a mileage ticket (each class of tickets being issued for distinct purposes and the form of contract in each case being different) to complain of unjust discrimination if charged a higher rate.

Associated Grocers of St. Louis v. Mo. P. R. Co. 1 Inters. Com. Rep. 393.

As the United States Commission of Fish and Fisheries is one of the agencies of the government, and the distribution of fish and eggs by that Commission is by authority of the government, the transportation of fish and eggs so distributed falls within the exception of section 22 of the Act.

Re U. S. Commission of Fish and Fisheries, 1 Inters. Com. Rep. 606.

Long and Short Haul; Fourth Section.

There is no counterpart of the fourth section of the Act of Congress in English legislation; but statutes of similar character are to be found in Illinois. (Act of May 2, 1873, § 3; R. S. 183, p. 884, § 125; Starr & Curt. Stat. § 147); Massachusetts (General Railroad Act, 1874, chap. 372, § 140); and Oregon (Act of February 28, 1885, § 4; Laws of 1885, p. 38.)

But a larger charge for a shorter haul is an undue preference under the English Statutes.

Budd v. London & N. W. R. Co. 4 R. & Can. Traf. Cas. 393; *S. C.* 86 L. T. N. S. 802; and the same charge for a shorter haul; *Denaby Main Colliery Co. v. Manchester, S. & L. R. Co.* 3 Nev. & Mac. 426.

But reductions in fare in favor of longer distances are proper.

Hozier v. Caledonian R. Co. 24 L. T. 339; 1 Nev. & Mac. 27; *Jones v. Eastern Counties*

R. Co. 3 C. B. N. S. 718; 1 Nev. & Mac. 45; *Ransome v. Eastern Counties R. Co.* 1 Nev. & Mac. 117.

"Circumstances and conditions" of transportation are not changed by any of the following considerations:—Developing a new trade.

Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 97;

Or to secure traffic that would otherwise go by other lines;

London & N. W. R. Co. v. Evershed, L. R. 3 App. Cas. 1029; *Oxlade v. North Eastern R. Co.* 1 C. B. N. S. 454; 1 Nev. & Mac. 72;

Competing with sea transportation;

Budd v. London & N. W. R. Co. 86 L. T. N. S. 802; 4 R. & Can. Traf. Cas. 393;

The place from which goods are shipped;

Ransome v. Eastern Counties R. Co. 4 C. B. N. S. 185; 1 Nev. & Mac. 109;

Place of destination;

Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. *supra*.

Of the character of the shipper, as whether a rival.

Great Western R. Co. v. Sutton, L. R. 4 Eng. & Irish App. H. L. 226.

Pooling arrangements are contrary to common law, and to public policy and have been the subject of several statutory prohibitions.

State v. Vanderbilt, 37 Ohio St. 590; *Mo.*

Pac. R. Co. v. Texas & P. R. Co. 30 Fed. Rep. 2; *Central Ohio Salt Co. v. Guthrie,* 35

Ohio St. 366; *Crawford v. Wick,* 18 Ohio St. 190; *Pullman Palace Car Co. v. Texas & P. R.*

Co. 11 Fed. Rep. 625; *Menacho v. Ward,* 27

Fed. Rep. 529; *Charlton v. Newcastle & C. R.*

Co. 5 Jur. N. S. 1100; *Hare v. London & N.*

W. R. Co. 2 Johns & H. 80; *Stanton v. Allen,*

5 Denio, 440; *Nashua & L. R. Corp. v. Boston*

& L. R. Corp. 19 Fed. Rep. 804; *Morris Run*

Coal Co. v. Barclay Coal Co. 68 Pa. 173;

Note on Railway Pools, 15 Fed. Rep. 667;

Central R. R. Co. v. Collins, 40 Ga. 582.

Cost of service constitutes a real difference in "circumstances."

Denaby Main Colliery Co. v. Manchester, S.

& L. R. Co. L. R. 11 App. Cas. 97; *Chicago &*

A. R. Co. v. People, 67 Ill. 11; *Ransome v.*

Eastern Counties R. Co. 1 Nev. & Mac. 117.

Constructions upon the English Statutes as

to the manner of making schedule of rates:

Colman v. G. E. R. Co. 4 R. & Can. Traf.

Cas. 108; *Watkinson etc. v. Wrexham etc. R.*

Co. 3 Nev. & Mac. 374; *Diphwys Casson Slate*

Co. v. Festiniog R. Co. 2 Nev. & Mac. 78;

Cairnes v. N. E. R. Co. 4 R. & Can. Traf. Cas.

221; *Clonmel Traders v. Waterford etc. R. Co.*

4 R. & Can. Traf. Cas. 92; *Jones v. N. E. R.*

Co. 2 Nev. & Mac. 108.

It is provided by the Illinois Statute of 1873,

§ 3, Starr & Curt. Stat. 1885, § 147, that "It

shall not be deemed a sufficient excuse or justification of such discriminations (same or

greater charge for short haul), on the part of

such railroad corporation, that the railway station

or point at which it shall charge or receive

the same or less rates of toll or compensation

for the transportation of such passenger or

freight, or for the use and transportation of

such railroad car the greater distance, than for

the shorter distance, is a railway station or

point at which there exists competition with

any other railroad or means of transportation."

The same principle is settled by the English decisions.

London & N. W. R. Co. v. Evershed, L. R. 3 App. Cas. 1029; *Budd v. London & N. W. R. Co.* 36 L. T. N. S. 802; 4 R. & Can. Traf. Cas. 398; *Thompson v. London etc. R. Co.* 2 Nev. & Mac. 115; *Greenoch v. S. E. R. Co.* 2 Nev. & Mac. 819; *Note*, 16 Am. L. Rev. 833.

In a case arising under the Oregon Act of February 20, 1885, the court directed the receiver to charge "No more for the carriage of goods for a shorter haul than a longer one in the same direction, except to and from points where the rate attainable is affected by water transportation, in which case he may carry at as low a rate as the water craft do, without reference to the length of the haul."

Ex parte Koehler, 23 Fed. Rep. 529; *S. O.* 25 Fed. Rep. 73; 21 Am. & Eng. R. R. Cas. 52-53.

As to construction of Illinois Statutes, see: *Chicago & A. R. Co. v. People*, 67 Ill. 11; *St. Louis, A. & T. H. R. Co. v. Hill*, 14 Bradw. (Ill. App.) 579; *Wabash etc. R. Co. v. People* (80 L. ed. 244); 1 Inters. Com. Rep. 81.

As to Massachusetts Statutes, see: *Com. v. Worcester & N. R. Co.* 124 Mass. 561.

The Statute of North Carolina (Code-§ 1966), which imposes a penalty on any railroad company which shall charge for transportation of any freight over its road a greater amount than shall be charged at the same time by it for an equal quantity of the same class of freight, transported in the same direction over any portion of the same railroad, of equal distance, is to be construed to mean that the compensation charged shippers for carrying an equal quantity of the same class of freight, going in the same direction, must be equal in amount for equal distances, no matter on what part of the road, at any time while its list of charges for carrying freight remains unchanged.

Hines v. Wilmington & W. R. Co. 95 N. C. 434.

A lower rate should not be made for the transportation of goods intended for export trade.

Twells v. Pa. R. Co. 3 Am. L. Reg. N. S. 728; *Mo. Pac. R. Co. v. Texas & P. R. Co.* 30 Fed. Rep. 2; *Denaby Main Colliery Co. v. Manchester, S. & L. R. Co.* L. R. 11 App. Cas. 97.

Carrying local passengers from one point on its line is not an identical service with that of carrying a through passenger from the same distance.

Union Pac. R. Co. v. U. S. 117 U. S. 355 (29 L. ed. 920). See also *Missouri Pac. R. Co. v. Texas & P. R. Co.* 30 Fed. Rep. 2.

A Statute of Illinois enacts that if any railroad company shall, within that State, charge or receive for transporting passengers or freight of the same class, the same or a greater sum for any distance than it does for a longer distance, it shall be liable to a penalty for unjust discrimination. The defendant in this case made such discrimination in regard to goods transported over the same road or roads, from Peoria in Illinois and from Gilman in Illinois

to New York; charging more for the same class of goods carried from Gilman than from Peoria, the former being eighty-six miles nearer to New York than the latter, this difference being in the length of the line within the State of Illinois.

Wabash, St. L. & P. R. Co. v. Ill. 118 U. S. 557 (30 L. ed. 244); 1 Inters. Com. Rep. 81.

The Supreme Court of the United States follows the Supreme Court of Illinois in holding that the Statute of Illinois must be construed to include a transportation of goods under one contract and by one voyage from the interior of the State of Illinois to New York. *Id.*

And it held further that such a transportation is "commerce among the States," even as to that part of the voyage which lies within the State of Illinois, while it is not denied that there may be transportation of goods which is begun and ended within its limits and disconnected with any carriage outside of the State, which is not commerce among the States. *Id.*

The latter is subject to regulation by the State, and the Statute of Illinois is valid as applied to it. But the former is national in its character, and its regulation is confided to Congress exclusively, by that clause of the Constitution which empowers it to regulate commerce among the States. *Id.*

Notwithstanding what is said in *Munn v. Illinois*, and *Pelk v. Chicago & N. W. R. Co.*, in 94 U. S. 118, 164 (34 L. ed. 77, 97), the United States Supreme Court holds now, and has never consciously held otherwise, that a statute of a State, intended to regulate or to tax, or to impose any other restriction upon the transmission of persons or property or telegraphic messages from one State to another, is not within that class of legislation which the States may enact in the absence of legislation by Congress; and that such statutes are void even as to that part of such transmission which may be within the State. *Id.*

It follows that the Statute of Illinois, as construed by the Supreme Court of the State, and as applied to the transaction under consideration, is forbidden by the Constitution of the United States. *Id.*

The Commission has not been given a general dispensing power to relieve hardships under the Law, but its power in that regard is strictly limited.

Re Iowa Barb Steel Wire Co. 1 Inters. Com. Rep. 605.

The Interstate Commerce Law contemplates that the cases in which the Commission is authorized to make orders for suspension of its operation are exceptional cases, and that where only general reasons operate, the general law shall be left to its general course, however serious the consequences in particular cases.

Jurisdiction of the Commission, 1 Inters. Com. Rep. 73.

The mere probability that injury will result from the operation of the Act will not authorize the Commission to direct a suspension. *Id.*

Incidental injuries under the Act must be borne for the public good until the Legislature provides a remedy. *Id.*

The prohibition in the fourth section of the Interstate Commerce Act against a greater charge for a shorter than for a longer distance

over the same line, in the same direction, the shorter being included within the longer distance, as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar.

Re Southern R. & Steamship Asso. 1 Inters. Com. Rep. 278.

The phrase "under substantially similar circumstances," in the fourth section, is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance. *Id.*

The judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts to decide whether error has been committed or whether the statute has been violated. And in case of complaint for violating the fourth section of the Act, the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions are substantially dissimilar. *Id.*

The provisions of section 1, requiring charges to be reasonable and just, and of section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4, as they do in other cases.

Re Southern R. & Steamship Asso. 1 Inters. Com. Rep. 278.

The existence of actual competition, which is of controlling force in respect to traffic important in amount, may make out the dissimilar circumstances and conditions, entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer, in the following cases:

(a) When the competition is with carriers by water which are not subject to the provisions of the statute;

(b) When the competition is with foreign or other railroads which are not subject to the provisions of the statute;

(c) In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition. *Id.*

When the greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not.

(a) Nor is it sufficient justification for such greater charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof;

(b) Nor that the lesser charge on the longer haul has for its motive the encouragement of

manufactures or some other branch of industry;

(c) Nor that it is designed to build up business or trade centers;

(d) Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up;

(e) The fact that long haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic. *Id.*

The fact that there is competition in the carriage of persons or property to or from a particular place is a circumstance that justifies a common carrier under section 4 of the Interstate Commerce Act to charge less for a long haul to or from said place than a short one included therein.

Ex parte Koehler (U. S. C. C.) 1 Inters. Com. Rep. 317.

Passes to families of employees. Section 2 of the Interstate Commerce Act in effect prohibits the giving of passes or free carriage to particular persons; and the exception allowed in section 22, in favor of officers and employees of the road, does not include the families of such persons. *Id.*

Defendant railway company has two lines of nearly equal length, one starting from Providence and the other from East Providence, which unite at Valley Falls, whence the main line runs into Massachusetts. The rate charged by defendant on coal shipped at Providence is the same as on coal shipped at East Providence as far as Valley Falls and the next station; but beyond that point the rate on coal from Providence is ten cents per gross ton more than on coal from East Providence. *Held:*

(a) That this is an unjust discrimination; that if it is fair and reasonable for the defendant to make the charge to Valley Falls from the two termini the same, there can be no justification for making different rates to stations beyond, based upon the fact that the coal comes from one terminus rather than from the other;

(b) That the evidence fails to support the contention of defendant that the extra rate upon coal received at Providence is only a fair equivalent for the additional cost of handling it there;

(c) That under all the circumstances it is not admissible for defendant to impose upon its patrons at Providence, whose investments were made before the East Providence line was constructed, an additional charge because of the inconvenience attending the transaction of its business at that station, and for which they are in no way responsible.

Providence Coal Co. v. Providence & W. R. Co. 1 Inters. Com. Rep. 868.

The defendant railway company had for some time paid the cost of hauling coal which was shipped by complainant, from complainant's wharf to defendant's freight station in Providence, without any contract obligation to that effect, but now refuses so to do. *Held*, that defendant cannot be compelled to continue paying for such hauling; that what defendant did for a time as a favor or by way of encouragement, it might discontinue at pleasure, and that there is nothing in the nature of a binding usage about it. *Id.*

Under the Interstate Commerce Act all charges made by the receiver of a railroad, in respect to such business as falls under the head of interstate commerce, for any service in the transportation of passengers or property, or for receiving, delivering, storing or handling property, must be reasonable and just; and such receiver may not discriminate in his rates, charges and facilities for or against either of two connecting steamship lines, but should give to both equal rates and facilities for trade and travel, for equal service, from all points.

Re Petition of Mallory, 1 Inters. Com. Rep. 294.

The complaint, in effect, asks from the Commission an order that shall require the defendant roads to receive freights at Schenectady for transportation at Boston, at rates less than are now charged by the same roads for the transportation of like freights to Boston from stations nearer Boston, under substantially similar circumstances and conditions.

Such order, if issued, would require the roads to depart from the general rule laid down in the fourth section of the Act.

While the Act authorizes the Commission to permit exceptions, it does not authorize it to require exceptions.

The Commission has not power to make rates generally, but only to determine whether rates imposed by the railroads are in conflict with the statute.

The question whether the rates now charged complainant are excessive is not raised by the complaint.

Thatcher v. Fitchburg R. Co. 1 Inters. Com. Rep. 356.

By the word "line" in the Act, a physical line is meant, not a business arrangement; and one line of road may be part of several lines.

Boston & A. R. Co. v. Boston & L. R. Co. 1 Inters. Com. Rep. 571.

Where, in a proceeding against several connecting railroad companies for charging more for a short than for a long haul, one of the companies claims that its only participation in the alleged offense consisted in its sharing in the low charges on the long haul, which were not in themselves alleged to be illegal, the complaint should not be dismissed as against such company, where its interest and the liability of the low rates on long haul traffic to be affected by changes made in the higher rates on short haul traffic is so great that in case such company had not been made a party, and should ask to be made a party, it would be proper to so order.

Boston & A. R. Co. v. Boston & L. R. Co. 1 Inters. Com. Rep. 571.

Where, in a proceeding by one railroad company against other companies, for charging more for a short than for the long haul, it appears that the rates alleged to be illegal are local rates; that the petitioner does not pay or participate in paying them; that they are not competitive rates to those imposed on the petitioner's road; and there is no allegation that such rates are excessive or unjust, and the sole grievance of the petitioner is that the defendant companies accept through traffic at lower rates than are made by the petitioner and its

connections—such petitioner has no standing to maintain the proceeding. *Id.*

The right to make greater charges for short than for long hauls is exceptional and depends in every case upon the peculiar circumstances and conditions; and a ruling in reference thereto in the case of one carrier would not be applicable to another carrier differently circumstanced. *Id.*

If several railroad companies join in making the joint tariff which constitutes the lesser charge on the longer haul, while one or more of their number makes the greater charge on the shorter haul, the case is within the fourth section of the Act; and those who make such greater charge are called upon to justify it. *Id.*

Through business over the defendant companies' roads was done by the National Despatch Line (a fast freight line, neither a corporation nor an association of persons, but a name under which business was done), the several roads paying mileage for the cars used, furnished to such line by a car company, and the earnings of such line being divided among the roads in agreed proportions. The tariff for the long haul traffic in question was made by the manager of the Despatch Line, who was the agent for all the roads over which it did business, and was acquiesced in by them. Held, that the defendant companies were responsible for the long haul rates. *Id.*

Held, that such peculiar facts are not found to exist as will justify the greater charge over the shorter line by the Central Vermont Roads. *Id.*

Facts examined, and held:

That defendant receives a greater compensation for its haul from Indianapolis to Michigan City than it does for its haul from Frankfort to South Watah, and consequently does not on its own line charge more for the shorter haul;

That defendant does not, and cannot, control the fixing of rates by the crossing and intersecting lines, and has no option but to accept those rates which are fixed, and prorate upon them, or to cease to take grain altogether;

If it is desired to test the reasonableness of the through rate from Frankfort to New York, all the roads responsible for it should be made defendants. It is not enough to make the initial road defendant, unless that road has authority to make the rate for them all.

Allen v. Louisville N. A. & C. R. Co. 1 Inters. Com. Rep. 621.

Evidence examined, and held: the difference in the rates at Mazeppa, compared with the rates at Red Wing and Lake City should neither exceed 2½ cents on 100 pounds, nor one third part of the rates made in the adjustment of charges from competing towns.

Raymond v. Chicago M. & St. P. R. Co. 1 Inters. Com. Rep. 627.

On complaint of millers and others on the Iowa and Minnesota Division, of unjust discrimination; held:

(a) That the complaint is well founded; that the rate on wheat on that division is relatively too high; that while a reasonable differential may be allowed on that division, on account of greater distance and probable larger expense

of transportation and the greater stringency of the competitive forces on the River Division, the difference above the present rate on the River Division should not exceed $2\frac{1}{2}$ cents a hundred;

(b) That it is not a sufficient compliance with the Law that rates are reasonable in themselves; but they should be so relatively reasonable as to protect communities and business against unjust discrimination;

(c) That when the same carrier operates parallel lines, and for any cause accepts low rates on one line, it should furnish sufficient corresponding advantages to the patrons of the other lines to prevent undue prejudice and disadvantage, and to preserve the substantial equality contemplated by the statute.

Boards of Trade Union v. Chicago, M. & St. P. R. Co. 1 Inters. Com. Rep. 608.

The operation of section 4 of the Act suspended, for ninety days, as to the traffic of the petitioner between certain points.

Re Detroit, G. H. & M. R. Co. 1 Inters. Com. Rep. 17.

Petitioning railroad company relieved temporarily from the operation of the fourth section, on certain conditions.

Re Atchison, T. & S. F. R. Co. 1 Inters. Com. Rep. 58.

The operation of the fourth section of the Act suspended, in its application to certain railroads and connecting steamship lines, for a period not greater than ninety days, until the Commission can make a complete examination of the matters alleged in the petition.

Re Southern R. & Steamship Asso. 1 Inters. Com. Rep. 15.

The circumstances and conditions touching the transportation of passengers and freight to and from the Republic of Mexico through El Paso, Texas, by the Texas & Pacific R. Co. are (within the meaning of section 4 of the Interstate Commerce Act) so substantially different from those surrounding transportation to other points on said railway as to justify said company in establishing lower rates at El Paso on freight transported for export into and received from Mexico and for delivery at El Paso than is charged at points between that city and the points where the freights originate and where the distance and haul are shorter.

Re Tex. & Pac. R. Co. (U. S. C. C. E. D. of La.) 1 Inters. Com. Rep. 80.

For proceedings of the Commission relating to complaints for violation of the Fourth Section, applications for suspension, and orders suspending its operation, see Index *infra*, under title "Long and Short Haul."

RULES OF CONSTRUCTION.

Where English Statutes have been adopted, the settled construction of those statutes is incorporated in the Acts adopting them.

McDonald v. Hovey, 110 U. S. 619 (28 L. ed. 269); Cathcart v. Robinson, 30 U. S. 5 Pet. 265 (8 L. ed. 120); Pennock v. Dialogue, 27 U. S. 2 Pet. 1 (7 L. ed. 327); McCool v. Smith, 66 U. S. 1 Black, 459 (17 L. ed. 218); The Abbotsford, 98 U. S. 440 (25 L. ed. 168).

See Address by Senator Cullom, 1 Inters. Com. Rep. 300.

Transportation in a foreign country is not affected by the English Acts.

Branley v. South Eastern R. Co. 12 C. B. N. S. 63; Zunz v. South Eastern R. Co. L. R. 4 Q. B. 539; S. C. 38 L. J. Q. B. 209.

The Commission has no authority to call a railroad company to account for any wrong of which such company may have been guilty prior to April, 1887, when the Interstate Commerce Act went into operation.

Holbrook v. St. Paul, M. & M. R. Co. 1 Inters. Com. Rep. 323; Ottinger v. Southern P. R. Co. 1 Inters. Com. Rep. 607.

Where no overt acts of misconduct on the part of a defendant railroad company, which could support any judgment of the Commission or any mandatory order, are made to appear, the Commission has no discretion but to dismiss the complaint.

Holbrook v. St. Paul, M. & M. R. Co. 1 Inters. Com. Rep. 323.

RULES OF PRACTICE.

Rules of practice adopted by the Commission. Appendix I.

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" 2. Applications under section 4; petition; verification; notice.

" 3. Investigation by Commission.

" 4. Complaints under section 13; copies of complaint; names and addresses to be set forth; service of copies.

" 5. Answer within twenty days; filing; verification.

" 6. Hearing on complaint without answer.

" 7. Adjournment and extension of time.

" 8. Hearing on issue joined; failure to answer.

" 9. Subpenas; depositions. (See amendment, Appendix II.)

" 10. Amendments.

" 11. Copies.

" 12. Affidavits, before whom taken.

Applications to the Commission for special exception under the Act will be granted only after investigation of the facts, upon a verified petition formally presenting a case.

Re Southern P. R. Co. 1 Inters. Com. Rep. 16; Re Petition of R. Conductors, 1 Inters. Com. Rep. 18.

The Commission cannot make an order or give an opinion in advance of an actual complaint and hearing.

Re Inmates of Nat. Homes, 1 Inters. Com. Rep. 75; Re Petition of R. Conductors, and Re Theatrical Rates, 1 Inters. Com. Rep. 18.

A desire to obtain a construction of the Interstate Commerce Act is not sufficient to support a proceeding before the Commission.

Boston & A. R. Co. v. Boston & L. R. Co. 1 Inters. Com. Rep. 571.

But it is not held that a complainant must necessarily have a pecuniary interest in order to entitle him to be heard; and it seems, under the provisions of the Act, that when an infraction of the Act would constitute a public grievance, it may be the duty of the Commission to investigate it, when brought to its attention by a responsible party in a duly authenticated form. *Id.*

Held, that the persons composing the Vermont State Grange of the Patrons of Husbandry had such an interest that it was proper that they, as an association, should raise a question

as to the justice of the high rates complained of by them, and that the proceeding was maintainable upon their petition. *Id.*

When an important question is raised by the pleading in the case, the determination of which will affect others quite as much as the parties before the Commission, but the parties give their attention almost exclusively to the other questions, and neither by the evidence nor in argument supply the Commission with the information to enable it to be understandingly determined, the Commission will decline to decide it, and leave the parties to bring it forward again as they may be advised.

Rice v. Louisville & N. R. Co. 1 Inters. Com. Rep. 722.

An amendment to a complaint seeking to introduce new grievances and charges will not be allowed.

Riddle v. Balt. & O. R. R. Co. 1 Inters. Com. Rep. 701.

Where complaint was served on receiver of defendant company, naming him as its president and alleging that the prior receivership had determined, upon answer that the receivership still existed, leave was given to amend the complaint to show the existence of the receivership.

Reynolds v. Western, N. Y. & P. R. Co. 1 Inters. Com. Rep. 685.

A motion to dismiss a complaint denied, because: 1, no notice of motion had been given; and 2, because the object of the motion was to reach the merits of the case and have them passed upon summarily, instead of at the customary final hearing.

Associated Grocers of St. Louis v. Mo. P. R. Co. 1 Inters. Com. Rep. 321.

It is the desire of the Commission that the practice and proceedings shall be as simple as possible, and that final hearings be had forthwith, without the interposition of dilatory motions, etc. *Id.*

Complaint dismissed, where complainant failed to appear at the hearing after notice thereof.

Jackson v. St. Louis, A. & T. R. Co. 1 Inters. Com. Rep. 599.

On a petition charging the exaction of unreasonable rates, the burden of proof is on the petitioner to sustain the charges by evidence which shows with reasonable certainty that they are in substance true.

Harding v. Chicago, St. P. M. & O. R. Co. 1 Inters. Com. Rep. 375.

Hence, petition charging that the rates on twine for harvesters, from Chicago to Hudson, was unreasonable, dismissed without prejudice, where the answer denied that the rate was unreasonable, and showed that it had been reduced, and neither party offered any evidence. *Id.*

The complaint charged unjust discrimination in exacting an extra rate for transporting cattle in a Burton stock car; the answer denied the fact of unjust discrimination, and no proof was given by either side. *Held*, that it is impossible for the Commission to say that if all the facts were before it, the greater charge could not be justified; and hence, as it is not suggested that further proceedings are desired, the case must stand dismissed, but without prejudice.

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Leonard v. Union P. R. Co. 1 Inters. Com. Rep. 627.

The Interstate Commerce Act contemplates that when a complaint is made against a carrier, on the ground of exorbitant rates, the carrier may change its rates before a hearing is had, so as to remedy the matter complained of, if it shall see proper so to do.

Fulton v. Chicago, St. P. M. & O. R. Co. 1 Inters. Com. Rep. 375.

Hence, petition dismissed without prejudice, where it appeared from a reply filed by the complainant to the defendant's answer, that the rates originally complained of had been reduced, and no complaint was made against such reduced rates. *Id.*

If, at a hearing before the Commission, of a complaint against a railroad company, the defendant avows a purpose to comply with the Law, the Commission must not only assume that the company will do so but must act upon that assumption until it has evidence that the purpose is not lived up to.

Holbrook v. St. Paul, M. & M. R. Co. 1 Inters. Com. Rep. 323.

Under the English Act, where the company admitted having made an undue preference, but asserted that the cause of complaint had been removed before the application for an injunction had been filed, so that it was not necessary that an injunction should issue, *held*, that the complainant was entitled to an injunction for the future.

Macfarlane v. N. B. R. Co. 4 R. & Can. Traf. Cas. 269.

But an attachment for disobedience to a writ of injunction was refused where it appeared by affidavits of the company that it was endeavoring to conform to the order of the court, although it appeared that the reformed scale of charges still operated in some respects injuriously to the interests of the complainants and advantageously to the other parties.

Ransome v. Eastern Counties R. Co. 4 C. B. N. S. 159; 1 Nev. & Mac. 116.

While the Commission will grant an application for rehearing for the correction of an error of law or fact, it will not direct a rehearing involving an expense to parties, unless satisfied that reargument may have the effect of changing the result. Where the relation of any carrier to the matter complained of is such that it is, in whole or in part, materially responsible for the alleged grievance, and has direct interest in any investigation of the subject matter involved, and the merits of the controversy cannot be investigated and determined in the absence of such carrier as a party, then that carrier should be made a party to the proceeding, and if not a party, no relief can be had against it.

Riddle v. Pittsburgh & L. E. R. Co. 1 Inters. Com. Rep. 778.

The Commission will not express an opinion where neither by complaint nor by application for relief is a case stated which will come within its jurisdiction.

Re Iowa Barb Steel Wire Co. 1 Inters. Com. Rep. 605.

The Commission has no power to construe, interpret or apply the Interstate Commerce Act in advance of an actual act or omission on the

part of a common carrier in contravention of the provisions of the Act.

Re Petition of R. Conductors, 1 Inters. Com. Rep. 18; Jurisdiction of the Commission, 1 Inters. Com. Rep. 73.

Upon petitions by railroad companies praying the Commission to "authorize the trunk lines to bill export freight to Boston at New York rates" etc., *held*, that as any legal ground for affirmative action on the part of the Commission was precluded by the fact that the parties bringing the practice to the attention of the Commission did so with explanations of its propriety and insisting upon its lawfulness, no order should be made on the petitions, but leave should be given to withdraw them.

Re Export Trade of Boston, 1 Inters. Com. Rep. 25.

The report and findings of the Commission upon the evidence relate only to the ascertainment and presentation of all the material facts necessary to fairly and justly present the merits of the controversy; and the Commission

does not report evidence which is only cumulative, or which is immaterial or irrelevant, or mere details of evidence already embraced in substantial facts stated, upon which the findings and conclusions of the Commission are made.

Riddle v. Pittsburgh & L. E. R. Co. 1 Inters. Com. Rep. 773.

Where the pleadings present issues of fact which cannot be disposed of by a decision which shall reach the merits without some evidence, and no evidence is presented, the case must be dismissed.

Leonard v. Union P. R. Co. 1 Inters. Com. Rep. 627.

The Commission will not make an award of damages where the defendant is entitled to have the amount assessed by a jury.

Riddle v. New York, L. E. & W. R. Co. 1 Inters. Com. Rep. 787; Heck v. E. Tenn. V. & G. R. Co. 1 Inters. Com. Rep. 775; Council v. Western & A. R. Co. 1 Inters. Com. Rep. 638; Heard v. Ga. R. Co. 1 Inters. Com. 719.

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4. Railroad companies cannot be required to make **freight rates upon mere conjectures.** *Id.*

5. The **burden of proving** the exaction of **unreasonable rates** is on petitioner. *Harding v. Chicago etc. R. R. Co.* 375.

II. DISCRIMINATION AGAINST LOCALITIES.

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7. The length and character of the haul, the cost of the service, the volume of the business, and the conditions of competition, etc., are **elements bearing upon such charges.** *Id.*

8. Rates should be so **relatively reasonable** as to protect communities and business against unjust discrimination. *Boards of Trade Union v. Chicago, M. & St. P. R. Co.* 608.

9. A carrier operating parallel lines and accepting **lower rates on one line** should make corresponding charges on other line. *Id.*

10. When a railroad company in establishing its charges on the different branches of its road so adjusted them as to divert trade and business to one locality, such **unreasonable preference for one place is not excused** by the fact that the rates are the result of **competition** with other carriers. *Raymond v. Chicago, M. & St. P. R. Co.* 627.

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small and large towns, although the effect may be prejudicial to the latter. *Crews v. Richmond & D. R. Co.* 703.

13. The purpose of the Interstate Commerce Act requires that when circumstances will fairly admit of it, **charges** to all points for like service should be made **relatively equal.** *Id.*

14. When the reasonableness of rates is in question, charges on long **through lines** cannot offer a just basis for comparison with **local rates** for relatively short distances. *Id.*

15. A **carrier is not responsible for rates** made by **connecting road** merely because of its giving them in connection with its own rates to parties making through shipments. *Id.*

16. That a **refusal to give a through rate** as for one shipment operates prejudicially to the town desiring privilege, does not make the refusal an unjust discrimination, when the carrier **applies the same rule to all towns.** *Id.*

17. **Discrimination** must consist of allowing one party what is denied another. *Id.*

18. **Carrier need not give** the merchants of towns on its line the **privilege** of shipping their goods from the point of purchase to their own locality and from there to the place of sale of the goods, at the same rate as would have been charged from the point of purchase to the point of ultimate delivery. *Id.*

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25. Detroit, Mich.—*Detroit Board of Trade v. Grand Trunk R. Co.* 698, 701.

26. Hartford, Conn.—Water Commerce—*Hartford & N. Y. Trans. Co. v. New York & New England R. Co.* 814.

27. Hartwell, Ga.—*McMullan v. Richmond & Danville R. Co.* 483.

28. Hot Springs, N. C.—*Hot Springs v. Western N. C. R. Co.* 816.

29. Hudson, Minn.—*Fulton v. Chicago, St. Paul, M. & O. R. Co.* 375; *Harding v. Same*, 375.

30. Lincoln, Neb.—*Lincoln Board of Trade v. Chicago, B. & Q. R. Co. et al.* 647; *Lincoln Board of Trade v. Southern Pacific R. Co.* 647, 702; *Lincoln Board of Trade v. Union Pacific R. Co.* 702; *Plummer v. Union Pacific R. Co. et al.* 648.

31. Marshallville, Ga.—*Slappey v. Central R. Co. of Ga. et al.* 675, 812.

32. Milwaukee, Wis.—*Milwaukee Chamber of Commerce v. Flint & Pere Marquette R. Co. et al.* 774, 792.

33. Minneapolis, Minn.—*St. Louis Millers' Assn. R.* 22.

34. New Orleans, La.—Cotton—*New Orleans Cotton Exchange v. New Orleans, Cincinnati & Texas Pac. R. Co.* 648.

35. Opelika, Ala., in favor of Montgomery and Columbus—*Columbus & Western R. Co.* 314, 494; *Harwell v. Columbus & Western R. Co.* 494, 631; *Re Opelika Board of Trade*, 314, 494, 631.

36. Phillipstown and Brady's Bend—Coal—*Allegheny River Coal Producers Assn. v. Allegheny Valley R. Co.* 604.

37. Providence and East Providence, R. I.—A higher rate on coal from Providence than from East Providence is an unjust discrimination, and under the circumstances it is not permissible to make an additional charge because of inconvenience attending transaction of business at East Providence. *Providence Coal Co. v. Providence & Worcester R. Co.* 316, 363.

38. Walla Walla, W. T.—The Oregon Railway & Navigation Company is ordered to cease charging more than 23½ cents per 100 pounds or \$4.70 per ton on wheat transported by it on its lines from Walla Walla, Washington Territory, to Portland, Oregon, during the present grain season. *Evans v. Oregon Railway & Navigation Co.* 314, 326, 641; *Reed v. Same*, 314, 328, 641.

III. TRANSPORTATION OF SPECIFIC ARTICLES.

39. The Commission should clearly see that duty requires an answer to the question, on *ex parte* application, whether special privileges by a railroad to manufacturers in a single line of trade, and not to manufacturers generally, is consistent with the law, before it does so. *Re Iowa Barb Steel Wire Co.* 605.

40. Beer from Milwaukee—*Stahl v. Oregon R. & Nav. Co.* 314.

41. Car load classifications—*Leggett v. Baltimore & O. R. Co.* 396; *Thurber v. New York Central & H. R. R. Co. et al.* 397, 684.

42. Cattle in Burton stock cars—*Leonard v. Union Pac. R. Co.* 472, 627.

43. The expense of hauling the Burton cars in one direction unloaded, since by their construction they are not suited to carry general freight, and the fact that a large percentage of ordinary cattle cars are back loaded upon long hauls of western roads, are considerations which justify difference in charge against shippers who prefer to hire improved stock cars. *Burton Stock Car Co. v. Chicago, Burlington & Quincy R. R. Co.* 329.

44. Classification of freights and underbilling—*Commercial Exchange of Phila. v. Erie Dispatch*, 778, 821; *Re Underbilling*, 778, 813, 821; *Walker v. Baltimore & O. R. Co. et al.* 649.

45. Underbilling weights of freight, whereby one person pays less compensation for like services than another is written inhibition of Act. *Re Underbilling*, 813.

46. Every carrier is held liable for correctness of weight and classification of freight received so far as same can be practically ascertained. *Id.*

47. Devices for evasion of Act commented on. *Id.*

48. Recommendations by Commission for regulations for detecting underbilling and of legislative action imposing penalty upon shippers guilty of underbilling. *Id.*

49. Coal rates—*Ohio Coal Exchange v. Wisconsin Cent. R. Co.* 793, 812; *Rend v. Chicago & N. W. R. Co.* 793, 812.

50. A discount allowed by a railroad company where consignments of coal in one year shall amount to 30,000 tons or upward is an unjust discrimination. *Providence Coal Co. v. Providence & Worcester R. Co.* 363.

51. Differences in rates per car load and less quantities—*Ayres v. Union Pacific R. Co.* 397; *Classification of Railroad Freights*, 317, 355.

52. Grain and flour from Schenectady, N. Y.—*Thatcher v. Fitchburg R. Co.* 356.

53. Live stock from Covington, Ky.—Carriers cannot make the yards of a certain company their exclusive stock depot at a certain place, there being other stock yards near by charging lower rates. *Keith v. Kentucky Central R. Co. et al.* 316, 601.

54. Lumber—Railroad Ties—Classification of railroad ties in different class from other lumber is an unjust discrimination. *Reynolds v. Western New York & P. R. Co.* 600, 685; *Reynolds v. New York & Phila. R. Co.* *Id.*

55. Rates of carrier under desire to keep upon its line a material for which it has use or to keep the price low for its own advantage cannot be justified. *Id.*

56. Lumber—Differences in rates between hewn and sawed lumber—*Jackson v. St. Louis, Arkansas & Texas R. Co.* 476, 599.

57. Lumber from Dalton, Ga.—*Farrar v. East Tennessee, Va. & Ga. R. Co. et al.* 600, 784.

58. Lumber from Fair Haven, Vt.—*Griffith v. Delaware & Hudson Canal Co.* 396, 433.

59. Meat products from Chicago—"Dressed Meat Cases," 294, 303, 314, 464.

60. Milk from Orange Co. N. Y.—*Howell v. New York, L. E. & W. R. Co.* 467; *Re Milk Traffic*, 24, 292, 315, 467.

61. Mineral water from Lansing, Mich.—*Michigan Congress Water Co. v. Chicago & G. T. R. Co.* 797.

62. Pearline, classification—*Pyle v. Southern Railway & Steamship Assn.* 486.

63. Pearline must be placed in fifth class freight in classification of Southern Railway & Steamship Association, and relative difference in rates on pearline and common soap must not exceed difference of sixty cents per 100 pounds on pearline and thirty-three cents on common soap. *Pyle v. East Tennessee, Va. & Ga. R. Co.* 600, 767.

64. Rates for carrying pearline and common soap to be maintained by Southern Railway & Steamship Association, stated. *Id.*

65. Statement of grounds of difference of classification of freight by railroad companies given. *Id.*

66. Petroleum oil—*Brady v. Pa. R. Co.* 649, 810; *Nicola v. Pa. R. Co.* 649, 810; *Rice v. Western N. Y. & P. R. Co.* 717, 792, 795, 811; *Rice v. Louisville & Nashville R. Co. et al.* 854, 876, 443, 478-482, 722.

67. Terms for rolling stock for transportation of petroleum oil should be uniform and published with rate sheets. *Rice v. Louisville & Nashville R. Co.* 722.

68. If from peculiarity of traffic, carrier cannot supply such stock, and consignors supply it for themselves carriers must not allow its deficiencies in this particular to be made means of putting at advantage those who make use in same traffic of facilities it supplies. *Id.*

69. Charge of transportation of oil in tank cars should be same as charged for transportation of barrel shipments of oil. *Id.*

70. That there are greater risks to carrier's property from such shipments does not justify greater charges therefor. *Id.*

71. Allowance can be made to owners of tank cars for their use. *Id.*

72. United States supplies—A carrier may make special rates with individuals to enable the latter to make proposals to the Interior Department for transportation of Indian supplies, such transportation being for the United States. *Re Indian Supplies*, 22.

73. Wheat from Colfax, W. T.—*McClaine v. Oregon R. & Nav. Co.* 895.

74. Wheat from Mazeppa, Minn.—*Raymond v. Chicago, Milwaukee & St. P. R. Co.* 474, 627.

75. Wheat from Minnesota towns—*Boards of Trade Union v. Chicago, Milwaukee & St. P. R. Co.* 608.

IV. REFUSAL TO FURNISH CARS.

76. *Rice v. Louisville & Nashville R. Co.* 722.

77. Refusing to furnish cars for transportation, when all cars are needed for transportation of freight which has accumulated along the line is not violation of Act. *Riddle v. Pittsburgh & L. E. R. Co.* 601, 688.

78. It is duty of carrier to furnish cars **ratably** to shippers along its line until the emergency is passed. *Id.*

79. A charge of preference of cars to one trade over another, and of a preference to shippers in not requiring them to load or unload its cars promptly was not sustained by the evidence. *Id.*

80. At times of special pressure, regular customers are not entitled to preference over occasional ones. *Riddle v. New York, L. E. & W. R. Co.* 787.

81. Shipper need not make special contract with carrier to be entitled to transportation for goods. *Id.*

82. Less desirable freight must be accepted upon reasonable terms, as well as that which is more desirable. *Id.*

83. When equipment of carrier usually applied to transportation of particular article is not equal to demand, carrier must appropriate other cars to such service. *Id.*

84. Carrier is not justified in refusing cars for transportation of coal at certain point by

fact that it could make more money by using its regular coal cars on another portion of its line. *Id.*

85. That at certain time article can not be profitably shipped at existing tariff rate is not conclusive evidence that that rate is unreasonable. *Id.*

86. The N. Y., L. E. & W. R. Co., extending to Dayton, Ohio, by agreement being considered with C., C. & I. R. Co., extending from Dayton to Cincinnati, an initial road at Cincinnati, with the right to make rates to that place, Cincinnati must be treated as point upon line for the purpose of proceeding against the company for unjust discrimination in furnishing coal cars. *Id.*

87. Carrier, charged with unjust discrimination, may show that it made extra exertions in good faith to obtain cars for shipper from connecting line to whom shipper had to look for such cars. *Riddle v. Baltimore & O. R. Co.* 701, 778.

88. In absence of custom, carrier need not notify shipper that it can not obtain cars for his freight; it is the duty of the shipper to obtain this information for himself. *Id.*

89. Refusal to carry coal—*Heck v. East Tennessee, Va. & Ga. R. Co. et al.* 498, 775.

90. Transportation of lumber—*Missouri & Ill. Tie & Lumber Co. v. Cape Girardeau & Southwestern R. Co.* 292.

91. Dakota wheat—*Holbrook v. St. Paul, Minneapolis & Manitoba R. Co.* 315, 323.

92. Manitoba wheat—*Derby v. St. Paul, Minneapolis & Manitoba R. Co.* 315.

V. REFUSAL TO AFFORD FACILITIES TO CONNECTING LINES.

93. Interchange of traffic—*Western & Atlantic R. Co. v. East Tenn., Va. & Ga. R. Co.* 488; *Worcester Excursion Car Co. v. Pennsylvania R. Co.* 811.

94. Burton Stock Car Company, which furnishes stock cars to shippers over railroad, does not exchange with or use cars belonging to others, and is not a connecting line entitled to equal facilities for interchange of traffic under section 8, par. 2, of Act. *Burton Stock Car Co. v. Chicago etc. R. R. Co.* 829.

95. Such company is not unjustly discriminated against by refusal of railroad companies to pay same rate of mileage for its cars as for ordinary freight cars. *Id.*

96. Customary mileage rate for freight cars of other railway companies used upon paying company's line, and which payment is, by interchange of cars, practically equalized among different roads, is not the measure of payment for the use of cars belonging to other persons than railroad companies. *Id.*

97. Charges by receiver of railroad in relation to interstate commerce business must be reasonable and just; and there can be no discrimination as to rates, charges or facilities for or against two connecting steamship lines. *Re Mallory* (U. S. C. Ct. Fla.) 294.

98. Refusal to interchange freight—*Crowe v. Richmond & Danville R. Co.* 490, 492, 703;

Kentucky & Ind. Bridge Co. v. Louisville & Nashville R. Co. 708, 715.

99. Refusal to accept shipments of wheat unless billed to elevators—*Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co.* 795.

VI. CARRIAGE OF PASSENGERS.

100. It is an unjust discrimination to remove a **colored passenger** holding a first class ticket from a first class car, to a second class car, less clean and comfortable. *Heard v. Georgia R. Co.* 814, 719; *Council v. Western & Atlantic R. Co.* 292, 855, 688.

101. The separation of white and colored passengers is lawful if the accommodations are equal in all respects. *Id.*

102. The Commission declines to proceed on the plaintiff's claim for damages, for injuries done in his violent removal from car, leaving him his remedy in the courts. *Id.* 688.

108. Twenty-five dollars per 1,000 miles is not unreasonable rate for **milage ticket**. *Associated Wholesale Grocers v. Missouri Pac. R. Co.* 321, 898.

104. **Rate at which excursion or commutation tickets** are sold does not entitle **milage ticket purchaser** to complain of unjust discrimination if charged a higher rate. *Id.*

105. A sale of milage tickets to **commercial travelers** at lower prices than they are sold to public generally, is an unjust discrimination. *Id.*; *Larrison v. Chicago etc. R. R. Co.* 869.

106. A **release of liability** by commercial travelers is not a good consideration for such discrimination. *Id.* 869.

107. Section 2 of Act prohibits giving of **passes** to particular persons, and the exception allowed in section 22 in favor of officers and employees of road does not include the families of such persons. *Ex parte Koehler* (U. S. C. Ct.) 817.

108. In the absence of an actual case, the Commission will not pass upon the question of passes to the United States Fish Commission. *Re U. S. Commission of Fish and Fisheries*, 606.

109. Use of by Territorial Judge of Dakota. *Tuttle v. Northern Pacific R. Co.* 488, 588.

110. Complaint. *Dexter v. Chicago, B. & Q. R. Co.* 598.

111. **Land explorers** and settlers are not entitled to lower rates than the general public. *Smith v. Northern Pac. R. Co.* 611.

112. Rates may be reduced for **religious teachers** and as act of charity. *Re Religious Teachers*, 21.

113. **Emigrants** from Castle Garden, New York City. *Savery v. New York Central & H. R. R. Co.* 695; *Savery v. Trunk Lines*, 488.

114. **Fares**. Half rate. *Re Inmates of Nat. Homes*, 75.

115. Passenger rates between Hot Springs and Arika, N. C. *Hot Springs v. Western North Carolina R. Co.* 816.

116. **Tickets**. Through passenger. *Chicago & Alton R. Co. v. Pa. R. Co.* 291, 298, 357.

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117. Complaint by ticket broker, having no apparent interest in transaction, alleging discrimination in allowing transfers of return portions of tickets, will not be entertained. *Otinger v. Southern Pac. R. Co.* 607.

118. The Commission will not make rules as to **free baggage** until violation of Act is charged. *Re Order of Railway Conductors*, 18; *Traders & Travelers Union v. Phila. & Reading R. Co.* 18, 62, 815, 871.

119. The Commission has no jurisdiction in a case presented involving agreement between Traders & Travelers Union and certain carriers, for allowance of extra free baggage to passengers presenting "baggage indemnity certificate" issued by such Union under arrangement made prior to time when Act went into effect. *Id.* 871.

BRIEFS AND NOTES.

Discrimination; general rule; against localities; against specific article; character, quantity, value of **goods**; classification; underbilling; competition; furnishing cars; connecting lines; express companies; stations; yards; terminal facilities. *Note*, 859-867.

Difference in cost of service so as to justify reasonable difference in rates. 725.

Complainant has burden of proof. 724.

Carriage of **passengers**. *Note*, 867.

CLASSIFICATION OF FREIGHT.

See CHARGES AND DISCRIMINATION, 44-48.

COLORED PERSONS.

1. It is an unjust discrimination to **remove** a colored passenger holding a first class car ticket from **first class car** to a second class car, less clean and comfortable. *Heard v. Georgia R. Co.* 814, 719; *Council v. Western & Atlantic R. Co.* 292, 855, 688.

2. The **separation of white and colored passengers** is not unlawful if the accommodations are equal in all respects. *Id.*

3. The Commission declined to proceed on plaintiff's claim for **damages**, for injuries done in his violent removal from car, leaving him his **remedy** in the courts. *Id.* 688.

COMBINATIONS.

1. Any **one member** of a joint combination may **file** copies of joint **tariff** for all the members. *Re Filing Copies of Joint Tariff*, 76.

2. Complaint against Trunk Lines alleging combinations to **exclude** emigrant company from **interviewing emigrants** at Castle Garden, New York City. *Savery v. Trunk Lines*, 488.

COMMERCE.

I. POWER OF CONGRESS.

II. STATE POWERS AND RESTRICTIONS.

- Interstate Commerce Generally.*
- License Tax upon Nonresidents.*
- Police Regulations.*
- Foreign Corporations.*

III. LINES WHOLLY WITHIN STATE; CONNECTING LINES; OTHER SUBJECTS OF INTERSTATE COMMERCE ACT.

BRIEFS AND NOTES.

I. POWER OF CONGRESS.

1. Power to regulate interstate commerce vested in Congress is the power to prescribe the **rules** by which it shall be governed. *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 882.

2. The power of Congress is **supreme** over interstate commerce, unembarrassed by state laws. *Id.*; *Stockton v. Baltimore etc. R. R. Co.* (U. S. C. Ct., N. J.) 411. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 838.

3. The **failure** of Congress to **make express regulations** indicates that the subject shall be free. *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 882; *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.) 808; *Robbins v. Tazewell District of Shelby Co.* (U. S. Sup. Ct.) 45; S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 829.

4. The **control of navigable waters** constituting channels of communication between States and foreign countries is within commercial power of Congress. Cited in *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 888; S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 840.

5. Power to regulate commerce between States extends to the **erection of piers, bridges** and all other instrumentalities of commerce which, in judgment of Congress, may be necessary or expedient. *Stockton v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. J.) 411.

6. Act of Congress of June 16, 1886, authorizing construction of **bridge across Staten Island Sound**, known as Arthur Kill, is valid under power of Congress to regulate interstate commerce. *Id.*; *Decker v. Baltimore & O. R. Co.* (U. S. C. Ct. N. Y.) 434.

7. **Regulation of fares and freights for transportation between different States** is within power of Congress. *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.) 808.

II. STATE POWERS AND RESTRICTIONS.

a. Interstate Commerce Generally.

8. Interstate commerce **consists of** intercourse and traffic between citizens of different States, and includes the transportation of property and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities. *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 882. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 830.

9. Transportation of property from one State to another is interstate commerce, whether carriers engaged in moving it or vehicles on which it is borne, cross line of State or not. *Ex parte Koehler* (U. S. C. Ct. Or.) 28.

10. A transportation of goods under one contract and by one voyage from the interior of Illinois to New York is interstate commerce. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 81.

11. In absence of interference by Congress a State may **carry on works of a local character**, although they necessarily more or

less affect interstate commerce. *Ouachita etc. Packet Co. v. Aiken* (U. S. Sup. Ct.) 379; *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 852.

12. A State can **not regulate** interstate commerce. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 81; *Western U. Tel. Co. v. Pendleton* (U. S. Sup. Ct.) 806.

13. A state **tax** upon interstate commerce is **void**. *Re Hennick* (Sup. Ct. D. C.) 68. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 880.

14. A state law imposing such tax is not cured by including in its provisions subjects within jurisdiction of State. *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.) 808; *Re Hennick* (Sup. Ct. D. C.) 70. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 884.

15. No State can impose a tax upon that portion of interstate commerce which is involved in the **transportation of persons and property**, whatever be the instrumentality by which it is carried on. Cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 829. S. P. in *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 882.

16. The only state **interference** with the landing and receiving of passengers and freight which is permissible is **confined** to such measures as will prevent confusion among vessels and collision between them, and insure their **safety and convenience** and facilitate the discharge and receipt of **passengers and freight**. *Id.* 882.

17. State law requiring **master of vessel** engaged in foreign commerce to **pay** certain sum to state officer on account of each **passenger** brought from a foreign country is void. Cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 836.

18. **Wharfage** is subject to local state laws, Congress having passed no Act to regulate it. *Ouachita etc. Packet Co. v. Aiken* (U. S. Sup. Ct.) 379.

19. Charges for **wharfage graduated by tonnage of vessels** using wharf are not open to objection that they are duties on tonnage within meaning of Constitution. *Id.*

20. Where wharfage charges are reasonable it in no way concerns those who pay them what **application** is made of the **proceeds**. *Id.*

21. The **appropriation of wharfage charges** to maintain, extend, light and police the **wharves** is unobjectionable, although profits may be realized by lessees from the city which owns them. *Id.*

22. **Goods brought into a State for sale**, although they become thereby a part of the mass of its property, cannot be taxed by reason of their introduction into the State or because they are products of another State. Cited in *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.) 811.

23. Illinois Act **regulating transportation** of goods under one contract to points **beyond the State** is unconstitutional. *Wabash, St. L. & P. R. Co. v. People* (U. S. Sup. Ct.) 81.

24. State **tax upon gross receipts of**

railroads for carriage of freight or passengers into, out of or through State, is void. *Fargo v. Stevens* (U. S. Sup. Ct.) 51.

25. **State tax upon earnings of sleeping car company** engaged in transporting passengers from one State to another is void. *Indiana v. Woodruff Sleeping & Parlor Coach Co.* (Sup. Ct. Ind.) 798. S. P. cited in *Wabash, St. Louis & P. R. Co. v. People* (U. S. Sup. Ct.) 37.

26. **A state tax upon a steamship company** upon gross receipts from transportation between different States, and to and from foreign countries, is unconstitutional. *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.) 308.

27. **The capital stock of a foreign ferry company** engaged in interstate traffic is not taxable by State. *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 382.

28. **A State may regulate the charges of public warehouses.** Cited in Dis. Op. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 44.

29. **Indiana Statute regulating mode in which messages sent by telegraph companies,** doing business in that State, shall be delivered in other States is void. *Western U. Tel. Co. v. Pendleton* (U. S. Sup. Ct.) 806. S. P. cited in *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 37.

30. **Issuing policy of insurance is not interstate commerce.** *List v. Pennsylvania* (Pa. Sup. Ct.) 784.

b. License Tax upon Nonresidents.

31. **A license tax upon nonresident merchants, drummers or agents is invalid.** *Robbins v. Tazewell District of Shelby Co.* (U. S. Sup. Ct.) 45; *Corson v. Maryland* (U. S. Sup. Ct.) 50; *Re Hennick* (D. C. Sup. Ct.) 66; *State v. Pratt* (Vt. Sup. Ct.) 299. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 884.

c. Police Regulations.

32. **Arkansas Act, 1885, February 27, prohibiting greater charge than specified in bill of lading,** and imposing a penalty for refusal to deliver on payment or tender of charges as shown in such bill, is within police power of State. *Little Rock & F. S. R. Co. v. Hanniford* (Sup. Ct. Ark.) 580.

33. **Police power of State defined and illustrated.** Cited in *Id.* 581.

34. **State cannot under cover of exerting its police powers substantially prohibit or burden interstate commerce.** Cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 882.

35. **State statute requiring locomotive engineers to be licensed** is not regulation of interstate commerce. Cited in *Id.* 840. S. P. in *Smith v. Alabama* (U. S. Sup. Ct.) 804.

36. **Fee to be paid by applicant for examination** is not provision for raising revenue and is not tax upon transportation. *Id.* 804.

37. **State statute which conflicts with common-law exercise of powers of Congress**

over commerce must give way to supremacy of national authority. *Id.*

38. **Rhode Island, Public Statute, chap. 684, § 1, prohibiting the keeping of intoxicating liquors for sale** is not obnoxious to Federal Constitution conferring exclusive power to regulate commerce upon Congress. *State v. Filpatrick* (Sup. Ct. R. I.) 718. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 885.

39. **Iowa Code, § 1553, forbidding carrier to bring into State intoxicating liquors** without first having certificate therein required is regulation of commerce and void. *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 823.

40. **It is not legitimate exercise of police power.** *Id.*

41. **Prohibiting driving or conveying of certain cattle into State** between certain days in each year is void as regulation of commerce, and is not legitimate exercise of police power. Cited in *Id.* 832.

42. **Under police power, State may prohibit spread of crime or pauperism or disturbance of the peace;** it may exclude from its limits convicts, paupers, idiots and lunatics, as well as persons afflicted with contagious diseases. Cited in *Id.*

d. Foreign Corporations.

43. **State Legislature may prescribe conditions upon which foreign corporation may do business,** unless engaged in interstate commerce. *List v. Pennsylvania* (Pa. Sup. Ct.) 784; *Indiana v. Woodruff Sleeping & Parlor Coach Co.* (Sup. Ct. Ind.) 798; *Stockton v. Baltimore etc. R. Co.* (U. S. C. Ct. N. J.) 411. Cited in *Barron v. Burnside* (U. S. Sup. Ct.) 295.

44. **Congress can confer upon a state corporation powers not contained in its original charter.** *Stockton v. Baltimore etc. R. Co.* (U. S. C. Ct. N. J.) 411.

45. **Louisiana Constitution, § 236, providing that a foreign corporation shall have a place of business and an agent upon whom service may be made within the State,** is void as a restriction on navigation. *New Orleans & M. Packet Co. v. James* (U. S. C. Ct. La.) 599.

46. **Iowa Act of April 16, 1886, seeking to make the right of foreign corporations to transact business in that State dependent upon surrender of right to remove causes to federal courts,** is invalid. *Barron v. Burnside* (U. S. Sup. Ct.) 295.

47. **A corporation is a citizen of the State by which created,** so far as its right to sue and be sued in the federal courts is concerned. *Id.*

III. LINES WHOLLY WITHIN STATE; CONNECTING LINES; OTHER SUBJECTS OF INTERSTATE COMMERCE ACT.

48. **The word "line" in the Act to Regulate Commerce means a physical line,** not a business arrangement. *Boston & A. R. Co. v. Boston & L. R. Co.* 571.

49. **Short road used as means of conducting interstate traffic in coal by companies owning connecting interstate roads** is sub-

ject to Act to Regulate Commerce. *Heck v. East Tennessee, V. & G. R. Co.* 775.

50. Such road must be accessible to interstate shippers on equal and reasonable terms, and cannot be used to discriminate between mine owners on its line. *Id.*

51. Knowledge of carrier, whose line is wholly within State, that the ultimate destination of freight is without State will not make it subject to Interstate Commerce Act. *Missouri etc. Lumber Co. v. Cape Girardeau & S. R. Co.* 607.

52. Bills of lading over connecting lines to points beyond the State, issued by a railroad whose line is entirely within one State, are subjects of interstate commerce. *Re Annapolis, W. & B. R. Co.* 315.

53. Interstate Commerce Act does not apply to carriage wholly within a State of property shipped from or destined to a point without, not in a foreign country. *Ex parte Koehler* (U. S. C. C. Or.) 28.

54. Express business conducted by a railroad company is within the Interstate Commerce Act; *aliter* as to independent express companies. *Re Express Companies*, 22, 317, 363, 448, 451, 456, 677.

55. Communication that bridge company discriminates against bicyclers. *Re Kenton Wheel Club of Covington*, 23.

BRIEFS AND NOTES.

Power of Congress; how far exclusive. *Notes*, 309, 851; 31, 788, 825; (U. S. Sup. Ct.) 45-53, 307, 382; (U. S. C. Ct.) 411, 427; (Sup. Ct. D. C.) 66-69.

Power of Congress to regulate navigation. (U. S. C. Ct. N. Y.) 421, 435.

State powers and restrictions. *Note*, 853. State tax upon interstate commerce is void. (U. S. Sup. Ct.) 45-53, 307, 382; 779, 800; (Sup. Ct. D. C.) 63-69.

It makes no difference whether such commerce is carried on by individuals or corporations. 801.

Tax on fares is tax on passengers. 800.

State quarantine laws do not derive validity from their adoption by Congress. 807.

State police powers. *Note*, 853.

State possesses power to adopt police regulations. 825.

State laws prohibiting manufacture of intoxicating liquors are valid police regulations. 825.

State may exercise its police power, even when it incidentally operates upon commerce. 806.

What is interstate commerce. *Note*, 853.

Transportation of passengers from one State to another is. 806.

Business of ferrriage between different States. (U. S. Sup. Ct.) 384.

Telegraphing from one State to another is. (U. S. Sup. Ct.) 307.

Foreign corporations; rights and privileges. (U. S. Sup. Ct.) 295.

INTER S.

State law impairing right of removal to federal court, as condition of doing business, is void. *Id.*

Lines within Act—Lines wholly within State; "common control, management or arrangement for continuous carriage;" Interstate Commerce Act, § 1; English Regulation of Railways Act of 1873, § 11. *Note*, 858.

COMMERCIAL TRAVELERS. See COMMERCE, II, b.

1. A sale of mileage tickets to commercial travelers at a rate lower than to other passengers is an unjust discrimination. *Associated Wholesale Grocers v. Missouri Pacific R. Co.* 321, 393; *Larrison v. Chicago etc. R. R. Co.* 369.

2. A release of liability by commercial travelers is not a good consideration for such discrimination. *Id.* 369.

COMMISSION. (THE INTERSTATE COMMERCE.) See RULES; RULINGS.

1. Commission has no jurisdiction in a case presented involving agreement between Traders & Travelers Union and certain carriers, for allowance of extra free baggage to passengers presenting "baggage indemnity certificate" issued by such Union, under arrangement made prior to time when Act went into effect. *Traders & Travelers Union v. Phila. etc. R. R. Co.* 371.

2. The Commission has no authority to call a railroad company to account for a wrong committed prior to time when Act went into effect. *Holbrook v. St. Paul, M. & M. R. Co.* 323.

3. The Commission can not construe the Act before violation thereof charged. *Re Order of Railway Conductors*, 18; *Re Theatrical Rates*, 18; *Re Inmates of Nat. Homes*, 73, 75.

4. In the absence of an actual case, the Commission will not pass upon the question of passes to the United States Fish Commission. *Re United States Commission of Fish and Fisheries*, 606.

5. The Commission has no power to make rates generally, but only to determine whether rates imposed by railroads are in conflict with statute. *Thatcher v. Fitchburg R. R. Co.* 365.

6. The Commission has no power to enforce contracts, nor has it any general power to manage business of carriers. *Traders & Travelers Union v. Phila. etc. R. R. Co.* 371.

7. The Commission has only a limited power, expressly defined by the Act, to interfere to prevent wrong and oppression in specified cases. *Id.*; *Re Iowa Barb Steel Wire Co.* 605.

8. While the Act authorizes the Commission to permit exceptions, it does not authorize it to require exceptions. *Thatcher v. Fitchburg R. R. Co.* 356.

9. Where the complaint does not state a case within its jurisdiction, the Commission will not express an opinion. *Re Iowa Barb Steel Wire Co.* 605.

10. The Commission will not make any ruling where petitioner alleges legal

ty of practice sought to be authorized. *Re Export Trade of Boston*, 25.

11. The Commission does not report cumulative evidence or mere details of evidence already embraced in substantial facts stated, upon which its findings are made. *Riddle v. Pittsburgh & L. E. R. Co.* 778.

COMMON LAW.

There is no common law of the United States distinct from the common law of England as adopted by the several States, each for itself, applied as its local law, and subject to such alteration as may be provided by its own statutes. Cited in *Smith v. Alabama* (U. S. Sup. Ct.) 808.

COMMUTATION TICKET. See TICKETS, 6.

COMPETITION.

That there is competition in carriage of persons or property to or from a particular place, is a circumstance that justifies a carrier, under section 4, to charge less for a long haul to or from such place, than a short one included therein. *Ex parte Koehler* (U. S. C. Ct. Or.) 817; *Re Southern R. & S. Assn.* 278.

COMPLAINT. See PLEADING AND PRACTICE, I.

CONDEMNATION PROCEEDINGS. See EMINENT DOMAIN.

CONNECTING LINES. See CHARGES AND DISCRIMINATION, V.

1. The Interstate Commerce Act only applies to such carriers as use a railway or a railway and water craft under common control or management for a continuous carriage or shipment of property from one State to another. *Ex parte Koehler* (U. S. C. Ct. Or.) 28.

2. The Act does not apply to railroad wholly within State, joining with connecting steamers in independent although concurrent reduction of rates, unless goods are going to or from a foreign country. *Id.*

3. Burton Stock Car Company, which furnishes stock cars to shippers over railroad, does not exchange with or use cars belonging to others, and is not a connecting line entitled to equal facilities for interchange of traffic under section 8, par. 2, of Act. *Burton Stock Car Co. v. Chicago etc. R. R. Co.* 329.

4. Such company is not unjustly discriminated against by refusal of railroad companies to pay same rate of millage for its cars as for ordinary freight cars. *Id.*

5. A carrier is not liable for rates made by a connecting road. *Allen v. Louisville, N. A. & C. R. Co.* 621; *Crows v. Richmond & D. R. Co.* 708.

6. Where in a proceeding against several connecting roads for violation of section 4, one claims that its only participation consisted in sharing in low charges on long haul, complaint should not be dismissed as against it. *Boston & A. R. R. Co. v. Boston & L. R. R. Co.* 571.

INTER S.

7. In absence of statutory authority, one railroad company can sell tickets over road of another company only by agreement. *Chicago & A. R. R. Co. v. Pennsylvania Co.* 357.

8. The Act does not require one company to sell through tickets over road of another. *Id.*

9. Railroad companies may forbid their agents to receive commissions for sale of tickets over other companies' roads. *Id.*

10. The practice of one company's paying the agents of another company a commission for selling tickets over former's road is not reasonable or proper. *Id.*

CONSTITUTIONAL LAW. See COMMERCE.

1. Arkansas Act, 1885, February 27, prohibiting greater charge by a carrier for transportation of freight than specified in bill of lading, and imposing a penalty for refusal to deliver on payment or tender of charges as shown in such bill, is not special legislation, nor a regulation of interstate commerce, but within police power of State. *Little Rock & F. S. R. Co. v. Hanniford* (Sup. Ct. Ark.) 580.

2. An Act being general and uniform in its operation, upon all persons coming within the class to which it belongs, is not special. Cited in *Id.* 581.

BRIEFS AND NOTES.

Constitutionality of part of Act. (U. S. Sup. Ct.) 296.

CONSTRUCTION. See ACT TO REGULATE COMMERCE.

CONTINUANCE AND ADJOURNMENT.

Adjournment and extension of time is within discretion of Commission. *Rule 7, Appendix I*, 843.

CONTINUOUS CARRIAGE.

Complaint alleging interruption of continuous carriage in violation of section 7. *Plummer v. Union Pac. R. Co.* 596; *Raymond v. Chicago, B. & Q. R. R. Co.* 592.

CONTRACTS.

The Commission has no power to enforce contracts. *Traders & Travelers Union v. Phila. etc. R. Co.* 871.

CORPORATIONS. See COMMERCE, II, d.

COURTS. See APPEAL AND ERROR.

1. The jurisdiction of federal courts cannot be affected by state legislation. *Barron v. Burnside* (U. S. Sup. Ct.) 295.

2. A corporation is a citizen of the State by which created, so far as its right to sue and be sued in the federal courts is concerned. *Id.*

CUSTOM AND USAGE.

That a railway company for some time paid cost of hauling coal from complainant's wharf to station is not ground for compelling such payment by the company. *Providence Coal Co. v. Providence & W. R. Co.* 863.

DAMAGES.

A claim for pecuniary damages entitles the defendant to a jury trial, and the Interstate Commerce Commission will not consider it. *Peck v. East Tennessee, V. & G. R. Co.* 775; *Council v. Western & A. R. Co.* 292, 355, 638; *Riddle v. New York, L. E. & W. R. Co.* 787.

DEFINITIONS. See CHARGES AND DISCRIMINATION, 17; COMMERCE, 8, 88.

Interstate commerce. *Ex parte Koehler* (U. S. C. Ct. Or.) 28; *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 382. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 880.

BRIEFS AND NOTES.

Interstate commerce; what is. *Note*, 858; (U. S. C. Ct. N. J.) 420.

Power to regulate. (U. S. C. Ct. N. J.) 420.

DEPARTMENT OF STATISTICS.

Creation of, by Commission; auditor appointed. 354.

DEPOSITIONS.

Depositions may be taken as provided by U. S. R. S., §§ 863, 864, without application to Commission. *Rule 9* as amended. *Appendix II*, 843, 410.

DEPOTS.

Carriers cannot make the yards of a certain company their exclusive stock depot at a certain place, there being other stock yards near by charging lower rates. *Keith v. Kentucky Cent. R. R. Co.* 601.

DISCOUNT. See REBATE.

DISCRIMINATION. See CHARGES AND DISCRIMINATION.

DISMISSAL AND DISCONTINUANCE.

1. Motion for, may be made at hearing. *Rule 6, Appendix I*, 843.

2. Leave should be granted to withdraw petition when petitioner alleges legality of practice sought to be authorized. *Re Report Trade of Boston*, 25.

3. Where no overt acts of misconduct on part of defendant railroad appears, the Commission has no discretion but to dismiss complaint. *Holbrook v. St. Paul, M. & M. R. Co.* 323.

4. Petition charging exorbitant rates will be dismissed where rates are reduced before hearing. *Fullon v. Chicago etc. R. R. Co.* 876; *Harding v. Chicago etc. R. R. Co.* 875.

5. The pleadings presenting issues of fact and no evidence being presented, the case will be dismissed. *Leonard v. Union Pac. R. Co.* 627.

6. Upon failure of complainant to appear at hearing, complaint will be dismissed. *Jackson v. St. Louis, A. & T. R. Co.* 599.

7. Complaint for over charge withdrawn where complainants receipt in full settlement for over charges was shown by respondent. *Stahl v. Oregon R. & Nav. Co.* 314.

INTER 8.

DRUMMERS. See COMMERCE, II, b; COMMERCIAL TRAVELERS.

EMIGRANTS. See CHARGES AND DISCRIMINATION, 118.

EMINENT DOMAIN.

United States may condemn land within State without consent of State. *Stockton v. Baltimore etc. R. Co.* (U. S. C. Ct. N. J.) 411.

BRIEFS AND NOTES.

Exercise of right of, by United States, without consent of State. (U. S. C. Ct. N. J.) 426.

Right to compensation. (U. S. C. Ct. N. J.) 414.

EMPLOYEES.

Section 2 of the Act prohibits giving of passes to particular persons; and the exception allowed in section 22 in favor of officers and employees of road does not include the families of such persons. *Ex parte Koehler* (U. S. C. Ct.) 317.

ERROR. See APPEAL AND ERROR.

EVIDENCE. See DEPOSITIONS; TESTIMONY.

1. The burden of proof is on petitioner charging exaction of unreasonable rates. *Harding v. Chicago etc. R. Co.* 375.

2. In case of complaint for violation of section 4 of Act, the burden of proof is on the carrier to justify any departure from the general rule prescribed by statute, by showing that circumstances and conditions are dissimilar. *Re Southern R. & S. Assn.* 278.

EXCURSION TICKETS.

Rate at which excursion tickets are sold does not entitle mileage ticket purchaser to complain of unjust discrimination if charged a higher rate. *Assn. Wholesale Grocers v. Missouri Pacific R. Co.* 393.

EXPRESS COMPANIES.

1. Express business conducted by a railroad company is within the Interstate Commerce Act; *aliter* as to independent express companies. *Re Express Companies*, 22, 877.

2. Pleadings, etc. 317, 363, 443, 451, 456.

FARES. See RATES.

FEDERAL COURTS. See COURTS.

FERRIES. See COMMERCE, 27.

A ferry is a means of commercial intercourse between States, bordering upon dividing waters, and it must be conducted without imposition by States of taxes upon the commerce between them. *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 383.

FISH AND FISHERIES.

The transportation of fish and eggs, distributed by the United States Commission of Fish and Fisheries, is within the exception of section 22 of the Act. *Re United States Commission of Fish and Fisheries*, 609.

FOREIGN CORPORATIONS. See COMMERCE, II, d.

FOURTH SECTION. See LONG AND SHORT HAUL.

FREE PASSES. See PASSEES.

HEARING. See CONTINUANCE AND ADJOURNMENT; REHEARING; RULES, 4, 10.

1. Carrier deeming complaint insufficient may serve notice for hearing on complaint without answer, and facts stated are admitted. Motion to dismiss for insufficiency may be made at hearing. *Rule 6, Appendix I, 842.*

2. Final hearings shall be had forthwith without dilatory motions, etc. *Associated Wholesale Grocers v. Missouri Pac. R. Co. 321*

8. Upon failure of complainant to appear at hearing, complaint will be dismissed. *Jackson v. St. Louis, A. & T. R. Co. 599.*

IMMIGRATION. See COMMERCE, 42.

INSURANCE. See COMMERCE, 30.

INTERCHANGE OF TRAFFIC. See CHARGES AND DISCRIMINATION, V.

INTERSTATE COMMERCE. See COMMERCE.

INTERSTATE COMMERCE ACT. See ACT TO REGULATE COMMERCE.

INTERSTATE COMMERCE COMMISSION. See COMMISSION.

INTOXICATING LIQUORS. See COMMERCE, 38-40.

JOINT TARIFF.

1. Joint tariffs to be printed in ordinary type, and copies kept at every depot or station upon the line of the carriers uniting therein. *Order as to Publication of Joint Tariffs, 598.*

2. Any one member of a joint combination may file copies of joint tariff for all the members. *Re Filing Copies of Joint Tariff, 76.*

JURISDICTION. See CHARGES AND DISCRIMINATION, 119; COMMISSION; CONTRACTS; COURTS; DAMAGES.

JURY.

A claim for pecuniary damages entitles the plaintiff to a jury trial and the Interstate Commerce Commission will not consider it. *Peck v. East Tennessee, V. & G. R. Co. 775; Council v. Western & A. R. Co. 638; Riddle v. New York, L. E. & W. R. Co. 787.*

LAND EXPLORERS.

Land explorers and settlers are not entitled to lower rates than the general public. *Smith v. Northern Pac. R. R. Co. 611.*

LICENSE. See COMMERCE, II, b; 35, 36.

LIVE STOCK.

1. Carriers cannot make the yards of a certain company their exclusive stock depot at a certain place, there being other stock yards near by charging lower rates. *Keith v. Kentucky Cent. R. Co. 816, 801.*

2. Conveyed in Burton stock cars, rates for INTER 8.

Burton Stock Car Co. v. Chicago, B. & Q. R. Co. 329.

LONG AND SHORT HAUL.

I. GENERAL RULES; CIRCUMSTANCES JUSTIFYING GREATER CHARGE FOR LESSER HAUL; COMPLAINTS FOR VIOLATION OF SECTION 4.

II. SUSPENSION OF FOURTH SECTION.

III. APPLICATIONS FOR SUSPENSION. BRIEFS AND NOTES.

I. GENERAL RULES; CIRCUMSTANCES JUSTIFYING GREATER CHARGE FOR LESSER HAUL; COMPLAINTS FOR VIOLATION OF SECTION 4.

1. Circular as to short haul rates. 601.

2. The joint rates on long hauls usually are, and should be, proportionately lower than local rates on short hauls. *Narrar v. East Tennessee, V. & G. R. Co. 764.*

3. The Act to Regulate Commerce aids the rule making the aggregate charge of transportation of freight less in proportion every hundred miles after the first. *Id.*

4. The prohibition in section 4 of the Interstate Commerce Act is limited to cases in which circumstances and conditions are substantially similar. *Re Southern R. & S. Assn. 278.*

5. Carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances or conditions that forbid or permit a greater charge for a shorter distance. *Id.*

6. Judgment of carriers in respect to circumstances and conditions is not final and is subject to authority of the Commission and of the courts to decide whether error has been committed or statute violated. *Id.*

7. In case of complaint for violation of section 4, the burden of proof is on the carrier to justify any departure from the general rule prescribed by statute, by showing that circumstances and conditions are dissimilar. *Id.*

8. Section 1, requiring charges to be reasonable, and section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4, as they do in other cases. *Id.*

9. The existence of actual competition which is of controlling force may, in certain cases, make out the dissimilar conditions entitling the carrier to charge less for longer than for shorter haul. *Id.; Ex parte Koehler, (U. S. C. Ct. Or.) 817; Harwell v. Columbus & W. R. Co. 631.*

10. That railroads have water competition, and are obliged to meet it, is not in itself sufficient to justify the lesser charge for the greater distance. *Id. 631.*

11. It is not a justification for charging more for a shorter than for a longer distance that the traffic which is subjected to such greater charge is way or local traffic; nor that the shorter haul traffic is more expensive to the carrier; nor that the lesser charge has for its motive the encouragement of manufactures or some other branch of industry; nor that it is designed to build up trade

centers; nor that the lesser charge for the longer haul is merely a continuation of favorable rates under which trade centers or industries have been built up. *Re Southern R. & Steamship Assn.* 278.

12. The fact that long haul traffic will only bear certain rates is not reason for carrying it for less than cost at expense of other traffic. *Id.*

13. The "circumstances and conditions" touching transportation to and from Mexico through El Paso, Texas, by Texas & Pacific R. Co., are so substantially different from those surrounding transportation to other points as to justify the establishment of lower rates than charged at points where the distance and haul are shorter. *Re Texas etc. R. Co.* (U. S. C. Ct. La.) 80.

14. Where in proceeding against several connecting roads for violation of section 4, one claims that its only participation consisted in sharing in low charges on long haul, complaint should not be dismissed against it. *Boston & A. R. R. Co. v. Boston & L. R. R. Co.* 571.

15. The sole grievance of petitioning road in such case being that defendant company accepted through traffic at lower rates than itself, the petitioner has no standing to maintain the proceeding. *Id.*

16. The desire to have the Act construed will not support such proceedings. *Id.*

17. The right to make greater charges for short than for long haul depends upon peculiar circumstances and conditions in each case. *Id.*

18. Complainant must not necessarily have pecuniary interest to be entitled to be heard. *Id.*

19. The Vermont State Grange has such interest that it may raise the question and the proceeding is maintainable upon its petition. *Id.*

20. Where several companies join in joint tariff, those making greater charges must justify it. *Id.*

21. Defendant companies permitting through business to be done over their tracks, by the National Despatch Line, are responsible for long haul rates. *Id.*

22. A complaint, in effect asking from the Commission an order requiring defendant roads to receive freight at Schenectady for transportation to Boston, for rates less than are now charged by some roads for transportation of like freights to Boston from stations nearer Boston, under substantially similar circumstances and conditions must be dismissed. *Thatcher v. Fitchburg R. Co.* 356.

23. Complaints for violation. *Allen v. Louisville, New Albany & O. R. Co.* 586, 621; *Boston & Albany R. Co. v. Boston & Lowell R. Co.* 291, 400, 500, 557, 571; *Business Assn. of Minnesota v. Chicago, & N. W. R. Co.* 488; *Same v. Chicago, St. P. M. & O. R. Co.* 488, 591; *Farrar v. East Tennessee, Va. & Ga. R. Co. et al.* 754; *Friend v. Southern Pacific R. Co. et al.* 58, *Koehler Re*, 817; *Raymond v. Chicago, B. & Q. R. Co.* 592.

INTER S.

II. SUSPENSION OF FOURTH SECTION.

24. Order for suspension must be based upon investigation. *Jurisdiction of Commission*, 78.

25. The cases in which the Commission is authorized to make orders for suspension of operation of Act are exceptional. *Id.*

26. Mere probability that injury will result will not authorize Commission to direct suspension. *Id.*

27. The Act does not authorize the Commission to require exceptions. *Thatcher v. Fitchburg R. Co.* 356.

28. The Commission will not grant a general suspension of section 4 of Act, but will give relief only as to traffic between specified points. *Re Richmond etc. R. R. Co.* 22.

As to Particular Roads.

29. Atchison, Topeka & Santa Fé R. Co. 1, 27, 58; Cape Fear & Yadkin Valley R. Co. 21; Cincinnati, N. O. & T. P. R. Co. 23; Detroit, Grand Haven & Milwaukee R. Co. 17; Illinois Central R. Co. 21; Louisville & Nashville R. Co. 278; Louisville, N. O. & T. R. Co. 21; Newport News & Miss. Valley R. Co. 21; New York, Phila. & Norfolk R. Co. 21; Norfolk & Western R. Co. 21; Norfolk Southern R. Co. 28; Northern Pacific R. Co. 27; Richmond, Fredericksburg & Potomac R. Co. 21; St. Louis & Cairo Short Line R. Co. 21; St. Louis & San Francisco R. Co. 27; Southern Pacific R. Co. 16, 27; Southern R. & Steamship Assn. 15, 17, 21; Tennessee & Ohio R. Co. 21; Texas & Pacific R. Co. 23, 30.

III. APPLICATIONS FOR SUSPENSION.

30. Applications must be made by petition, stating relief desired and points between which authority is asked to charge less; and verified by officer or agent of petitioner. *Rule 2, Appendix I*, 841.

31. Application for exceptions under Act will only be granted after investigation upon verified petition. *Re Southern Pac. R. R. Co.* 16.

32. Notice must be published by petitioner in not less than two newspapers along the line for at least ten days prior to presentation of petition, stating nature of relief applied for and time of presentation of application; proof of each publication must be filed with petition. *Id.*; *Rule 2, Appendix I*, 841.

Proceedings for Suspension.

33. Atlantic & North Carolina R. Co. 292; Central R. & Banking Co. 15; Chicago, St. Paul, Minneapolis & Omaha R. Co. 24, 63; Indianapolis, Decatur & Springfield R. Co. 15; Evidence at Atlanta, 76; Evidence at Memphis, 62, 63, 72, 212; Evidence at Mobile, 186; Evidence at New Orleans, 62, 179; Fruit Interests of California, *Re*, 23; Gullett Cotton Gin Co. *Re*, 68; Iowa Barb Steel Wire Co. *Re*, 21, 605; Lake Shore & M. S. R. Co. 63, 292; Louisville & Nashville R. Co. 15, 278; Louisville, New Orleans & Texas R. Co. *Re*, 21; Manufacturers & Jobbers Union v. Minneapolis & St. L. R. Co. 483, 630; Meadville & Louisville R. Co. 292; Minneapolis & Northwestern R. Co. 78; New York C. & H. R. R. Co. 63;

New York, Phila. & Norfolk R. Co. v. Atlantic Coast Line, 447, 582; Oregon R. & Nav. Co. *Re*, 62; Pacific Mail Steamship Co. 293; Pacific Pine Lumber Co. 23; Palatka, Fla. 72; Pittsburg & L. E. R. Co. 63, 292; Prescott, Arizona, 72; Queen & Crescent R. Co. System, 73; Redwood Mfg. Asso. 23; *Re* Richmond & Allegheny R. Co. 22; *Re* Southern Pacific R. Co. 16, 25; Southern R. & Steamship Asso. 15, 17, 70, 278; Sultan & Co. 293; *Re* Union Pacific R. Co. 60; Western & Atlantic R. Co. 15; *Re* Wisconsin Cent. R. Co. 21.

BRIEFS AND NOTES.

Rules. *Note*, 868.

MAXIMS.

1. *Omne majus continet in se minus*. Dis. Op. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 42.
2. *Sic utere tuo ut alienum non laedas*. *Ex parte Koehler* (U. S. C. Ct.) 819.

BRIEFS AND NOTES.

Expressio unius est exclusio alterius. (U. S. C. Ct. N. J.) 416.

MISSIONARIES.

Missionaries may have reduced rates. *Re Religious Teachers*, 21.

NAVIGABLE WATERS.

1. Navigable waters of the United States are those which form by themselves or by uniting with others a continuous highway for commerce with other States. Cited in *Decker v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. Y.) 441.

2. The control of navigable waters constituting channels of communication between States and foreign countries, is within the commercial power of Congress. Cited in *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 388.

3. Congress may authorize a private corporation to occupy the navigable waters within a State and appropriate soil under them, for purposes of interstate commerce, without consent of State. *Stockton v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. J.) 411; *Decker v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. Y.) 434.

4. Act of Congress of June 16, 1886, authorizing construction of bridge across Staten Island Sound, known as Arthur Kill, etc., is valid. *Id.*

5. Fifth Amendment of Federal Constitution does not apply in such case. *Id.*

6. The shores of navigable waters and the soil under them were not granted by the Constitution to the United States but were reserved to the States respectively. Cited in *Id.* 441.

NEGROES. See COLORED PERSONS.

NONRESIDENTS. See COMMERCE, II, b.

OATH. See AFFIDAVITS.

OFFICE AND OFFICER. See AFFIDAVITS.

INTER S.

OVERCHARGE.

1. Hearing of complaint of people of Hot Springs, N. C., against the Western, North Carolina Railroad Company for overcharge in passenger rates; upon company's promise to refund excess, the case was permitted to remain open for a few days to see if company fulfilled promise. *Hot Springs v. Western N. C. R. R. Co.* 316.

2. Complaint for overcharges withdrawn where complainant's receipt in full settlement for overcharges was shown by respondent. *Stahl v. Oregon R. & Nav. Co.* 314.

PARALLEL LINES. See CHARGES AND DISCRIMINATION, 9.

PARTIES. See PLEADING AND PRACTICE, 1.

PASSENGERS. See BAGGAGE; CHARGES AND DISCRIMINATION, VI.

1. It is unjust discrimination to remove a colored passenger holding a first class ticket from a first class car to a second class car, less clean and comfortable. *Heard v. Georgia R. Co.* 493, 719. *Council v. Western & A. R. Co.* 292, 355, 638.

2. The separation of white and colored passengers is not unlawful if the accommodations are equal in all respects. *Id.*

3. The Commission declines to proceed on the plaintiff's claim for damages, for injuries done in his violent removal from car, leaving him his remedy in the courts. *Id.* 638.

PASSES.

1. Section 2 of Act prohibits giving of passes to particular persons; and the exception allowed in section 23 in favor of officers and employees of road does not include the families of such persons. *Ex parte Koehler* (U. S. C. Ct. Or.) 817.

2. Complaint charging use of free pass by Territorial Judge of Dakota. *Tuttle v. Northern Pac. R. R. Co.* 483, 588.

3. In the absence of an actual case, the Commission will not pass upon the question of passes to the United States Fish Commission. *Re United States Commission of Fish and Fisheries*, 606.

PETITION. See PLEADING AND PRACTICE, I.

PILOTAGE.

Pilotage regulations are susceptible of state regulation. Authorities cited in Dis. Op. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 41.

PLEADING AND PRACTICE.

I. COMPLAINT; PARTIES.

II. ANSWERS.

III. AMENDMENT.

IV. PRACTICE.

BRIEFS AND NOTES.

See AFFIDAVITS; COMMISSION; DEPOSITIONS; DISMISSAL AND DISCONTINUANCE; HEARING; JURY; REHEARING; RULES.

FOR PLEADINGS under various sections of Act, See various TITLES.

I. COMPLAINT; PARTIES.

1. **Complaint under section 13** must be by petition, stating facts claimed to be a violation of the Act, and verified; as many written or printed copies of the complaint must be presented as there may be respondents; **names and addresses** must be set forth and indorsed upon the writ; and a copy is to be served upon each respondent by mail or personally with notice, to satisfy the complaint or answer within time specified. *Rule 4, Appendix I, 841.*

2. Application for exception under Act will only be granted after investigation upon **verified petition**. 15; *Re Southern Pac. R. R. Co.* 16.

3. Carrier must be made a **party** where merit of controversy cannot be determined without it. *Riddle v. Pittsburgh & L. E. R. Co.* 773.

4. To test the reasonableness of a through rate, all the roads responsible for it should be made defendants. *Allen v. Louisville, N. A. & C. R. Co.* 621.

5. The person aggrieved should complain in his own name; a complaint by a ticket broker having no interest in the transaction will not be entertained. *Ottinger v. Southern Pac. R. R. Co.* 607.

II. ANSWERS.

6. Answers, **verified**, must be filed with the Commission **within twenty days** from notice, unless a shorter time is prescribed, and a copy served upon complainant. *Rule 5, Appendix I, 841.*

7. If respondent makes **satisfaction** before answering, the written acknowledgment thereof must be filed and may be **set forth** in answer; if made after service of answer, a supplemental answer may be filed. *Id.* 842.

8. Upon **failure to answer**, the Commission will take proof and make order. *Rule 8, Id.* 842.

III. AMENDMENT.

9. Pleadings may be amended in **discretion** of Commission. *Rule 10, Appendix I, 842.*

10. Practice of the Commission in allowing amendments is to be limited under rules of law; amendments to complaint, introducing **new charges, not allowed**. *Riddle v. Baltimore & O. R. R. Co.* 701.

11. Complaint against railroad company stating that it had been previously in the hands of a receiver who was now president, was **allowed** to be amended so as to show existence of **receivership** which it appeared on hearing was still in existence. *Reynolds v. Western New York & P. R. Co.* 685.

IV. PRACTICE.

12. Powers and proceedings of Commission. *Letter of Chairman Cooley*, 408.

13. Practice and proceedings shall be as **simple as possible**. *Associated Wholesale Grocers v. Missouri P. R. Co.* 321.

14. Letter of *Chairman Cooley* in response to communication expressing desire that Com-

mission would go to certain State and there hear testimony in certain cases then pending at issue, and such other cases as may have arisen in that State; suggestion in letter that **facts be put in writing** and that counsel make diligent effort to bring within smallest possible compass the necessity for oral evidence. 446.

15. **Orders for suspension** must be based upon investigation. *Jurisdiction of Commission*, 78.

16. Leave should be granted to **withdraw petition when petitioner alleges legality of practice** sought to be authorized. *Re Export Trade of Boston*, 25.

17. If, at hearing, defendant company **avows purpose to comply with law**, the Commission must act upon the assumption that defendant will do so, until it has evidence that the purpose is not lived up to. *Holbrook v. St. Paul, M. & M. R. Co.* 823.

18. A **motion to dismiss** a complaint **denied** because **no notice** of motion had been given and the object of the motion was to reach the merits of the case and to have them passed upon summarily instead of at final hearing. *Associated Wholesale Grocers v. Missouri P. R. Co.* 321.

19. Where after the examination of the evidence upon a complaint charging unjust discrimination and unlawful preference in tariff of rates, but before the announcement of the opinion, the **respondent conceded the relief** sought and published a tariff of rates in accordance with the complaint, the **Commission only made a report to complete the record** of the case. *Manufacturers & Jobbers Union v. Minneapolis & St. L. R. Co.* 680.

20. When an important **question** is raised by the pleadings, but the parties **neither by evidence nor by argument** supply the Commission with information as to it, it will not be decided. *Rice v. Louisville & N. R. Co.* 722.

BRIEFS AND NOTES.

Rules of practice. *Note*, 872.

POLICE REGULATIONS. See **COMMERCE**, II, c.

PRACTICE. See **PLEADING AND PRACTICE**, IV.

RAILROAD COMPANIES. See **AGENTS AND BROKERS; BAGGAGE; BILL OF LADING; CHARGES AND DISCRIMINATION; COMMERCE; CONNECTING LINES; LONG AND SHORT HAUL; PASSENGERS; RATES.**

RATES. See **CHARGES AND DISCRIMINATION; SCHEDULES.**

1. The **Commission has no power to make rates generally**, but only to determine whether rates imposed by railroads are in conflict with statute. *Thatcher v. Fitchburg R. R. Co.* 356; *Re Theatrical Rates*, 18.

2. But the Commission has power to **regulate fares and freights** for transportation between different States. *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.), 808.

3. A **state statute cannot regulate rates**

for interstate commerce. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 81.

4. Rates should be so **relatively reasonable** as to protect communities and business against unjust discrimination. *Boards of Trade Union v. Chicago, M. & St. P. R. Co.* 608.

5. A carrier operating **parallel lines**, and accepting lower rates on one line, should make corresponding charges on other line. *Id.*

6. Rates are not to be lower for **commercial travelers** than for general public. *Associated Wholesale Grocers v. Missouri Pacific R. Co.* 321, 393; *Larrison v. Chicago & Grand Trunk R. Co.* 369.

7. Nor for **land explorers** and settlers. *Smith v. Northern Pac. R. Co.* 611.

8. But may be reduced for **religious teachers** and as act of charity. *Re Religious Teachers*, 21.

9. A carrier may make **special rates** with individuals, to enable the latter to make proposals to the Interior Department for transportation of Indian supplies, such **transportation** being for the **United States**. *Re Indian Supplies*, 22.

10. Twenty-five dollars for 1,000 miles is not unreasonable for a **mileage ticket**. *Associated Wholesale Grocers v. Missouri Pacific R. Co.* 321, 393.

11. Carriers charged with exorbitant rates may **change rates before hearing**. *Pulton v. Chicago etc. R. Co.* 375.

REBATE.

A discount allowed by a railroad company where consignments of coal in one year shall amount to 30,000 tons or upwards is an **unjust discrimination**. *Providence Coal Co. v. Providence etc. R. R. Co.* 363.

REFUSAL TO FURNISH CARS. See CHARGES AND DISCRIMINATION, IV.

REHEARING.

The Commission will **not** order a rehearing involving expenses to parties, **unless** satisfied that the **result** might be **changed**. *Riddle v. Pittsburgh & L. E. R. Co.* 773.

RELIGIOUS TEACHERS.

Religious teachers may have reduced **rates**. *Re Religious Teachers*, 21.

REMOVAL OF CAUSES.

Iowa Act of April 6, 1886, seeking to make right of **foreign corporations** to transact business in that State dependent upon surrender of right to remove causes to federal courts, is invalid. *Barron v. Burnside* (U. S. Sup. Ct.) 295.

RIVERS. See NAVIGABLE WATERS.

RULES.

1. **Sessions of Commission** held at Washington No. 1315 F. St. northwest, at 11 o'clock, daily, except Saturdays and Sundays. When special sessions are held elsewhere, necessary regulations will be made. *Rule 1, Appendix I*, 841.

INTER 8.

2. **Applications under section 4** (Long and Short Haul section), to be made by verified **petition**, stating extent of relief desired and points between which authority is asked to charge less. *Rule 2, Id.*

3. **Notice** to be published by petitioner in two newspapers along line for ten days prior to presentation of petition, stating nature of relief applied for and time of presentation of application; proof of each publication to be filed with petition. *Id.*

4. **Investigation** will be made by **Commission** at time and place designated, where testimony will be received. *Rule 3, Id.*

5. **Complaint under section 13** must be by verified petition, stating facts claimed to be violation of Act; as many **copies** of complaint must be presented as there are respondents; **names and addresses of parties** must be set forth and indorsed upon writ; and copy is to be **served** upon each respondent, with notice to satisfy complaint or answer within time specified. *Rule 4, Id.*

6. **Answers**, verified, must be **filed** with Commission within twenty days from notice, unless shorter time is prescribed; and copy served upon complainant. *Rule 5, Id.*

7. If respondent makes satisfaction before answering, written acknowledgment thereof must be filed and may be set forth in answer; if made after service of answer, **supplemental answer** may be filed. *Id.* 842.

8. Carrier deeming complaint insufficient may serve notice for **hearing** on it **without answer**; facts stated are admitted. Motion to dismiss for insufficiency may be made at hearing. *Rule 6, Id.*

9. **Adjournment** and extension of time is within discretion of Commission. *Rule 7, Id.*

10. Upon **issue** being **joined**, time and place of **hearing** will be assigned; witnesses examined orally before Commission, except where otherwise ordered; petitioner has burden of proof. *Rule 8, Id.*

11. Upon **failure to answer**, the Commission will take proof and make order. *Id.*

12. **Subpenas** will be issued by any commissioner and will be required to be obeyed. *Rule 9, Id.*

13. **Depositions** may be taken as printed by U. S. R. S., §§ 863, 864 without application to Commission. *Rule 9, as amended; Appendix II*, 848; 410.

14. **Amendments** of pleadings are in discretion of Commission. *Rule 10, Appendix I*, 842.

15. **Copies** of petition, opinion, etc., will be furnished upon payment of expense thereof. *Rule 11, Id.*

16. **Affidavits** may be taken before any officer authorized to administer oath. *Rule 12, Id.*

BRIEFS AND NOTES.

Rules of practice. *Note*, 873.

RULINGS.

1. The Commission will **not** make any ruling where petitioner alleges **legality**

of practice sought to be authorized. *Re Export Trade of Boston*, 25.

2. The Commission can **not** construe the Act before violation thereof charged. *Re Order of Railway Conductors*, 18; *Re Theatrical Rates*, 18; *Re Inmates of Nat. Homes*, 73, 75.

SCHEDULES.

1. When purposes of Act seem to be fully accomplished by rate sheets as printed, and no one complains, Commission may not feel inclined to interfere on its own motion where sheets are printed in smaller type than prescribed by Act. *Re Rate Sheets*, 316.

2. Any one member of a joint combination may file copies of joint tariff for all the members. 76.

3. Neglect to publish rates for mileage tickets is violation of Act. *Larrison v. Chicago etc. R. R. Co.* 369.

4. Complaint alleging violation of section 6. *Plummer v. Union Pac. R. Co.* 596.

SERVANTS. See EMPLOYEES.

SESSIONS. See RULES OF COURT, 1.

SETTLERS.

Land explorers and settlers are not entitled to lower rates than the general public. *Smith v. Northern Pac. R. R. Co.* 611.

SHIPPING FACILITIES. See CHARGES AND DISCRIMINATION, IV, V.

SHIPS AND SHIPPING. See COMMERCE, 17, 26.

SLEEPING CARS.

A state tax upon sleeping cars of a company, used in carrying passengers into and out of the State, is void as a regulation of interstate commerce. *Indiana v. Woodruff Sleeping & Parlor Coach Co.* (Ind. Sup. Ct.) 798; S. P. cited in *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 81.

SPECIAL LAWS. See CONSTITUTIONAL LAW.

STATE. See COMMERCE, II.

STATIONS. See DEPOTS.

STATISTICS. See DEPARTMENT OF STATISTICS.

STATUTES. See ACT TO REGULATE COMMERCE; CONSTITUTIONAL LAW.

The Interstate Commerce Act does not afford a remedy for transactions occurring before it took effect. *Ottinger v. Southern Pac. R. Co.* 607.

SUBPENA. See RULES, 12.

SUSPENSION OF LONG AND SHORT HAUL SECTION (§ 4).
See LONG AND SHORT HAUL.

TARIFFS. See SCHEDULES, 2; JOINT TARIFFS.

TAXES. See COMMERCE, II.

TELEGRAPH COMPANIES.

1. Intercourse by telegraph between INTER 8.

States is interstate commerce, and State has no authority to regulate same. *Western Union Tel. Co. v. Pendleton* (U. S. Sup. Ct.) 306. S. P. cited in *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 37.

2. Indiana Statute regulating mode in which messages sent by telegraph companies, doing business in that State, shall be delivered in other States, is void, as an interference with interstate commerce. *Western U. Tel. Co. v. Pendleton* (U. S. Sup. Ct.) 306.

TESTIMONY.

1. In matter of various petitions for suspension of section 4 in proceedings at Atlanta, Georgia. 76.

2. In proceedings at Mobile, 136; at New Orleans, 179; at Memphis, 213.

3. In *Boston & Albany R. R. Co. v. Boston & Lowell R. R. Co.* 500.

4. On application charging discrimination in favor of New York, in rates to Chicago, as against Boston. *Re Export Trade of Boston*, 18, 23.

5. In proceeding against Providence & Worcester Railroad Company for discrimination. *Providence Coal Co. v. Providence etc. R. R. Co.* 316.

6. In proceeding against Pennsylvania Railroad Company for unlawful preference in interchange of passengers at Chicago. *Chicago & Alton R. R. Co. v. Pennsylvania R. R. Co.* 293.

7. On petition charging refusal to furnish cars. *Re Thatcher*, 317.

8. On complaint against Western & Atlantic Railroad Company for damages for forcible ejectment from first class car of colored man holding first class ticket. *Council v. Western etc. R. R. Co.* 855.

THEATRICAL RATES.

The Commission will not say in advance of violation of Act what rates company shall make for any class or organization of persons. *Re Theatrical Rates*, 18.

TICKETS.

1. Carriers may continue issuance of mileage passenger tickets at reasonable prices, free from discrimination. *Larrison v. Chicago etc. R. Co.* 369.

2. Neglect to publish rates for mileage tickets is violation of Act. *Id.*

3. Twenty-five dollars per 1,000 miles is not an unreasonable rate for mileage ticket. *Associated Wholesale Grocers v. Missouri Pac. R. R. Co.* 393.

4. A sale of mileage tickets to commercial travelers at a lower rate than to other passengers is an unjust discrimination. *Id.*; *Larrison v. Chicago etc. R. R. Co.* 369.

5. A release of liability by commercial travelers is not a good consideration for such discrimination. *Id.*

6. Rate at which excursion or commutation tickets are sold does not entitle mileage ticket purchaser to complain of unjust discrimination if charged a higher rate. *Associated Wholesale Grocers v. Missouri Pac. R. R. Co.* 393.

7. The Act does not require **one company** to **sell** through **tickets over road of another**. *Chicago etc. R. R. Co. v. Pennsylvania Co.* 857.

UNDERBILLING. See CHARGES AND DISCRIMINATION, 44-48.

UNITED STATES.

1. United States may **condemn land within State** without consent of State. *Stockton v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. J.) 411.

2. Fish and eggs, distributed by the **United States Commission of Fish and Fisheries**, are entitled to **free transportation**. *Re United States Commission of Fish and Fisheries*, 606.

8. In the absence of an actual case, the Commission will not pass upon the question of **passes** to the United States Fish Commission. *Id.*

INTER 8.

4. A carrier may make **special rates** with individuals to enable the latter to make proposals to the Interior Department for transportation of Indian supplies, such **transportation** being for the United States. *Re Indian Supplies*, 22.

USAGE. See CUSTOM AND USAGE.

WAREHOUSEMAN. See COMMERCE, 28.

WATERS AND WATERCOURSES.
See NAVIGABLE WATERS.

WHARFAGE. See COMMERCE, 18-21.

WITNESS.

Subpenas will be issued by any commissioner and will be required to be obeyed. *Rule 9, Appendix I*, 842.

END OF VOLUME I.

parties respecting the receiving, forwarding or delivering of any animals, articles, goods or things, as aforesaid shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods or things respectively for carriage; *Provided, also*, That nothing herein contained shall alter or affect the rights, privileges or liabilities of any such company under the said Act of the 11 Geo. 4 & 1 Wm. 4, c. 68, with respect to articles of the description mentioned in the said Act.

8. This Act may be cited for all purposes as the "Railway and Canal Traffic Act, 1854."

THE REGULATION OF RAILWAYS ACT, 1868.

(31 & 32 Vict. c. 119.)

Interpretation of Terms.

Sec. 2. In this Act the term "railway" means the whole or any portion of a railway or tramway, whether worked by steam or otherwise.

The term "company" means a company incorporated either before or after the passing of this Act for the purpose of constructing, maintaining, or working a railway in the United Kingdom (either alone or in conjunction with any other purpose), and includes, except when otherwise expressed, any individual or individuals not incorporated who are owners or lessees of a railway in the United Kingdom, or parties to an agreement for working a railway in the United Kingdom.

The term "person" includes a body corporate.

Provision for Securing Equality of Treatment where Railway Company Works Steam Vessels.

Sec. 16. Where a company is authorized to build, or buy, or hire, and to use, maintain, and work, or to enter into arrangements for using, maintaining, or working, steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels, then and in every such case tolls shall be at all times charged to all persons equally and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favor of or against any person using the steam vessels in consequence of his having traveled or being about to travel on the whole or any part of the company's railway, or not having traveled or not being about to travel on any part thereof, or in favor of or against any person using the railway in consequence of his having used or being about to use, or his not having used or not being about to use, the steam vessels, and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

The provisions of the Railway and Canal Traffic Act, 1854, so far as the same are applicable, shall extend to the steam vessels and to the traffic carried on thereby.

THE REGULATION OF RAILWAYS ACT, 1873.

(36 & 37 Vict. c. 48.)

An Act to make better provision for carrying into effect the Railway and Canal Traffic Act, 1854, and for other purposes connected therewith. (21st July, 1873.)

Be it enacted as follows:

Preliminary.

1. This Act may be cited as the Regulation of Railways Act, 1873.

2. This Act shall, except as herein is otherwise expressly provided, come into operation on the first day of September, 1873, which date is in this Act referred to as the commencement of this Act.

3. In this Act the term "railway company" includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament.

The term "canal company" includes any person being the owner or lessee of, or working, or entitled to charge tolls for the use of any canal in the United Kingdom constructed or carried on under the powers of any Act of Parliament.

The term "person" includes a body of persons corporate or unincorporate.

The term "railway" includes every station, siding, wharf, or dock of or belonging to such railway and used for the purposes of public traffic.

The term "canal" includes any navigation which has been made under or upon which tolls may be levied by authority of Parliament, and also the wharves and landing places of and belonging to such canal or navigation, and used for the purposes of public traffic.

The term "traffic" includes not only passengers and their luggage, goods, animals, and other things conveyed by any railway company or canal company, but also carriages, wagons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company.

The term "mails" includes mail bags and post letter bags.

The term "special act" means a local or local and personal act, or an act of a local and personal nature, and includes a provisional order of the board of trade confirmed by Act of Parliament, and a certificate granted by the board of trade under the Railways Construction Facilities Act, 1864.

The term "the treasury" means the commissioners of Her Majesty's treasury for the time being.

The term "superior court" means in England any of Her Majesty's courts at Westminster; in Ireland, any of Her Majesty's superior courts at Dublin, and in Scotland, the court of session.

Appointment and Duties of Railway Commissioners.

4. For the purpose of carrying into effect the provisions of the Railway and Canal Traffic Act, 1854, and of this Act, it shall be lawful for Her Majesty, at any time after the passing of this Act, by warrant under the royal sign

manual, to appoint not more than three commissioners, of whom one shall be of experience in the law and one of experience in railway business, and not more than two assistant commissioners; and upon the occurrence of any vacancy in the office of any such commissioner or assistant commissioner from time to time in like manner to appoint some fit person to fill the vacancy. It shall be lawful for the lord chancellor, if he think fit, to remove for inability or misbehavior any commissioner appointed in pursuance of this Act.

The three commissioners appointed under this Act (and in this Act referred to as the commissioners), shall be styled the railway commissioners, and shall have an official seal, which shall be judicially noticed. They may act notwithstanding any vacancy in their number. The said assistant commissioners shall hold office during the pleasure of Her Majesty.

5. Any person appointed a commissioner under this Act shall, within three calendar months after his appointment, absolutely sell and dispose of any stock, share, debenture stock, debenture bond, or other security of any railway or canal company in the United Kingdom which he shall at the time of his appointment own or be interested in for his own benefit; it shall not be lawful for any person appointed a commissioner under this Act, so long as he shall hold office as such commissioner, to purchase, take, or become interested in for his own benefit, any such stock, share, debenture stock, debenture bond, or other security, and if any such stock, share, debenture stock, debenture bond or other security, or any interest therein, shall come to or vest in such commissioner by will or succession, for his own benefit, he shall, within three calendar months after the same shall so come to or vest in him, absolutely sell or dispose of the same or his interest therein.

It shall not be lawful for the commissioners, except by consent of the parties to the proceedings, to exercise any jurisdiction by this Act conferred upon them in any case in which they shall be directly or indirectly interested in the matter in question. The commissioners shall devote the whole of their time to the performance of their duties under this Act, and shall not accept or hold any office or employment inconsistent with this provision.

6. Any person complaining of anything done or of any omission made in violation or contravention of section 2 of the Railway and Canal Traffic Act, 1854, or of section 16 of the Regulation of Railways Act, 1868, or of this Act, or of any enactment amending or applying the said enactments respectively, may apply to the commissioners, and upon the certificate of the board of trade alleging any such violation or contravention, any person appointed by the board of trade in that behalf may in like manner apply to the commissioners; and for the purpose of enabling the commissioners to hear and determine the matter of any such complaint, they shall have and may exercise all the jurisdiction conferred by section 8 of the Railway and Canal Traffic Act, 1854, on the several courts and judges empowered to hear and determine complaints under that Act; and may make orders of like nature with the writs and orders authorized to be is-

sued and made by the said courts and judges; and the said courts and judges shall, except for the purpose of enforcing any decision or order of the commissioners, cease to exercise the jurisdiction conferred on them by that section.

7. Where the commissioners have received any complaint alleging the infringement by a railway company or a canal company of the provisions of any enactment in respect of which the commissioners have jurisdiction, they may, if they think fit, before requiring or permitting any formal proceedings to be taken on such complaint, communicate the same to the company against whom it is made, so as to afford them an opportunity of making such observations thereon as they may think fit.

8. Where any difference between railway companies, or between canal companies, or between a railway company and a canal company, is, under the provisions of any general or special Act, passed either before or after the passing of this Act, required or authorized to be referred to arbitration, such difference shall, at the instance of any company, party to the difference, and with the consent of the commissioners, be referred to the commissioners for their decision in lieu of being referred to arbitration; *Provided*, That the power of compelling a reference to the commissioners in this section contained shall not apply to any case in which any arbitrator has in any general or special Act been designated by his name, or by the name of his office, or in which a standing arbitrator having been appointed under any special or general Act, the commissioners are of opinion that the difference in question may more conveniently be referred to him.

9. Any difference to which a railway company or canal company is a party, may, on the application of the parties to the difference, and with the assent of the commissioners, be referred to them for their decision.

10. The following powers and duties of the board of trade shall be transferred to the commissioners, namely:

(1.) The powers of the board of trade under part III of the Railway Clauses Act, 1863, or under any special Act, with respect to the approval of working agreements between railway companies; and,

(2.) The powers and duties of the board of trade under section 35 of the Railway Clauses Act, 1863, with respect to the exercise by railway companies of their powers in relation to steam vessels.

And the provisions of the said Acts conferring such powers or imposing such duties, or otherwise referring to such powers or duties, shall, so far as is consistent with the tenor thereof, be read as if the commissioners were therein named instead of the board of trade.

Explanation and Amendment of Law.

11. *Whereas*, by section 2 of the Railway and Canal Traffic Act, 1854, it is enacted that every railway company and canal company and railway and canal company shall, according to their respective powers, afford all reasonable facilities for the receiving, and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respect-

ively, and for the return of carriages, trucks, boats, and other vehicles; and that no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, or shall subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and that every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway, or canal, or railway and canal communication, or which have the terminus, station, or wharf of the one, near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways or canals all the traffic arriving by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals, or railways and canals as a continuous line of communication, and so that all reasonable accommodation may by means of the railways and canals and of the several companies be at all times afforded to the public in that behalf:

And, *whereas*, it is expedient to explain and amend the said enactment, *Be it therefore enacted*, that—

Subject as hereinafter mentioned, the said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding, and delivering by every railway company and canal company and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares (in this Act referred to as through rates).

Provided as follows:

(1.) The company requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding company, stating both its amount and its apportionment, and the route by which the traffic is proposed to be forwarded.

(2.) Each forwarding company shall, within the prescribed period after the receipt of such notice, by written notice, inform the company requiring the traffic to be forwarded whether they agree to the rate and route; and, if they object to either, the grounds of the objection.

(3.) If at the expiration of the prescribed period no such objection has been sent by any forwarding company, the rate shall come into operation at such expiration.

(4.) If any objection to the rate or route has been sent within the prescribed period, the matter shall be referred to the commissioners for their decision.

(5.) If an objection be made to the granting of the rate or to the route, the commissioners shall consider whether the granting of the rate is a due and reasonable facility, in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly.

(6.) If the objection be only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the commissioners as to its apportionment shall be retrospective, in any other case the operation of the rate shall be suspended until the decision is given.

(7.) The commissioners, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance or working of the route, or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof.

(8.) It shall not be lawful for the commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route.

(9.) The prescribed period mentioned in this section shall be ten days, or such longer period as the commissioners may from time to time, by general order, prescribe.

Where a railway company or canal company use, maintain, or work, or are party to an arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels and to the traffic carried thereby.

12. Subject to the provisions in the last preceding section contained, the commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly.

13. A complaint of a contravention of section 2 of the Railway and Canal Traffic Act, 1854, as amended by this Act, may be made to the commissioners by a municipal or other public corporation, local or harbor board, without proof that the complainants are aggrieved by the contravention; *Provided*, That a complaint shall not be entertained by the commissioners in pursuance of this section unless such complaint is accompanied by a certificate of the board of trade to the effect that in their opinion the case, in respect of which the complaint is made, is a proper one to be submitted for adjudication to the commissioners by such municipal or other public corporation, local or harbor board.

14. Every railway company and canal company shall keep at each of their stations and wharves a book or books showing every rate for the time being charged for the carriage of traffic other than passengers and their luggage, from that station or wharf to any place to which they book, including any rates charged under any special contract, and stating the distance from that station or wharf of every station, wharf, siding, or place to which any such rate is charged.

Every such book shall, during all reasonable

hours, be open to the inspection of any person without the payment of any fee.

The commissioners may from time to time, on the application of any person interested, make orders with respect to any particular description of traffic requiring a railway company or canal company to distinguish in such book how much of each rate is for the conveyance of the traffic on the railway or canal, including therein tolls for the use of the railway or canal, for the use of carriages or vessels, or for locomotive power, and how much is for other expenses, specifying the nature and detail of such other expenses.

Any company failing to comply with the provisions of this selection shall, for each offense, and in the case of a continuing offense, for every day during which the offense continues, be liable to a penalty not exceeding £5, and such penalty shall be recovered and applied in the same manner as penalties imposed by the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845 (as the case may require) are for the time being recoverable and applicable.

15. The commissioners shall have power to hear and determine any question or dispute which may arise with respect to the terminal charges of any railway company, where such charges have not been fixed by any Act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading and unloading, covering collection, delivery, and other services of a like nature; any decision of the commissioners under this section shall be binding on all courts and in all legal proceedings whatsoever.

16. No railway company or canal company, unless expressly authorized thereto by any Act passed before the passing of this Act, shall, without the sanction of the commissioners, to be signified in such manner as they may by general order or otherwise direct, enter into any agreement whereby any control over or right to interfere in or concerning the traffic carried or rates or tolls levied on any part of a canal is given to the railway company, or any persons managing or connected with the management of any railway; and any such agreement made after the commencement of this Act without such sanction shall be void.

The commissioners shall withhold their sanction from any such agreement which is in their opinion prejudicial to the interests of the public.

Not less than one month before any such agreement is so sanctioned, copies of the intended agreement certified under the hand of the secretary of the railway company or one of the railway companies party or parties thereto, shall be deposited for public inspection at the office of the commissioners, and also at the office of the clerk of the peace of the county, riding, or division in England or Ireland, in which the head office of any canal company party to the agreement is situate, and at the office of the principal sheriff clerk of every such county in Scotland, and notice of the intended agreement, setting forth the parties between whom or on whose behalf the same is intended to be made, and such further particulars with respect thereto as the commis-

sioners may require, shall be given by advertisement in the London, Edinburgh or Dublin Gazette, according as the head office of any canal company party to the agreement is situate in England, Scotland, or Ireland, and shall be sent to the secretary or principal officer of every canal company any of whose canals communicates with the canal of any company party to the agreement; and shall be published in such other way, if any, as the commissioners for the purpose of giving notice to all parties interested therein by order direct.

17. Every railway company owning or having the management of any canal or part of a canal shall at all times keep and maintain such canal or part, and all the reservoirs, works, and conveniences thereto belonging, thoroughly repaired and dredged and in good working condition, and shall preserve the supplies of water to the same, so that the whole of such canal or part may be at all times kept open and navigable for the use of all persons desirous to use and navigate the same without any unnecessary hindrance, interruption, or delay.

(Sections 18, 19 and 20 relate to the *Conveyance of Mails*.)

Regulations as to Commerce.

Section 21 prescribes the duties of "assistant commissioners," and section 22 the salaries of the commissioners and their assistants; while sections 23 and 24 provide for the appointment of assessors and subordinate officers and clerks.

25. For the purposes of this Act the commissioners shall, subject as in this Act mentioned, have full power to decide all questions, whether of law or of fact, and shall also have the following powers; that is to say:

(a.) They may, by themselves or by any persons appointed by them to prosecute an inquiry, enter and inspect any place or building being the property or under the control of any railway or canal company, the entry or inspection of which appears to them requisite;

(b.) They may require the attendance of all such persons as they think fit to call before them and examine, and may require answers or returns to such inquiries as they think fit to make;

(c.) They may require the production of all books, papers, and documents relating to the matters before them;

(d.) They may administer an oath;

(e.) They may, when sitting in open court, punish for contempt in like manner as if they were a court of record.

Every person required by the commissioners to attend as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred to a master of one of the superior courts, who, on request, under the hands of the commissioners, shall ascertain and certify the proper amount of such expenses.

26. Any decision or any order made by the commissioners for the purpose of carrying into effect any of the provisions of this Act may be made a rule or order of any superior court, and shall be enforced either in the manner directed by section 8 of the Railway and Canal

Traffic Act, 1854, as to the writs and orders therein mentioned, or in like manner as any rule or order of such court.

For the purpose of carrying into effect this section, general rules and orders may be made by any superior court in the same manner as general rules and orders may be made with respect to any other proceedings in such court.

The commissioners may review and rescind or vary any decision or order previously made by them; or any of them.

The commissioners shall, in all proceedings before them under sections 6, 11, 12 and 13 of this Act, and may, if they think fit, in all other proceedings before them under this Act, at the instance of any party to the proceedings before them, and upon such security being given by the appellant as the commissioners may direct, state a case in writing for the opinion of any superior court determined by the commissioners upon any question which, in the opinion of the commissioners, is a question of law.

The court to which the case is transmitted shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the commissioners with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such order as to costs as to the court may seem fit; and all such orders shall be final and conclusive on all parties; *Provided*, That the commissioners shall not be liable to any costs in respect or by reason of any such appeal.

The operation of any decision or order made by the commissioners shall not be stayed pending the decision of any such appeal, unless the commissioners shall otherwise order. Save as aforesaid, every decision and order of the commissioners shall be final.

27. The commissioners shall sit at such times and in such places and conduct their proceedings in such manner as may seem to them most convenient for the speedy dispatch of business; they may, subject as in this Act mentioned, sit together or separately, and either in private or in open court; but any complaint made to them shall, on the application of any party to the complaint, be heard and determined in open court.

28. The costs of and incidental to any proceeding before the commissioners shall be in the discretion of the commissioners.

29. The commissioners may at any time after the passing of this Act, and from time to time, make such general orders as may be requisite for the regulation of proceedings before them, including applications for and the stating of cases for appeal, and also for prescribing, di-

recting or regulating any matter which they are authorized by this Act to prescribe, direct, or regulate by general order, and also for enabling the commissioners in cases to be specified in such general orders to exercise their jurisdiction by any one or two of their number; *Provided*, That any person aggrieved by any decision or order made in any case so specified may require a rehearing by all the commissioners. They may further make regulations for enabling them to carry into effect the provisions of this Act, and may from time to time revoke and alter any general orders or regulations made in pursuance of this Act. Every general order, and every alteration in a general order, made in pursuance of this section, shall be submitted to the lord chancellor for approval, and shall not come into force until it shall be approved by him.

Every general order purporting to be made in pursuance of this Act shall, immediately after the making thereof, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, within seven days after the then next meeting of Parliament; and if either House of Parliament, by a resolution passed within two months after such general order has been so laid before the said House, resolve that the whole or any part of such general order ought not to continue in force, the same shall, after the date of such resolution, cease to be of any force, without prejudice, nevertheless, to the making of any other general order in its place, or to anything done in pursuance of this general order before the date of such resolution; but, subject as aforesaid, every general order purporting to be made in pursuance of this Act shall be deemed to have been duly made and within the powers of this Act, and shall have effect as if it had been enacted in this Act.

30. Every document purporting to be signed by the commissioners, or any one of them, shall be received in evidence without proof of such signature, and until the contrary is proved shall be deemed to have been so signed and to have been duly executed or issued by the commissioners.

31. The commissioners shall, once in every year, make a report to Her Majesty of their proceedings under this Act during the past year; and such report shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting, and if not, then within fourteen days after the next meeting of Parliament.

(Sections 32-37 provide for fees, notices, etc.)
(The Rules and Forms of Procedure under this Act are printed in 2 Nev. & Mac. R. R. Cas. 2-14.)

APPENDIX IV.

NOTE ON DECISIONS AFFECTING THE ACT TO REGULATE COMMERCE, APPROVED FEBRUARY 4, 1887; AND REFERENCES TO CONSTRUCTIONS OF THE ENGLISH STATUTES UPON THE SUBJECT OF COMMERCE.

(PREPARED BY ALBERT B. GUILBERT.)

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CONSTITUTIONALITY; POWER OF CONGRESS.

The United States Constitution provides: *

"The Congress shall have power * * * to regulate commerce with foreign Nations and among the States and with the Indian Tribes."

Art. 1, § 8, cl. 3.

"Congress shall have power * * * to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested in this Constitution in the Government of the United States, or in any department or office thereof."

Art. 1, § 8, cl. 18.

"No tax or duty shall be laid on articles exported from any State."

Art. 1, § 9, cl. 5.

"No preference shall be given by any regulation of commerce, or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another."

Art. 1, § 9, cl. 6.

"No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for
INTER 8.

the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

Art. 1, § 10, cl. 3.

The previous Acts of Congress regulating commerce are:

The Act of March 8, 1873, R. S. §§ 4386-4390, regulating the transportation of live stock, held constitutional in:

U. S. v. Boston & A. R. Co. 15 Fed. Rep. 209; U. S. v. Louisville & N. R. Co. 18 Fed. Rep. 480; U. S. v. East Tenn V. & G. R. Co. 13 Fed. Rep. 642.

The Act of June 15, 1856, R. S. § 5258, providing that railroads may form continuous lines for transportation between States held constitutional in:

Dubuque & S. C. R. Co. v. Richmond, 86 U. S. 19 Wall. 584 (22 L. ed. 173); Council Bluffs v. Kansas City, St. J. & C. B. R. Co. 45 Iowa, 338; Hardy v. Atchison, T. & S. F. R. Co. 32 Kan. 698.

In the report of the Senate select committee on interstate commerce, submitted January 18, 1886, pp. 28-33, the constitutionality of the Act is predicated upon the following decisions:

Cooley v. Board of Wardens, 53 U. S. 12 How. 299 (13 L. ed. 996); Mobile Co. v. Kimball, 102 U. S. 691 (26 L. ed. 238); Gloucester

Ferry Co. v. Pa. 114 U. S. 196 (29 L. ed. 158); 1 Inters. Com. Rep. 382; Brown v. Houston, 114 U. S. 622 (29 L. ed. 257); Gibbons v. Ogden, 22 U. S. 9 Wheat. 1 (6 L. ed. 28); Pa. v. Wheeling & B. Bridge Co. 54 U. S. 18 How. 518 (14 L. ed. 249).

Marshall, C. J., in Gibbons v. Ogden, 22 U. S. 9 Wheat. 196, 197 (6 L. ed. 70) says:

"It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. * * * If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign Nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its Constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States."

The power of Congress to regulate commerce is not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but keeps pace with the progress of the country and adapts itself to new developments of time and circumstances.

Pensacola Tel. Co. v. W. U. Tel. Co. 96 U. S. 1 (24 L. ed. 708); W. U. Tel. Co. v. Texas, 105 U. S. 460 (26 L. ed. 1067).

The constitutional power is necessarily exclusive whenever the subjects are national in character, and admit only of one uniform system or plan of regulation.

Robbins v. Taxing Dist. of Shelby Co. 120 U. S. 489 (30 L. ed. 694); 1 Inters. Com. Rep. 45; Phila. & S. M. Steamship Co. v. Pa. 123 U. S. 326 (30 L. ed. 1200); 1 Inters. Com. Rep. 308; Wabash, St. L. & P. R. Co. v. Ill. 118 U. S. 557 (30 L. ed. 244); 1 Inters. Com. Rep. 31; Gloucester Ferry Co. v. Pa. 114 U. S. 196, 203 (29 L. ed. 158, 161); Mobile Co. v. Kimball, 102 U. S. 691, 697 (26 L. ed. 238, 239); The Case of the State Freight Tax, 82 U. S. 15 Wall. 282 (21 L. ed. 146); Henderson v. Mayor of N. Y. 92 U. S. 260 (23 L. ed. 848).

The nonexercise of the power in respect to the regulation of commerce between the States is equivalent to a declaration that such commerce shall be free and untrammelled except in matters of local concern.

Welton v. Mo. 91 U. S. 275 (23 L. ed. 347); Brown v. Houston, 114 U. S. 622 (29 L. ed. 257); Pickard v. Pullman S. Car Co. 117 U. S. 84 (29 L. ed. 785); Wabash, St. L. & P. R. Co. v. Ill. 118 U. S. 557 (30 L. ed. 244); 1 Inters. Com. Rep. 31; Walling v. Mich. 116 U. S. 446 (29 L. ed. 691); Corson v. Md. 120 U. S. 502 (30 L. ed. 699); 1 Inters. Com. Rep. 50; Hall v. DeCuir, 95 U. S. 485 (24 L. ed. 547); Hannibal & St. J. R. Co. v. Husen, 95 U. S. 465 (24 L. ed. 527); Robbins v. Shelby Co. Taxing Dist. 120 U. S. 489 (30 L. ed. 694); 1 Inters. Com. Rep. 45; Gloucester Ferry Co. v. Pa. 114 U. S. 196 (29 L. ed. 158); 1 Inters. Com. Rep. 382; Phila. & S. M. Steamship Co. v. Pa. 123 U. S. 326 (30 L. ed. 1200); 1 Inters. Com. Rep. 308; State R. Comrs. v. R. Co. 23 S. C. 220.

The regulation of fares and freights receivable for transportation of persons and goods

between different States, and between the States and foreign countries, is within the power of Congress equally with the regulation of transportation itself.

Phila. & S. M. Steamship Co. v. Pa. 123 U. S. 326 (30 L. ed. 1200); 1 Inters. Com. Rep. 308.

The power to regulate interstate and foreign commerce vested in Congress is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted; to determine when it shall be free from, and when subject to, duties or other exactions.

Gloucester Ferry Co. v. Pa. 114 U. S. 196 (29 L. ed. 158); 1 Inters. Com. Rep. 382.

Freedom of transportation implies exemption from charges other than such as are imposed by way of compensation for the use of the property employed, or for facilities afforded for its use, or as ordinary taxes upon the value of the property within the jurisdiction of the State. *Id.*

Power of Congress over bridges and navigable rivers.

Pa. v. Wheeling & B. Bridge Co. 59 U. S. 18 How. 429 (15 L. ed. 436); The Clinton Bridge, 77 U. S. 10 Wall. 454 (19 L. ed. 969); Miller v. Mayor of N. Y. 10 Fed. Rep. 513; S. C. 109 U. S. 385 (27 L. ed. 971); Newport & C. Bridge Co. v. U. S. 105 U. S. 470 (26 L. ed. 1143); Canada S. R. Co. v. Internat. Bridge Co. 8 Fed. Rep. 190; S. C. v. Ga. 98 U. S. 4 (23 L. ed. 782); Stockton v. Balt. & N. Y. R. Co. (U. S. C. C.) 1 Inters. Com. Rep. 411.

The Act of Congress, approved June 16, 1886, entitled "An Act to Authorize the construction of a Bridge across the Staten Island Sound, Known as Arthur Kill," etc., is valid and constitutional under the power of Congress to regulate commerce among the States.

Stockton v. Balt. & N. Y. R. Co. (U. S. C. C.); 1 Inters. Com. Rep. 411; Decker v. Same, 1 Inters. Com. Rep. 484. (See full reports of briefs of counsel in these cases.)

Said Act is not permissive merely, but gives authority and power to build such bridge, without reference to any authority or consent from the State on whose land under navigable water the bridge is to rest, and without compensation to the State.

Stockton v. Balt. & N. Y. R. Co. (U. S. C. C.) 1 Inters. Com. Rep. 411.

When the United States does not seek to acquire exclusive jurisdiction over land within a State, it may condemn such land for its purposes without the consent of the State. *Id.*

Congress has the power to fix the maximum compensation for transportation between States and foreign countries.

Canada S. R. Co. v. Internat. Bridge Co. 8 Fed. Rep. 190; Louisville & N. R. Co. v. Tennessee R. Commission, 19 Fed. Rep. 679.

The power of Congress to regulate commerce with the Indian Tribes is exclusive.

Worcester v. Ga. 31 U. S. 6 Pet. 515 (8 L. ed. 483); U. S. v. Holliday, 70 U. S. 8 Wall. 407 (18 L. ed. 182); U. S. v. 43 Gallons of Whiskey, 98 U. S. 188 (23 L. ed. 846).

It may also extend its regulations to Territories in proximity to that occupied by Indians.

U. S. v. 43 Gallons of Whisky, 98 U. S. 188 (23 L. ed. 846).

See also Harper, *Interstate Commerce*, pp. 19-29; Note 1, *Inters. Com. Rep.* 882; Dos Passos, *Interstate Commerce Act*.

WHAT IS INTERSTATE COMMERCE.

"Commerce is a term of the largest import, * * * The power to regulate it embraces all the instruments by which such commerce may be conducted."

Welton v. Mo. 91 U. S. 275, 278 (23 L. ed. 347, 349).

It consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale and exchange of commodities.

Gibbons v. Ogden, 22 U. S. 9 *Wheat.* 1, 189 (6 L. ed. 23, 68); *Brown v. Md.* 25 U. S. 12 *Wheat.* 446 (6 L. ed. 688); *Gloucester Ferry Co. v. Pa.* 114 U. S. 196 (29 L. ed. 158); *Henderson v. Mayor of N. Y.*, 92 U. S. 259 (23 L. ed. 548); *Mobile Co. v. Kimball*, 102 U. S. 691 (26 L. ed. 238); *Wabash, St. L. & P. R. Co. v. Ill.* 118 U. S. 557 (30 L. ed. 244); *Pacific Coast S. S. Co. v. Railroad Comrs.* 9 *Sawyer*, 253; *S. C.* 18 Fed. Rep. 10.

It includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities.

Gloucester Ferry Co. v. Pa. 114 U. S. 196 (29 L. ed. 158); 1 *Inters. Com. Rep.* 382.

Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between States has commenced. The fact that several different and independent agencies are employed in transferring the commodity, some acting entirely within one State, and some acting through two or more States, does not in any respect affect the character of the transaction. To the extent which each agency acts in that transportation, it is subject to the regulation of commerce.

The Daniel Ball, 77 U. S. 10 *Wall.* 557 (19 L. ed. 999); *Coe v. Errol*, 116 U. S. 517 (29 L. ed. 715); *U. S. v. Coombs*, 37 U. S. 12 *Pet.* 72 (9 L. ed. 1004); *Sherlock v. Alling*, 93 U. S. 99 (23 L. ed. 819).

In *Hardy v. Atchison, T. & S. F. R. Co.* 32 *Kan.* 717, *Horton, C. J.*, says "That each railroad company in the case before us issued its own way bill to and from the connecting point with the defendant, and that each company was liable for the loss and damage occurring on its own road only, does not affect the question of interstate commerce. From the time the goods began to be moved from St. Louis, Mo., until they were delivered at Hutchinson, in this State, they were the subject of commerce among States, and therefore interstate commerce."

The transportation of property from one State to another is interstate commerce, whether the carriers engaged in moving it, or the vehicles on which it is borne, cross the line of the State or not.

Ex parte Koehler (U. S. C. C.); 1 *Inters. Com. Rep.* 28.

The power to regulate commerce between the States extends not only to the control of the navigable waters of the country and the lands under them for the purpose of navigation, but for the purpose of erecting piers, bridges, and all other instrumentalities of commerce which in the judgment of Congress may be necessary or expedient.

Stockton v. Balt. & N. Y. R. Co. (U. S. C. C.); 1 *Inters. Com. Rep.* 411.

The negotiation of sales of goods which are in another State for the purpose of introducing them into the State where the negotiation is made, is interstate commerce, and cannot be taxed or restricted by the State.

Robbins v. Shelby Co. Taxing Dist. and Corson v. Md. 120 U. S. 489, 502 (30 L. ed. 694, 699).

Foreign corporations have the same right as individuals to conduct everywhere the business of interstate transportation.

Paul v. Va. 75 U. S. 8 *Wall.* 168 (19 L. ed. 357); *Pensacola Tel. Co. v. W. U. Tel. Co.* 96 U. S. 12 (24 L. ed. 711); *Doyle v. Continental Ins. Co.* 94 U. S. 544 (24 L. ed. 152); *W. U. Tel. Co. v. Texas*, 105 U. S. 460 (26 L. ed. 1067); *N. O. & M. Packet Co. v. James*, 1 *Inters. Com. Rep.* 599.

But a State may prescribe the terms upon which a foreign insurance company may do business within its borders.

List v. Pa. 1 *Inters. Com. Rep.* 784; *Paul v. Va.* 75 U. S. 8 *Wall.* 169 (19 L. ed. 357); *Liverpool Ins. Co. v. Mass.* 77 U. S. 10 *Wall.* 566 (19 L. ed. 1029); *Phila. Fire Assn. v. N. Y.* 119 U. S. 110 (30 L. ed. 342).

Intercourse by telegraph between the States is interstate commerce.

W. U. Tel. Co. v. Pendleton, 122 U. S. 347 (30 L. ed. 1187); 1 *Inters. Com. Rep.* 306; *W. U. Tel. Co. v. Texas*, 105 U. S. 460 (26 L. ed. 1067); *Pensacola Tel. Co. v. W. U. Tel. Co.* 96 U. S. 1 (24 L. ed. 708). See *W. U. Tel. Co. v. Ferris (Ind.)* 1 *West. Rep.* 211.

Express business when conducted by a railroad company is within the provisions of the Interstate Commerce Act, but independent Express Companies are not subject to the Act, not being included in the common carriers declared to be so subject.

Re Express Companies, 1 *Inters. Com. Rep.* 677.

POWER OF STATES; POLICE POWER.

The police power of a State extends to all regulations affecting the health, good order, morals, peace and safety of society; and under it all sorts of restrictions and burdens are imposed; and when these are not in conflict with any constitutional prohibition or fundamental principles they cannot be successfully assailed in a judicial tribunal.

Bartemeyer v. Iowa, 85 U. S. 18 *Wall.* 129 (21 L. ed. 929); *Slaughter-House Cases*, 83 U. S. 16 *Wall.* 36 (21 L. ed. 894); *Butchers Union Co. v. Crescent City Co.* 111 U. S. 8 *Wall.* 28 (28 L. ed. 585); *Barbier v. Connolly*, 113 U. S. 27 (28 L. ed. 923); *Boston Beer Co. v. Mass.* 97 U. S. 25 (24 L. ed. 989); *Patterson v. Ky.* 97 U. S. 501 (24 L. ed. 1115); *Stone v. Miss.* 101 U. S. 814 (25 L. ed. 1079); *Soon Hing v. Crowley*, 118 U. S. 703 (28 L. ed. 1145); *Blair v. Forehand*, 100 *Mass.* 186; *Bertholf v. O'Reilly*, 74 *N. Y.* 509; 30 *Am. Rep.* 823; *Metropolitan Excise Board v. Barrie*, 34 *N. Y.* 657; *Com. v. Alger*, 7 *Cush.* 53; *Woods v. State*, 36 *Ark.* 86; 38 *Am. Rep.* 22; *State v. Mugler*, 29 *Kan.* 252;

44 Am. Rep. 684; *Davis v. State*, 68 Ala. 58; 44 Am. Rep. 128; *Donnelly v. Decker*, 58 Wis. 461; 46 Am. Rep. 687; *State v. Ah Chew*, 16 Nev. 50; 40 Am. Rep. 488; *People v. Cipperly* (N. Y.) 1 Cent. Rep. 806; *State v. Fitzpatrick* (R. I.) 5 New Eng. Rep. 678; 1 Inters. Com. Rep. 718; *People v. Marx*, 99 N. Y. 377; *State v. Addington*, 77 Mo. 110; 12 Mo. App. 217; *Powell v. Com.* (Pa.) 5 Cent. Rep. 890; *People v. Arensberg*, 4 Cent. Rep. 542; 108 N. Y. 888; *Re Brosnahan*, 18 Fed. Rep. 62.

States may regulate subjects of commerce which are local and limited in their nature, until Congress intervenes.

Gloucester Ferry Co. v. Pa. 114 U. S. 196 (29 L. ed. 158); 1 Inters. Com. Rep. 382; *Brown v. Houston*, 114 U. S. 623 (20 L. ed. 257); *Cooley v. Port Wardens*, 53 U. S. 12 How. 299 (13 L. ed. 996); *Pound v. Turck*, 95 U. S. 459 (24 L. ed. 525); *Gilman v. Phila.* 70 U. S. 3 Wall. 718 (18 L. ed. 96); *Wilson v. Blackbird Creek Marsh Co.* 27 U. S. 2 Pet. 245 (7 L. ed. 412); *Escanaba & L. M. Transp. Co. v. Chicago*, 107 U. S. 678 (27 L. ed. 442); *Miller v. Mayor, of N. Y.* 109 U. S. 885 (27 L. ed. 971); *Cardwell v. American R. Bridge Co.* 118 U. S. 205 (2 L. ed. 959); *Ouachita & M. R. Packet Co. v. Aiken*, 121 U. S. 444 (30 L. ed. 976); 1 Inters. Com. Rep. 879.

"Legislation may in a great variety of ways affect commerce and persons engaged in it, without constituting a regulation of it within the meaning of the Constitution."

Hall v. De Cuir, 95 U. S. 485 (24 L. ed. 547); *Sherlock v. Alling*, 93 U. S. 101 (23 L. ed. 820); *State Tax on Railway Gross Receipts*, 82 U. S. 15 Wall. 284 (21 L. ed. 164); *Munn v. Ill.* 94 U. S. 118 (24 L. ed. 77).

In the absence of federal legislation a State has power to make regulations concerning navigable water—as, by authorizing the construction of dams.

Wilson v. Blackbird Creek Marsh Co. 27 U. S. 2 Pet. 245 (7 L. ed. 412); *Cardwell v. American R. Bridge Co.* 118 U. S. 205 (2 L. ed. 959).

Or by constructing bridges.

Gilman v. Phila. 70 U. S. 3 Wall. 718 (18 L. ed. 96); *Escanaba & L. M. Transp. Co. v. Chicago*, 107 U. S. 678 (27 L. ed. 442); *Cardwell v. American R. Bridge Co.* 118 U. S. 205 (2 L. ed. 959); *The Passaic Bridges*, 70 U. S. 3 Wall. 782 (18 L. ed. 799); *Newport & C. Bridge Co. v. U. S.* 105 U. S. 470 (26 L. ed. 1148), and authorities cited.

And by wharfage regulations.

Keokuk N. L. Packet Co. v. Keokuk, 95 U. S. 80 (24 L. ed. 377); *Northwestern Union Packet Co. v. St. Louis*, 100 U. S. 428 (25 L. ed. 688); *Cincinnati, P. B. S. & P. Packet Co. v. Catlettsburg*, 105 U. S. 559 (26 L. ed. 1169); *Parkersburg & O. R. Transp. Co. v. Parkersburg*, 107 U. S. 691 (27 L. ed. 584); and the improvement of harbors; *Mobile Co. v. Kimball*, 102 U. S. 691 (26 L. ed. 238); or by regulation of pilots; *Cooley v. Board of Wardens*, 53 U. S. 12 How. 299 (13 L. ed. 996); *Ex parte McNeill*, 80 U. S. 18 Wall. 286 (20 L. ed. 624); *Wilson v. McNamee*, 102 U. S. 573 (26 L. ed. 234); but pilot regulations in conflict with Acts of Congress are void; *Sprague v. Thompson*, 118 U. S. 90 (30 L. ed. 115).

A State may grant an exclusive ferry right.

Conway v. Taylor, 66 U. S. 1 Black, 606 (17 L. ed. 191); *Fanning v. Gregoire*, 57 U. S. 16 How. 534 (14 L. ed. 1043); *Starin v. N. Y.* 115 U. S. 248 (39 L. ed. 886).

State statutes imposing obstruction to navigation are void.

Gibbons v. Ogden, 23 U. S. 9 Wheat. 1 (6 L. ed. 23); *Pa. v. Wheeling & B. Bridge Co.* 54 U. S. 18 How. 518 (14 L. ed. 249); *Pa. v. Wheeling & B. Bridge Co.* 59 U. S. 18 How. 429 (15 L. ed. 486); *The Clinton Bridge*, 77 U. S. 10 Wall. 454 (19 L. ed. 989); *Newport & C. Bridge Co. v. U. S.* 105 U. S. 470 (26 L. ed. 1148).

An unconstitutional provision in a state statute taxing commerce is not cured because included in the same Act with valid provisions.

Phila. & S. M. Steamship Co. v. Pa. 123 U. S. 326 (30 L. ed. 1200); 1 Inters. Com. Rep. 308.

Generally any tax or burden laid on national commerce by a State is void.

Gibbons v. Ogden, 23 U. S. 9 Wheat. 1 (6 L. ed. 23); *Passenger Cases*, 48 U. S. 7 How. 263 (12 L. ed. 702); *Brown v. Md.* 25 U. S. 12 Wheat. 446 (6 L. ed. 688); *U. S. v. Holliday*, 70 U. S. 8 Wall. 407 (18 L. ed. 182); *Crandall v. Nevada*, 73 U. S. 6 Wall. 35 (18 L. ed. 745); *Southern Steamship Co. v. Port Wardens*, 73 U. S. 6 Wall. 81 (18 L. ed. 749); *Paul v. Va.* 75 U. S. 8 Wall. 168 (19 L. ed. 857); "The Daniel Ball," 77 U. S. 10 Wall. 557 (19 L. ed. 999). See also *Erie R. Co. v. Pa.* 82 U. S. 15 Wall. 282 (21 L. ed. 164); *Phila. & R. R. Co. v. Pa.* 82 U. S. 15 Wall. 282 (21 L. ed. 146); *Balt. & O. R. Co. v. Md.* 88 U. S. 21 Wall. 456 (23 L. ed. 678); *Welton v. Mo.* 91 U. S. 275 (23 L. ed. 847); *Henderson v. Mayor of N. Y.* 92 U. S. 259 (23 L. ed. 548); *Chy Lung v. Freeman*, 92 U. S. 275 (23 L. ed. 550); *U. S. v. 43 Gallons of Whisky*, 98 U. S. 183 (23 L. ed. 846); *Foster v. Port Wardens*, 94 U. S. 246 (24 L. ed. 122); *Hannibal & St. J. R. Co. v. Huseen*, 95 U. S. 485 (24 L. ed. 537); *Hall v. De Cuir*, 95 U. S. 485 (24 L. ed. 547); *Pensacola Tel. Co. v. W. U. Tel. Co.* 96 U. S. 1 (24 L. ed. 706); *Cook v. Pa.* 97 U. S. 566 (24 L. ed. 1015); *Guy v. Baltimore*, 100 U. S. 434 (25 L. ed. 743); *Mobile Co. v. Kimball*, 102 U. S. 691 (26 L. ed. 238); *Webber v. Va.* 103 U. S. 344 (26 L. ed. 565); *W. U. Tel. Co. v. Texas*, 105 U. S. 460 (26 L. ed. 1067); *Head Money Cases*, 112 U. S. 591 (28 L. ed. 801); *Gloucester Ferry Co. v. Pa.* 114 U. S. 196 (29 L. ed. 158); 1 Inters. Com. Rep. 382; *Brown v. Houston*, 114 U. S. 623 (20 L. ed. 257); *Walling v. Mich.* 116 U. S. 446 (29 L. ed. 691); *Pickard v. Pullman S. Car Co.* 117 U. S. 34 (29 L. ed. 785); *Tenn. v. Pullman S. Car Co.* 117 U. S. 51 (29 L. ed. 791); *Wabash, St. L. & P. R. Co. v. Ill.* 118 U. S. 557 (30 L. ed. 244); *Robbins v. Shelby Co. Taxing Dist.* 120 U. S. 489 (30 L. ed. 694); *Fargo v. Mich.* 112 U. S. 230 (30 L. ed. 888); *Phila. & S. Steamship Co. v. Pa.* 123 U. S. 326 (30 L. ed. 1200); *Pullman S. Car Co. v. Nolan*, 22 Fed. Rep. 276.

A state license or tax discriminating against products of other States is void.

Welton v. Mo. 91 U. S. 275 (23 L. ed. 347); *Webber v. Va.* 103 U. S. 344 (26 L. ed. 565); *Walling v. Mich.* 116 U. S. 446 (29 L. ed. 691); *State v. Furbush*, 73 Maine, 498; *Higgins v. 200 Casks Lime*, 180 Mass. 1; *State v. North*, 27 Mo. 464; *Re Watson*, 15 Fed. Rep. 511.

A state law requiring a license to sell im

ported goods in the original package is void.

Cook v. Pa. 97 U. S. 566 (24 L. ed. 1016); *Brown v. Md.* 25 U. S. 12 Wheat. 419 (6 L. ed. 678).

A State cannot levy a license tax or impose any other restriction upon the citizens or inhabitants of other States for selling or seeking to sell their goods in such State before they are introduced therein.

Corson v. State, 120 U. S. 502 (30 L. ed. 699); 1 Inters. Com. Rep. 50; *Robbins v. Shelby Co. Taxing Dist.* 120 U. S. 489 (30 L. ed. 694); 1 Inters. Com. Rep. 45; *Re Hennick (D. C.)* 1 Inters. Com. Rep. 66; *Rash v. Halloway*, 82 Ky. 674; *Grafty v. Rushville (Ind.)* 5 West. Rep. 858; *State v. Pratt (Vt.)* 4 New Eng. Rep. 357; 1 Inters. Com. Rep. 299.

But it was held in *State v. Long*, 95 N. C. 582, that the license tax imposed upon drummers by section 28, chap. 175, Revenue Act N. C. Laws 1885, does not conflict with the Constitution of the United States. The rebate allowed from the drummers' license tax to merchants paying a purchase tax, by section 25 of said Act, does not discriminate against nonresidents, since all persons, irrespective of their residence, engaged in the business therein designated, are entitled to its benefits.

A statute requiring the inspection of tobacco and prescribing the charges therefor is not a regulation of commerce.

Turner v. Md. 107 U. S. 38 (27 L. ed. 370).

The right to make, use and vend a patented article is subject to the power of the State to regulate.

Authorities cited. *Hockett v. State (Ind.)* 2 West. Rep. 770; *New v. Walker (Ind.)* 6 West. Rep. 869; *Brechbill v. Randall (Ind.)* 2 West. Rep. 731.

Whether a statute discriminating against patented articles would be valid, questioned.

Brechbill v. Randall (Ind.) 2 West. Rep. 731.

The Missouri Statute prohibiting the driving of cattle of other States into that State within certain months is void.

Hannibal & St. J. R. Co. v. Husen, 95 U. S. 465 (24 L. ed. 527).

A statute giving a right of action to recover a penalty against telegraph companies for failure of duty to transmit telegrams, is not a violation of the commercial clause of the United States Constitution.

W. U. Tel. Co. v. Ferris (Ind.) 1 West. Rep. 211.

A statute granting exclusive rights to telegraph lines and imposing taxes on messages are void.

Pensacola Tel. Co. v. W. U. Tel. Co. 96 U. S. 1 (24 L. ed. 709); *W. U. Tel. Co. v. Texas* 105 U. S. 460 (26 L. ed. 1067).

But intercourse between the States by telegraph is commerce and not subject to state interference.

W. U. Tel. Co. v. Pendleton, 122 U. S. 347 (03 L. ed. 1187); 1 Inters. Com. Rep. 306; *W. U. Tel. Co. v. Texas*, 105 U. S. 460 (26 L. ed. 1067); *Pensacola Tel. Co. v. W. U. Tel. Co.* 96 U. S. 1 (24 L. ed. 708).

A state statute which levies a tax upon the gross receipts of railroads for the carriage of freights and passengers into, out of, or through the State, is a tax upon commerce among the States, and therefore void.

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Fargo v. Stevens, 121 U. S. 230 (30 L. ed. 888); 1 Inters. Com. Rep. 51.

Case of the State Freight Tax, 83 U. S. 15 Wall. 232 (21 L. ed. 146); *W. U. Tel. Co. v. Texas*, 105 U. S. 460 (26 L. ed. 1067); *Erie R. Co. v. N. J.* 31 N. J. L. 531; *Pickard v. Pullman S. Car. Co.* 117 U. S. 84 (29 L. ed. 785); *Com. v. Housatonic R. Co. (Mass.)* 3 New Eng. Rep. 449; *Phila. & S. M. Steamship Co. v. Pa.* 122 U. S. 826 (30 L. ed. 1200); 1 Inters. Com. Rep. 308.

A statute requiring the payment of a certain sum for every passenger brought from a foreign country is invalid.

Passenger Cases, 48 U. S. 7 How. 283 (12 L. ed. 702); *People v. Compagnie Générale Transatlantique*, 107 U. S. 59 (27 L. ed. 833); *Henderson v. Mayor of N. Y.* 92 U. S. 259 (23 L. ed. 543); *Chy Lung v. Freeman*, 92 U. S. 275 (23 L. ed. 550).

Receiving and landing passengers and freight is incident to their transportation. All restraints by exactions in the form of taxes upon such transportation or upon acts necessary to its completion, are invasions of the exclusive power of Congress.

Gloucester Ferry Co. v. Pa. 114 U. S. 196 (29 L. ed. 158); 1 Inters. Com. Rep. 382.

The State has no power to levy a tax upon the earnings of a sleeping car company engaged in the business of transporting passengers from one State to another.

Ind. v. Woodruff S. & P. Coach Co. 1 Inters. Com. Rep. 198.

Wharfage is subject to local state laws, Congress having passed no Act to regulate it; and by those laws its reasonableness must be determined; and where wharfage charges are reasonable, the application that is made of the proceeds in no way concerns those who pay them. Their appropriation to maintain, extend, light and police the wharves is unobjectionable, although a profit may be realized by lessees from the city which owns them. *Id.*

Ouachita & M. R. Packet Co. v. Aiken, 121 U. S. 444 (30 L. ed. 976); 1 Inters. Com. Rep. 379.

Reasonable compensation for the use of artificial facilities for the improvement of navigation is not a tonnage duty, although prescribed according to the tonnage of the vessels.

Huse v. Glover, 119 U. S. 543 (30 L. ed. 487).

The State statute requiring the inspection of every sea going vessel arriving at New Orleans is a regulation of commerce and void.

Foster v. Port Wardens, 94 U. S. 246 (24 L. ed. 122).

A State may tax the gross receipts of railways made up in part from freights on goods from other States.

Case of the State Freight Tax, 83 U. S. 15 Wall. 232 (21 L. ed. 146); *The Delaware R. Tax*, 85 U. S. 18 Wall. 206 (21 L. ed. 898); *Baltimore & O. R. Co. v. Md.* 88 U. S. 21 Wall. 456 (22 L. ed. 678).

Property brought to a depot for the purpose of transporting outside of the State, while remaining there is still liable for state taxes.

Coe v. Errol, 116 U. S. 517 (29 L. ed. 715).

A State may prescribe the terms upon which foreign corporations may do business within its borders; *Paul v. Va.* 75 U. S. 8 Wall. 168 (19

ively, and for the return of carriages, trucks, boats, and other vehicles; and that no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, or shall subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and that every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway, or canal, or railway and canal communication, or which have the terminus, station, or wharf of the one, near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways or canals all the traffic arriving by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals, or railways and canals as a continuous line of communication, and so that all reasonable accommodation may by means of the railways and canals and of the several companies be at all times afforded to the public in that behalf:

And, whereas, it is expedient to explain and amend the said enactment, Be it therefore enacted, that—

Subject as hereinafter mentioned, the said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding, and delivering by every railway company and canal company and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares (in this Act referred to as through rates).

Provided as follows:

(1.) The company requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding company, stating both its amount and its apportionment, and the route by which the traffic is proposed to be forwarded.

(2.) Each forwarding company shall, within the prescribed period after the receipt of such notice, by written notice, inform the company requiring the traffic to be forwarded whether they agree to the rate and route; and, if they object to either, the grounds of the objection.

(3.) If at the expiration of the prescribed period no such objection has been sent by any forwarding company, the rate shall come into operation at such expiration.

(4.) If any objection to the rate or route has been sent within the prescribed period, the matter shall be referred to the commissioners for their decision.

(5.) If an objection be made to the granting of the rate or to the route, the commissioners shall consider whether the granting of the rate is a due and reasonable facility, in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly.

(6.) If the objection be only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the commissioners as to its apportionment shall be retrospective; in any other case the operation of the rate shall be suspended until the decision is given.

(7.) The commissioners, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance or working of the route, or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof.

(8.) It shall not be lawful for the commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route.

(9.) The prescribed period mentioned in this section shall be ten days, or such longer period as the commissioners may from time to time, by general order, prescribe.

Where a railway company or canal company use, maintain, or work, or are party to an arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels and to the traffic carried thereby.

12. Subject to the provisions in the last preceding section contained, the commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly.

13. A complaint of a contravention of section 2 of the Railway and Canal Traffic Act, 1854, as amended by this Act, may be made to the commissioners by a municipal or other public corporation, local or harbor board, without proof that the complainants are aggrieved by the contravention; *Provided*, That a complaint shall not be entertained by the commissioners in pursuance of this section unless such complaint is accompanied by a certificate of the board of trade to the effect that in their opinion the case, in respect of which the complaint is made, is a proper one to be submitted for adjudication to the commissioners by such municipal or other public corporation, local or harbor board.

14. Every railway company and canal company shall keep at each of their stations and wharves a book or books showing every rate for the time being charged for the carriage of traffic other than passengers and their luggage, from that station or wharf to any place to which they book, including any rates charged under any special contract, and stating the distance from that station or wharf of every station, wharf, siding, or place to which any such rate is charged.

Every such book shall, during all reasonable

hours, be open to the inspection of any person without the payment of any fee.

The commissioners may from time to time, on the application of any person interested, make orders with respect to any particular description of traffic requiring a railway company or canal company to distinguish in such book how much of each rate is for the conveyance of the traffic on the railway or canal, including therein tolls for the use of the railway or canal, for the use of carriages or vessels, or for locomotive power, and how much is for other expenses, specifying the nature and detail of such other expenses.

Any company failing to comply with the provisions of this selection shall, for each offense, and in the case of a continuing offense, for every day during which the offense continues, be liable to a penalty not exceeding £5, and such penalty shall be recovered and applied in the same manner as penalties imposed by the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845 (as the case may require) are for the time being recoverable and applicable.

15. The commissioners shall have power to hear and determine any question or dispute which may arise with respect to the terminal charges of any railway company, where such charges have not been fixed by any Act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading and unloading, covering collection, delivery, and other services of a like nature; any decision of the commissioners under this section shall be binding on all courts and in all legal proceedings whatsoever.

16. No railway company or canal company, unless expressly authorized thereto by any Act passed before the passing of this Act, shall, without the sanction of the commissioners, to be signified in such manner as they may by general order or otherwise direct, enter into any agreement whereby any control over or right to interfere in or concerning the traffic carried or rates or tolls levied on any part of a canal is given to the railway company, or any persons managing or connected with the management of any railway; and any such agreement made after the commencement of this Act without such sanction shall be void.

The commissioners shall withhold their sanction from any such agreement which is in their opinion prejudicial to the interests of the public.

Not less than one month before any such agreement is so sanctioned, copies of the intended agreement certified under the hand of the secretary of the railway company or one of the railway companies party or parties thereto, shall be deposited for public inspection at the office of the commissioners, and also at the office of the clerk of the peace of the county, riding, or division in England or Ireland, in which the head office of any canal company party to the agreement is situate, and at the office of the principal sheriff clerk of every such county in Scotland, and notice of the intended agreement, setting forth the parties between whom or on whose behalf the same is intended to be made, and such further particulars with respect thereto as the commis-

sioners may require, shall be given by advertisement in the London, Edinburgh or Dublin Gazette, according as the head office of any canal company party to the agreement is situate in England, Scotland, or Ireland, and shall be sent to the secretary or principal officer of every canal company any of whose canals communicates with the canal of any company party to the agreement; and shall be published in such other way, if any, as the commissioners for the purpose of giving notice to all parties interested therein by order direct.

17. Every railway company owning or having the management of any canal or part of a canal shall at all times keep and maintain such canal or part, and all the reservoirs, works, and conveniences thereto belonging, thoroughly repaired and dredged and in good working condition, and shall preserve the supplies of water to the same, so that the whole of such canal or part may be at all times kept open and navigable for the use of all persons desirous to use and navigate the same without any unnecessary hindrance, interruption, or delay.

(Sections 18, 19 and 20 relate to the *Conveyance of Mails*.)

Regulations as to Commerce.

Section 21 prescribes the duties of "assistant commissioners," and section 22 the salaries of the commissioners and their assistants; while sections 23 and 24 provide for the appointment of assessors and subordinate officers and clerks.

25. For the purposes of this Act the commissioners shall, subject as in this Act mentioned, have full power to decide all questions, whether of law or of fact, and shall also have the following powers; that is to say:

(a.) They may, by themselves or by any persons appointed by them to prosecute an inquiry, enter and inspect any place or building being the property or under the control of any railway or canal company, the entry or inspection of which appears to them requisite;

(b.) They may require the attendance of all such persons as they think fit to call before them and examine, and may require answers or returns to such inquiries as they think fit to make;

(c.) They may require the production of all books, papers, and documents relating to the matters before them;

(d.) They may administer an oath;

(e.) They may, when sitting in open court, punish for contempt in like manner as if they were a court of record.

Every person required by the commissioners to attend as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred to a master of one of the superior courts, who, on request, under the hands of the commissioners, shall ascertain and certify the proper amount of such expenses.

26. Any decision or any order made by the commissioners for the purpose of carrying into effect any of the provisions of this Act may be made a rule or order of any superior court, and shall be enforced either in the manner directed by section 8 of the Railway and Canal

COMMON—LAW DUTIES OF CARRIERS.

At common law, a common carrier was bound to make only reasonable charges.

Great Western R. Co. v. Sutton, L. R. 4 Eng. & Irish App. (H. L.) 226-237; Angell, Carriers, § 124; Johnson v. Pensacola & P. R. Co. 16 Fla. 628; Baxendale v. Eastern Counties R. Co. 4 C. B. (N. S.) 68; Branley v. South Eastern R. Co. 12 C. B. (N. S.) 68; Fitchburg R. Co. v. Gage, 12 Gray, 398; Ex parte Benson, 18 S. C. 88; S. C. 44 Am. Rep. 564; Menacho v. Ward, 27 Fed. Rep. 531; S. C. 23 Am. & Eng. R. R. Cas. 647; 84 Alb. L. J. 44; Messenger v. Pa. R. Co. 86 N. J. L. 407; McDuffee v. Portland & R. R. Co. 62 N. H. 430; Munn v. Ill. 94 U. S. 118-184 (24 L. ed. 77-87); Sandford v. Catawissa, W. & E. R. Co. 24 Pa. 378; Shipper v. Pa. R. Co. 47 Pa. 388-341; Audenried v. Phila. & R. R. Co. 68 Pa. 370; Chicago B. & Q. R. Co. v. Parks, 18 Ill. 460; Chicago & A. R. Co. v. People, 67 Ill. 11; Scofield v. Lake Shore & M. S. R. Co. 1 West. Rep. 812, 43 Ohio St. 571; New England Express Co. v. M. C. R. Co. 57 Maine, 188; Hays v. Pa. Co. 12 Fed. Rep. 309; Hollister v. Nowlen, 19 Wend. 239; Smith v. Chicago & N. W. R. Co. 49 Wis. 443; Brown v. Adams Express Co. 15 W. Va. 521; Killmer v. N. Y. Cent. & H. R. R. Co. 1 Cent. Rep. 525, 100 N. Y. 895.

But he was not obliged to transport goods for all persons for the same compensation.

Great Western R. Co. v. Sutton, L. R. 4 Eng. & Irish. App. (H. L.) 226-237; Baxendale v. Eastern Counties R. Co. 4 C. B. (N. S.) 68; Branley v. South Eastern R. Co. 12 C. B. (N. S.) 68; Fitchburg R. Co. v. Gage, 12 Gray, 398; Spofford v. Boston & M. R. Co. 128 Mass. 826; Sargent v. Boston & L. R. Corp. 115 Mass. 423; Johnson v. Pensacola & P. R. Co. 16 Fla. 628; Ex parte Benson, 18 S. C. 88; S. C. 44 Am. Rep. 564; Menacho v. Ward, 27 Fed. Rep. 529-531; S. C. 23 Am. & Eng. R. R. Cas. 647; 84 Alb. L. J. 44; Killmer v. N. Y. Cent. & H. R. R. Co. 1 Cent. Rep. 525, 100 N. Y. 895.

The weight of American authority is that the common law requires that the charges must be equal to all for the same services under like circumstances.

St. Louis, A. & T. H. R. Co. v. Hill, 14 Bradw. (Ill. App.) 579; Messenger v. Pa. R. Co. 36 N. J. L. 407; S. C. 87 N. J. L. 531; Shipper v. Pa. R. Co. 47 Pa. 388; Audenried v. Phila. & R. R. Co. 68 Pa. 370; Chicago, B. & Q. R. Co. v. Parks, 18 Ill. 460-464; Chicago & A. R. Co. v. People, 67 Ill. 11; Scofield v. Lake Shore & M. S. R. Co. 1 West. Rep. 812, 43 Ohio St. 571; New England Express Co. v. Maine Cent. R. Co. 57 Maine, 188; Hays v. Pa. Co. 12 Fed. Rep. 309; State, Webster, v. Nebraska Telephone Co. 17 Neb. 126; State, Mattoon, v. Republican Valley R. Co. 17 Neb. 647; Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co. 110 U. S. 667 (28 L. ed. 291); Munhall v. Pa. R. Co. 92 Pa. 150.

At common law discriminations based solely upon the amounts of freight shipped without reference to the actual cost of transportation are not sanctioned.

Hays v. Pa. Co. 12 Fed. Rep. 309; Scofield v. Lake Shore & M. S. R. Co. 1 West. Rep. 812, 43 Ohio St. 571; Mo. Pac. R. Co. v. Texas & P. R. Co. 30 Fed. Rep. 2.

Railroads are bound at common law to receive and haul cars of other roads.

Mackin v. Boston & A. R. Co. 185 Mass. 201; Peoria & P. U. R. Co. v. Chicago, R. I. & P. R. Co. 109 Ill. 185; Note, 19 Cent. L. J. 111; Note, 18 Am. & Eng. R. R. Cas. 506.

LINE WHOLLY WITHIN A STATE; "COMMON CONTROL, MANAGEMENT OR ARRANGEMENT FOR CONTINUOUS CARRIAGE;" INTERSTATE COMMERCE ACT, § 1; ENGLISH RAILWAYS REGULATION, ACT 1878, § 11.

Provisions of section 11, of the Regulation of Railways Act, 1878, apply whenever there is an arrangement with the proprietors of steam vessels for the conveyance of passengers or goods to and from any port or town with which there is railway communication, provided the railway company party to the arrangement owned or worked or was otherwise immediately interested in some portion or other of the line of railway communication.

Caledonian R. Co. v. Greenock & W. B. R. Co. 4 R. & Can. Traf. Cas. 185; Greenock & W. B. R. Co. v. Caledonian R. Co. 2 Nev. & Mac. R. Cas. 327.

An agreement between a steamboat company and railway company that the vessels of the former shall be run at certain times, regard being had to the convenience of the railway company and to the times of the arrival and departure of its trains, as an arrangement within the meaning of section 11 of the Regulation of Railways Act, 1878.

Belfast etc. R. Co. v. G. N. R. Co. 4 R. & Can. Traf. Cas. 379.

But the mere existence of through bookings is not such an arrangement as that contemplated by section 11.

Ayr Harbour Trustees v. Glasgow R. Co. 4 R. & Can. Traf. Cas. 81.

The Interstate Commerce Act does not include or apply to all carriers engaged in interstate commerce, but only to such as use a railway, or a railway and water craft "under common control, management or arrangement for a continuous carriage or shipment" of property from one State to another; nor does it apply to the carriage of property by rail wholly within the State, although shipped from or destined to a place without the State, so that such place is not in a foreign country.

Ex parte Koehler (U. S. C. C.) 1 Inters. Com. Rep. 28; Mo. & I. R. T. & Lumber Co. v. Cape Girardeau & S. W. R. Co. 1 Inters. Com. Rep. 607.

The knowledge of a carrier whose line is wholly within one State that the ultimate destination of freight is without the State will not make it subject to the Interstate Commerce Act.

Mo. & I. R. T. & Lumber Co. v. Cape Girardeau & S. W. R. Co. 1 Inters. Com. Rep. 607.

In Ex parte Koehler, 1 Inters. Com. Rep. 28, Deady, J., says: "The mere fact that a railway wholly within a State, and a vessel running between said State and another, meet at a point within the railway State, and thus form a continuous line of transportation between the two States, by the one taking up the goods delivered by the other at its terminus, and carrying them thence to their destination, does not bring the carriers who so use the rail-

way and steamer within the Act. So long as the railway and steamer are each operated under a separate and distinct control, making its own rates, and only liable for the carriage and safe delivery of the goods at the end of its own route, the Act does not apply to the transaction. To make these carriers subject to the Act, the railway and vessel must, as therein provided, be operated or used under a 'common control'—a control to which each is alike subject, and by which rates are prescribed and bills of lading given for the carriage of goods over both routes as one."

Where a railway company made a contract applicable to all routes which it might thereafter control, and acquired the majority of stock of another railway company and the same persons were elected respectively president and vice president of both companies, *held*, that the contracting company had not acquired "control" of the other railway within the meaning of the terms of the contract.

Pullman Palace Car Co. v. Mo. P. R. Co. 11 Fed. Rep. 634.

A railroad wholly within one State, used as a means of conducting interstate traffic in coal by companies owning connecting interstate roads, is subject to the provisions of the Act to Regulate Commerce; and it must be accessible to all interstate shippers on equal and reasonable terms.

Heck v. East Tenn. V. & G. R. Co. 1 Inters. Com. Rep. 775.

A carrier is not responsible for rates made by a connecting road because of its giving them in connection with its own rates to parties desiring to make through shipments.

Crews v. Richmond & D. R. Co. 1 Inters. Com. Rep. 708.

So far as a railroad company, whose line is entirely within one State, issues through bills of lading over its connecting lines to points in other States, and makes through rates, it falls under the Interstate Commerce Act.

Re Annapolis, W. & B. R. Co. 1 Inters. Com. Rep. 315.

Several railroad companies uniting in an arrangement under which a fast freight line violates the Interstate Commerce Act are responsible therefor.

Boston & A. R. Co. v. Boston & L. R. Co. 1 Inters. Com. Rep. 571.

The Illinois Statute regulating the transportation of goods under one contract to points beyond the State is unconstitutional.

Wabash, St. L. & P. R. Co. v. Ill. 118 U. S. 557 (80 L. ed. 244); 1 Inters. Com. Rep. 31.

A statute regulating the transmission of telegraph messages beyond the State is void.

W. U. Tel. Co. v. Pendleton, 123 U. S. 347 (30 L. ed. 1187); 1 Inters. Com. Rep. 806.

DISCRIMINATION.

Statutory Provisions. Section 3, par. 1, of the Interstate Commerce Act is an almost literal copy of a portion of section 2 of the English Railway and Canal Traffic Act of 1854.

The object of section 3 is to apply to cases not within section 2, since section 2 is limited to cases of "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances."

Section 3, par. 2, of the Act of Congress, is also a copy of a portion of section 2 of the English Railway & Canal Traffic Act of 1854; the changes in the Act of Congress are shown by the words between brackets in italics as follows: "Every railway company, canal company, and railway and canal company [*every common carrier subject to the provisions of this Act*] shall, according to their respective powers, afford all reasonable [*proper and equal*] facilities for the [*interchange of traffic between their respective lines and for the*] receiving and [*"and"* omitted] forwarding and delivering of (English Statute: "*Traffic upon and from the several railways and canals belonging to or worked by such companies respectively*;" American Act: "*Passengers and property to and from their several lines and those connecting therewith.*")"

Section 7 of the American Act contains provisions similar to section 2 of the Railway & Canal Traffic Act of 1854.

General Rules.

To constitute an unreasonable preference, there must be inequality in the charge for traveling over the same line, or the same portion of the line.

Caterham R. Co. v. London, B. & S. C. R. Co. 1 C. B. (N. S.) 410; 1 Nev. & Mac. 82; *Finnie v. Glasgow & S. W. R. Co.* 2 Macq. 177; *S. C.* 26 L. T. 14.

The relative reasonableness of rates on shipments from western points to cities on the Atlantic seaboard is to be determined by all the circumstances and conditions that affect the traffic to the respective points between which the rates are questioned, and not solely by one standard of comparison.

Boston Chamber of Commerce v. Lake Shore & M. S. R. Co. 1 Inters. Com. Rep. 754.

What amounts to an undue preference is a question of fact and not of law.

Diphwys etc. Co. v. Festinlog R. Co. 2 Nev. & Mac. 73; *Watkinson v. Wrexham etc. R. Co.* 3 Nev. & Mac. R. Cas. 5; *Denaby Main Colliery Co. v. Manchester etc. R. Co.* 3 Nev. & Mac. 441.

The burden of proof is on petitioner charging unreasonable rates.

Harding v. Chicago, St. P. M. & O. R. Co. 1 Inters. Com. Rep. 375.

The burden is on the carrier to justify any departure from the rules prescribed by the statute.

Re Southern R. & Steamship Asso., and Re Louisville & Nashville R. Co. 1 Inters. Com. Rep. 278.

As to sufficiency of evidence to establish charge of excessive rates, see:

Great Western R. Co. v. Sutton, L. R. 4 Eng. & Irish App. H. L. 226; *Ransome v. Eastern Counties R. Co.* 1 C. B. N. S. 437; *S. C.* 26 L. J. C. P. 91; 1 Nev. & Mac. 63; *Baxendale v. Great Western R. Co.* 5 C. B. N. S. 336; *S. C.* 28 L. J. C. P. 81; *Nicholson v. Great Western R. Co.* 5 C. B. N. S. 366; *S. C.* 28 L. J. C. P. 89; 1 Nev. & Mac. 121.

As to the manner of determining what are reasonable charges, see:

Louisville & N. R. Co. v. Tennessee R. Com-

mission, 19 Fed. Rep. 679; Canada S. R. Co. v. Internat. Bridge Co. 8 Fed. Rep. 190; Internat. Bridge Co. v. Canada S. R. Co. L. R. 8 App. Cas. 733; Riley v. Horne, 5 Bing. 217; Manchester, S. & L. R. Co. v. Brown, L. R. 8 App. Cas. 703; Chicago & A. R. R. Co. v. People, 67 Ill. 11; Stone v. Farmers L. & T. Co. 116 U. S. 807-836 (39 L. ed. 636-646); Baxendale v. Eastern Counties R. Co. 4 C. B. (N. S.) 63.

A charter right to make such charges as the company might see fit is not contravened by the statute requiring charges to all persons to be equal.

Great Western R. Co. v. Sutton, L. R. 4 Eng. & Irish App. H. L. 236; Baxendale v. Great Western R. Co. 14 C. B. N. S. 1; S. C. 16 C. B. N. S. 137; Crouch v. Great Northern R. Co. 9 Exch. 557.

For a Complete Digest of English Decisions and Index thereto see Appendix to Am. & Eng. R. Cases, Vol. 27, by Adelbert Hamilton, Esq.

Against Localities.

Preferences to localities in furnishing facilities or rates for the shipment of goods are prohibited.

Hoxier v. Caledonian R. Co. 17 Scss. 703; S. C. 24 L. T. 339; 1 Nev. & Mac. 27; Jones v. Eastern Counties R. Co. 8 C. B. N. S. 718; 1 Nev. & Mac. 45; Nicholson v. Great Western R. Co. 5 C. B. N. S. 386; Richardson v. Midland R. Co. 4 R. & Can. Traf. Cas. 1; Girardote. Midland R. Co. 4 R. & Can. Traf. Cas. 291.

A railway company must give equal facilities and similar rates to all persons in receiving and delivering goods.

Cooper v. London & S. W. R. Co. 4 C. B. N. S. 733; S. C. 27 L. J. C. P. 324; 1 Nev. & Mac. 185; Bell v. London etc. R. Co. 2 Nev. & Mac. 185.

It is not ground of complaint against a railroad that it equalizes its rates as between small and large towns, even though the effect may be prejudicial to the large towns which before had been specially favored.

Crews v. Richmond & D. R. Co. 1 Inters. Com. Rep. 703.

A carrier cannot be compelled to give to merchants the privilege of shipping goods from the point of purchase to their own locality and thence to the place to which the goods may be sold, at the same rate which would have been charged had there been but one shipment from point of purchase to point of ultimate delivery; the fact that such refusal operates prejudicially to one town and favorably to another, will not constitute unjust discrimination when the carrier applies the same rule to all towns. *Id.*

In view of the longer haul to Boston than to New York, the greater cost of transportation to Boston, the very much greater volume of business to and from New York, the competition by water transportation by the lakes, Erie Canal and Hudson River, and also by several rival railroad lines, and the geographical and commercial advantages of New York, the differentials on Boston local rates of ten cents per 100 pounds on the first and second classes of merchandise and of five cents per 100 pounds on the four other classes between New York

and Boston, on traffic originating west of Buffalo, have not been shown to be unjust and unreasonable or to constitute unjust discrimination against Boston.

Boston Chamber of Commerce v. Lake Shore & M. S. R. Co. 1 Inters. Com. Rep. 754.

The fact that the export rates through Boston, and the rates on merchandise intended for coastwise points east of Portland, and the west bound rates from Boston have been made by the carriers the same as corresponding New York rates in order to put Boston on an equality with New York and other seaboard cities wherever Boston is a competitor with those cities, is not controlling in determining the reasonableness of the east bound local rates in a traffic in which there is no competition by other cities. *Id.*

A manufactory of plaintiff was situated twelve miles from the seaport of Swansea, and on the defendant's railway from the seaport to Liverpool. The defendant charged the plaintiff 12s 6d per ton for the carriage of iron and tin plates over its line from his manufactory to Liverpool, while other manufacturers of iron and tin plates whose works were situated within a radius of six miles of the seaport of Swansea, and therefore further from Liverpool than the plaintiff's works, were charged by the defendant, for the carriage of their plates from Swansea to Liverpool, 11s 4d per ton only. There is a communication by sea from Swansea to Liverpool, and the rate of 11s 4d was fixed by the defendant as the charge for the carriage of the goods of these manufacturers within the six miles' radius in order to enable the defendant to compete with the sea carriage; and by reason of the lesser charge, those manufacturers who were thus favored were enabled to sell their plates at a lower price per ton, delivered at Liverpool, than the plaintiff. *Held*, that the charging of a lower rate to the manufacturers within the six miles' radius, for the carriage of their goods a longer distance than the plaintiff's was an undue and unreasonable preference and advantage granted to them by the defendant, and was in contravention of section 2 of the Railway & Canal Traffic Act of 1854, and the plaintiff was entitled to recover the amounts paid by him to the defendants in excess of the 11s. 4d. rate.

Budd v. London & N. W. R. Co. 38 L. T. N. S. 802; S. C. 25 W. R. 753; 4 R. & Can. Traf. Cas. 393.

Where rates for carrying coal were grouped in districts adjusted not with a view to give an undue preference to one set of dealers over another, but solely with regard to their own convenience and the wants of the neighborhood, the Act is not violated.

Ransom v. Eastern Counties R. Co. 4 C. B. N. S. 135; S. C. L. J. C. P. 166; 1 Nev. & Mac. 109.

Where the through rate is a gross sum of a small amount for conveyance over a long route, it is enough if places that are practically in the same district have the same rate. Thus, *held*, no undue prejudice was caused to the trader charged the same through rates to certain places, for traffic over his siding, as was charged for traffic over the siding situated two or three miles further.

Lloyd v. Northampton etc. R. Co. 3 Nev. & Mac. 359.

Grouping rates for collieries working the same bed of coal, where the coal field extends twenty miles, may result in an unreasonable preference.

Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. 3 Nev. & Mac. 426; 4 R. & Can. Traf. Cas. 23, 450; Broughton etc. Coal Co. v. G. W. R. Co. 4 R. & Can. Traf. Cas. 191.

Where a petition complained of discrimination against the Town of Opelika, Ala., but the order which was prayed would, if granted, increase the discriminations against other local points, leave was given to amend the petition so as to set out the effects with reference to other local points and to afford opportunity of notice to them.

Harwell v. Columbus & W. R. Co. 1 Inters. Com. Rep. 631.

Where on evidence, the Commission found that cotton offered for shipment at Opelika for New Orleans was unjustly and unreasonably refused by the defendant company, in violation of the third section of the statute, while taken by it at other points similarly situated, and that connecting lines were ready and willing to unite in a reasonable adjustment of rates—an order was made requiring the defendant to cease such discrimination within ten days. *Id.*

A petition charging unjust discrimination in rates between Waterville and Mankato, and that such rates were higher than rates between Chicago and Waterville, disposed of by report of Commission that the respondent company has conceded the relief sought and had made and published a tariff of the rates in accordance with the prayer of the petition.

Manufacturer's & Jobbers Union v. Minneapolis & St. L. R. Co. 1 Inters. Com. Rep. 630.

An index of all proceedings and decisions by the Interstate Commerce Commission relating to discrimination against localities will be found in the index to this volume, under title "Charges and Discrimination."

Against Specific Articles.

Under Railways Clauses Act, 1845, § 90, 8 & 9 Vict., the charge must be the same to all for the same services performed in the same manner for carrying goods for the same distance, and for similar services rendered in any other way.

London & N. W. R. Co. v. Evershed, L. R. 3 App. Cas. 1020; S. C. 39 L. T. N. S. 806.

Under the Illinois Statute a charge of two cents more per 100 pounds for carrying grain than charged to others, held unjust discrimination.

St. Louis, A. & T. H. R. Co. v. Hill, 14 Bradw. 579.

Rates are so related to each other that the instances are very frequent where a change of rate upon one important article of commerce involves a consideration of the relative rates on other articles; it appearing that the defendant company has made a change and general reduction on lines of freight, and it appearing that during the next season it is intended to make a further reduction, and that rates on wheat from Walla Walla, Washington Terri-

tory, to Portland, Oregon, were charged at a higher relative rate than was just, it was ordered that the defendant cease to charge more than 23½ cents per 100 pounds or \$4.70 per ton on wheat thus transported.

Evans v. Oregon R. & Nav. Co. and Reed v. Oregon R. & Nav. Co. 1 Inters. Com. Rep. 641.

The relative difference in rates on pearline, and special rates on common soap on shipments from New York to Atlanta adjusted, so that the relative difference in the rates shall not exceed the difference of sixty cents per 100 pounds on pearline and thirty-three cents on common soap.

Pyle v. East Tenn. V. & G. R. Co. 1 Inters. Com. Rep. 767.

The classification of railroad ties in a different class from other lumber, thus imposing a higher rate upon ties than upon other lumber, held to be an unjust discrimination.

Reynolds v. Western N. Y. & P. R. Co. 1 Inters. Com. Rep. 685.

Classification of coals as gas coal and common coal held, under the facts, improper.

Nitshill etc. Coal Co. v. Caledonian R. Co. 2 Nev. & Mac. 39.

Rates established for the purpose of keeping up a line of road material (as railroad ties) for which the road itself has use, or to keep the price thereof low for its own advantage, cannot be justified.

Reynolds v. Western N. Y. & P. R. Co. 1 Inters. Com. Rep. 685.

Whether a special privilege, granted by railroad companies to manufacturers in a single line of trade, but not to manufacturers in general, is consistent with the rule of equity and justice which the Interstate Law undertakes to establish, is a question upon which an opinion ought to be expressed only after the most careful consideration; and the Commission ought clearly to see that duty requires an answer, before it proceeds to give one on *ex parte* application.

Re Iowa Barb Steel Wire Co. 1 Inters. Com. Rep. 605.

An index of all proceedings and decisions by the Interstate Commerce Commission relating to discriminations against specific articles will be found in the index to this volume, under title "Charges and Discrimination."

Character, Quantity, Value of Goods; Classification; Underbilling.

Making of freight rates may be affected by a variety of practical considerations, as: the sparsely settled character of the country; the articles of freight upon which the railroad must depend as compared with other roads transporting similar commodities through more populous communities; the relation of local and through freights; the mode of shipping and delivering, as wheat from elevators, and wheat in sacks; and expenses of hauling empty cars.

Evans v. Oregon R. & Nav. Co. and Reed v. Oregon R. & Nav. Co. 1 Inters. Com. Rep. 641; Hays v. Pa. Co. 12 Fed. Rep. 309; Scofield v. Lake Shore & M. S. R. Co. 1 West. Rep. 812, 43 Ohio St. 571; Mo. Pac. R. Co. v. Texas & P. R. Co. 30 Fed. Rep. 2; Girardot v. Midland

R. Co. 4 R. & Can. Traf. Cas. 291; Greenock v. S. E. R. Co. 2 Nev. & Mac. 819; Concord & P. R. Co. v. Forsaith, 59 N. H. 123.

The length and character of the haul, the cost of service, the volume of business, the conditions of competition, the storage capacity and the geographical situation of the different terminal points are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation.

Boston Chamber of Commerce v. Lake Shore & M. S. R. Co. 1 Inters. Com. Rep. 754.

Under the Railway Clauses Consolidation Act of 1845, mere inequality in the rate of charge, when unequal distances are traversed, does not constitute a preference.

Denaby Main Colliery Co. v. Manchester S. & L. R. Co. L. R. 11 App. Cas. 97.

A difference in the cost of service will justify a carrier in making a reasonable difference in its rates.

Chicago & A. R. Co. v. People, 67 Ill. 11-24; Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. 26 Am. & Eng. R. R. Cas. 298; Nicholson v. Great Western R. Co. 5 C. B. N. S. 866; Ransome v. Eastern Counties R. Co. 2 Nev. & Mac. 202; Girardot v. R. Co. 4 R. & Can. Traf. Cas. 291; Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 101, 102; Ransome v. Eastern Counties R. Co. 1 Nev. & Mac. 68; S. O. 1 C. B. N. S. 437; 26 L. J. C. P. 91; Foreman v. Great Western R. Co. 2 Nev. & Mac. 202; Nittshill etc. Coal Co. v. Caledonian R. Co. 2 Nev. & Mac. 89; Bellsdyke Coal Co. v. North British R. Co. 2 Nev. & Mac. 105; Bell v. London etc. R. Co. 2 Nev. & Mac. 185; Holland etc. R. Co. v. Festinlog R. Co. 2 Nev. & Mac. 287; Lotspeich v. Cent. R. & Bkg. Co. 73 Ala. 306; S. O. 18 Am. & Eng. R. R. Cas. 490; Burton Stock Car Co. v. Chicago, B. & Q. R. Co. 1 Inters. Com. Rep. 329; Providence Coal Co. v. Providence & W. R. Co. 1 Inters. Com. Rep. 363.

A railway company is justified in carrying goods for one person at a less rate than that at which it carries goods for another, only where there are circumstances which make the cost of carrying the former less than the cost of carrying the latter.

Garton v. Bristol & E. R. Co. 6 C. B. N. S. 639; S. O. 28 L. J. C. P. 306; 1 Nev. & Mac. 218; Oxlade v. North Eastern R. Co. 1 C. B. N. S. 454; S. O. 26 L. J. C. P. 129; 1 Nev. & Mac. 73; Nittshill etc. Coal Co. v. Caledonian R. Co. 2 Nev. & Mac. 89.

The difference in rates must bear some proportion to the difference of the cost to carriers.

Harris v. Cockermouth etc. R. Co. 1 Nev. & Mac. 97-102; 3 C. B. N. S. 693; Garton v. Bristol etc. R. Co. 1 Nev. & Mac. 227; 6 C. B. N. S. 639-655; Nicholson v. G. W. R. Co. 1 Nev. & Mac. 185; Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 123; Baxendale v. R. Co. 1 Nev. & Mac. 202; Ransome v. Eastern Counties R. Co. 1 Nev. & Mac. 69.

A difference in bulk will justify difference in rates.

Lotspeich v. Cent. R. & Bkg. Co. 73 Ala. 306. Or when return loads could not be had.

Chicago & A. R. Co. v. People, 67 Ill. 24; Girardot v. Midland R. Co. 4 R. & Can. Traf. Cas. 291.

Or difference in expense of loading and unloading.

Chicago & A. R. Co. v. People, 67 Ill. 26.

Different rates may be charged where shippers own private side tracks and return cars more promptly.

Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 102.

Less rates may be charged for furnishing freight in fully loaded trains at regular intervals.

Nicholson v. Great Western R. Co. 5 C. B. N. S. 866.

A difference in charge is justified where the transportation is over steep grades.

Bellsdyke Coal Co. v. North British R. Co. 2 Nev. & Mac. 105; Nittshill Coal Co. v. Caledonian R. Co. 2 Nev. & Mac. 89.

"Goods of like description" and "goods of same description" refer not to the contents of the parcels, but to the parcels themselves, that is, like or different for the purpose of carriage.

Great Western L. Co. v. Sutton, L. R. 4 Eng. & Irish App. H. L. 226; Nittshill etc. Coal Co. v. Caledonian R. Co. 2 Nev. & Mac. 89; Merry v. Glasgow R. Co. 4 R. & Can. Traf. Cas. 383.

Less desirable traffic must be accepted upon reasonable terms, as well as that which is more desirable.

Riddle v. New York, L. E. & W. R. Co. 1 Inters. Com. Rep. 787.

The N. W. Railway Company carried goods for the complainants who were brewers at B. by their railway; they charged the complainants, and the public generally, 1s per ton for the carriage of goods to and from their B. station, and 9d per ton for terminal services there. T. & Co. and C. & Co., who were also brewers at B., had breweries connected with the M. Railway Company's station at that place by continuous railway communication; the goods which they sent or received by the M. line were loaded and unloaded on their own premises by their servants, and they were consequently not charged by the M. Railway Company any rate for cartage or terminal services. The N. W. Railway Company, in order to compete with the M. Railway Company for the carriage of the goods of T. & Co. and C. & Co., exempted them from the above mentioned rates of 1s 9d respectively, carting and loading their goods gratuitously. There being nothing to show that there was a saving of cost to the company by reason of the quantity of goods carried for T. & Co. and C. & Co., to compensate for the loss of 1s, 9d per ton, and T. & Co. and C. & Co. being the only firms to whom the reduced rates were applicable, held, that there was not sufficient ground for the arrangements made in their favor, and that an injunction should issue against the N. W. Railway Company, under the third section of the Railway & Canal Traffic Act, 1854; in order to justify a difference being made by a railway company in favor of one or more individual members of its general class of customers, there must be an adequate consideration to the railway company lessening the cost to it of the services rendered to such individual members of the general class; and it is not sufficient that the railway company merely de-

sires to attract the traffic from another line to itself, especially where the favor thus shown to a few is prejudicial to many others in the same trade as the favored persons; the railway company having acted *bona fide* in the matter, and with no intention of prejudicing the complainants as rivals in trade with others, the injunction was granted without costs.

Thompson v. London etc. R. Co. 2 Nev. & Mac. 115.

It is an unlawful preference to give reduced rates in consideration of an agreement to employ other lines of the company for the carriage of other traffic or to employ the company in other distinct business, the carriage of goods to other points not affecting the cost of carriage between the particular points.

Baxendale v. Great Western R. Co. 5 C. B. N. S. 809; 1 Nev. & Mac. 191; 28 L. J. C. P. 69; Scofield v. Lake Shore & M. S. R. Co. 1 West. Rep. 812, 48 Ohio St. 571; Twells v. Pa. R. R. Co. 3 Am. L. Reg. N. S. 728; Bellsdyke Coal Co. v. North British R. Co. 2 Nev. & Mac. 105.

Or to charge a higher wharfage rate on goods to be conveyed by another railway.

Toomer v. London R. Co. 3 Nev. & Mac. 79.

A reduced rate in consideration of a contract to carry all of certain goods and to prevent their being carried by water or other means is an undue preference.

Garton v. Bristol & E. R. Co. 1 Nev. & Mac. 218; S. C. 28 L. J. C. P. 306.

A difference in rates on an agreement for a period of thirty years and another agreement for fourteen years for a similar service is an undue preference.

Holland v. Festiniog R. Co. 2 Nev. & Mac. 278.

That the shipper contracts to furnish all his freight to the carrier will not authorize a lower rate to him.

Scofield v. Lake Shore & M. S. R. Co. 1 West. Rep. 812, 48 Ohio St. 571; Baxendale v. Great Western R. Co. 5 C. B. N. S. 809; Diphwys Casson Slate Co. v. Festiniog R. Co. 2 Nev. & Mac. 78; S. C. 32 L. T. N. S. 271; Bellsdyke Coal Co. v. N. B. R. Co. 2 Nev. & Mac. 105.

An agreement with certain quarry owners to carry slate for a fixed number of years at a less rate than charged for the same service to complainant quarry owners, who refused to bind themselves by such an agreement, held an undue preference.

Diphwys Casson Slate Co. v. Festiniog R. Co. 2 Nev. & Mac. 78. See also Scofield v. Lake Co. Shore & M. S. R. Co. 1 West. Rep. 812, 48 Ohio St. 571; Baxendale v. Great Western R. Co. 5 C. B. N. S. 809; Menacho v. Ward, 27 Fed. Rep. 529.

Where the railway company fixed rates for packages containing a certain number of pounds, *held*, that baskets of fish, of a size required by the business, should be rated by the pound and not by the size of packages as contained in the published rates of the railway company.

Woodger v. Great Western R. Co. 2 Nev. & Mac. 102; S. C. L. R. 2 C. P. 318.

But a railway company may carry at a lower rate in consideration of a guaranty of large

quantities and full train loads at regular periods.

Nicholson v. Great Western R. Co. 5 C. B. N. S. 366; S. C. 28 L. J. C. P. 89; 1 Nev. & Mac. 121.

Where plaintiff's business was to collect parcels in London and forward them, each parcel being labeled with plaintiff's name, "Pickford & Co." and also with the name of the person to whom it was ultimately to be delivered, but all the parcels were delivered in one consignment, *held*, defendant company had no right to charge for each parcel separately according to its individual weight.

Baxendale v. South Western R. Co. 35 L. J. Exch. 108.

When oil is transported in tanks permanently fixed to car bodies, the tank is to be considered as a part of the car; and for oil transported therein the charge for transportation should be the same by the 100 pounds that the carrier charges for transportation between the same points, of barrels filled with like oil and taken in car load lots. The carrier is guilty of unjust discrimination if the shipper in barrels is charged a higher rate. Under this rule the carrier will be at liberty, and will be expected, to make to the owner of tank cars a reasonable allowance for their use.

Rice v. Louisville & N. R. Co. 1 Inters. Com. Rep. 722.

Neither the fact that the shipper in the one case supplies the rolling stock, nor the alleged fact, that for the tanks there is a greater probability of return loads, nor the further alleged fact, that with barrel shipments there are greater risks to the carrier's property and that which it carries, can justify imposing upon the barrel shipments the greater burden. *Id.*

When two methods for the transportation of an article of merchandise are nominally offered by the carrier, for only one of which it offers rolling stock, and for the other of which the shipper must supply his own rolling stock at considerable expense, it cannot be said that the resort to the latter by the shipper is so far a matter of choice that he has no concern with the charges for transportation in the other mode. The man of small means being compelled to make his choice, by reason of the carrier's failure to supply rolling stock for the other mode, has a right to insist that the charges for transportation in the two modes shall be relatively just and equal. *Id.*

Defendant railway company published a tariff containing the following: "For the purpose of facilitating quick dispatch of the coal cars of this company, a discount of 10 per cent will be made from the following rates to any person, firm or company, who shall receive consignments of coal, in any one year, amounting to 80,000 tons or upwards, at any one station on the line of this road. Quick dispatch to be construed as immediate unloading of coal on its arrival at destination." Defendant claimed that this discount was offered to secure, and was conditioned upon, quick dispatch in unloading its coal cars, and that it was a reasonable regulation for the proper conduct of its business. *Held*:

(a) That, by the wording of the offer, "quick dispatch" was not made a condition of the of-

fer; and, therefore, it cannot be supported on that ground;

(b) That even if "quick dispatch" were made a condition of the discount, such offer would have neither justice nor reason to support it, as its limitation to consignees receiving a specified number of tons would be an unjust discrimination;

(c) That the offer of discount cannot be supported on the consideration of quantity, on the analogy of the distinction usually made in ordinary business transactions, between wholesale and retail dealers.

Providence Coal Co. v. Providence & W. R. Co. 1 Inters. Com. Rep. 363.

The expense of hauling Burton live stock cars in one direction unloaded (for the reason that by their construction they are not suited to carrying general freight) as compared with the greater ability to load back the ordinary railroad cattle cars, and the fact that a large percentage of the ordinary cattle cars are so back loaded upon the long hauls of western roads, are considerations which justify a difference in charge against shippers who prefer to hire the improved stock cars.

Burton Stock Car Co. v. Chicago, B. & Q. R. Co. 1 Inters. Com. Rep. 329.

Doubted (but not decided) whether the extra charges made to shippers of live stock in special cars (including the Burton cars) over thirty feet in length, according to the revised classification of the Western Railroad Classification Committee, put in force April 7, 1887, are not unreasonable. *Id.*

The permitting by common carriers, of the practice of underbilling the weight of freight or giving it a false classification, whereby less compensation is paid by one person than by another for "a like and contemporaneous service," is within the inhibition of the Act to Regulate Commerce.

Re Underbilling, 1 Inters. Com. Rep. 813.

Competition.

The fact that one shipper can go by another route and will probably do so if charged as much as the charge made to the complaining party, is not a circumstance justifying an unequal charge; nor will the fact that those charged a less rate are seeking to develop a new trade.

London & N. W. R. Co. v. Everahed, L. R. 3 App. Cas. 1029; Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 97.

The lowering of rates for the purpose of developing business is an undue preference.

Oxlade v. North Eastern R. Co. 1 C. B. N. S. 454; S. O. 26 L. J. C. P. 129; 1 Nev. & Mac. 73.

Or making a lower rate in consequence of a threat from the owner of a colliery to construct another railway, by which traffic would be diverted.

Harris v. Cockermouth & W. R. Co. 3 C. B. N. S. 693; S. O. 27 L. J. C. P. 162; 1 Nev. & Mac. 97; Diphwys Casson Slate Co. v. Festiniog R. Co. 3 Nev. & Mac. 73.

An exceptional rebate and gratuitous cartage of goods of one customer not allowed to others, for the purpose of competing with another line, held to be undue preference.

London & M. W. R. Co. v. Everahed, L. R. 3 App. Cas. 1029.

A company made an agreement with A to carry for him coals for three years, from Petersborough to various places on its line of railway, at certain rates. B, a coal merchant at Ipswich, sent coals (which had been brought to that port by sea) to various places on the same lines of railway, and the company charged him a much larger sum in proportion to the distance over which his coals were carried than the company charged to A—the professed object of the difference being to enable A (whose coal came to Petersborough by railway) to compete in the coal trade of the district with B, who had the advantage of having had his coals brought to Ipswich by sea. *Held*, that this was giving an undue preference to A, and the company was required to carry coals for B on equal terms with A, due regard being had to any circumstance rendering the cost of carrying for one less than for the other.

Ransome v. Eastern Counties R. Co. 1 C. B. N. S. 437; S. O. 3 Jur. N. S. 217; 26 L. R. C. P. 91; 1 Nev. & Mac. 63.

That "Railroads have water competition and are compelled to meet it," without more, is not sufficient to justify a lesser charge for the greater distance. Dissimilar "circumstances and conditions" are made out by the existence of actual competition which is the controlling force.

Harwell v. Columbus & W. R. Co. 1 Inters. Com. Rep. 631; Ex parte Koehler, 23 Fed. Rep. 529.

In Boston Chamber of Commerce v. Lake Shore & M. S. R. Co. 1 Inters. Com. Rep. 754, the rule is stated to be: the length and character of the haul, the cost of service, the volume of business, the conditions of competition, the storage capacity and the geographical situation of the different terminal points, are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation.

The subject of competition is further considered under the title "Long and Short Haul and Operation and Suspension of Fourth Section of the Interstate Commerce Act."

Furnishing Cars.

A railway company is bound to furnish sufficient locomotive power, and to desist from unduly detaining empty or unloaded wagons; Watkinson etc. Copper Co. v. Wrexham etc. R. Co. 3 Nev. & Mac. 446; and to furnish sufficient cars for its traffic.

Watkinson etc. Copper Co. v. Wrexham etc. R. Co. 3 Nev. & Mac. 164; Tharvis etc. v. London etc. R. Co. 3 Nev. & Mac. 455; Caterham R. Co. v. London, B. & S. C. R. Co. 1 C. B. N. S. 410; S. O. 26 L. J. C. P. 161; 1 Nev. & Mac. 33; Barrett v. Gt. North. R. Co. 1 Nev. & Mac. 38; Toomer v. London etc. R. Co. 3 Nev. & Mac. 79; Dublin etc. R. Co. v. Midland R. Co. 3 Nev. & Mac. 379; Riddle v. N. Y. etc. R. Co. 1 Inters. Com. Rep. 787.

The character and condition of goods and the orderly prosecution of business will determine the order of shipment and the furnishing of facilities for transportation.

Galena & C. U. R. Co. v. Rae, 13 Ill. 493.

Great Western R. Co. v. Burns, 60 Ill. 284; Peet v. Chicago & N. W. R. Co. 20 Wis. 594.

See note, 16 Am. L. Rev. 832.

It is properly the business of a carrier by railroad to supply the rolling stock for the freight it offers or proposes to carry; and if the diversities and peculiarities of traffic are such that this is not always practicable, and consignors are allowed to supply it for themselves, the carrier must not allow its own deficiencies in this particular to be made the means of putting at an unreasonable advantage those who make use in the same traffic of the facilities it supplies.

Rice v. Louisville & N. R. Co. 1 Inters. Com. Rep. 722.

When for a special traffic—e. g., the transportation of petroleum oils—a carrier provides rolling stock for one method, but does not provide it for another for which it publishes rates, but the shippers are expected to provide the same, the terms on which such rolling stock is to be provided should be uniform and should be published with the rate sheets, and cannot lawfully be left to be the subject of bargain and of different terms in the case of different shippers. *Id.*

A railroad is not justified in refusing to furnish cars for the transportation of coal, by the fact that it could at that time make more money by using its coal cars upon other portions of its line.

Riddle v. N. Y. etc. R. Co. 1 Inters. Com. Rep. 737.

During the summer and fall of 1887, owing to high rates on lake vessels, there was an accumulation of coal and other freights along the line of defendant company. *Held*, that the proof did not sustain the charge that the company gave a preference in furnishing cars for the transportation of coke over the coal trade, or gave a preference to shippers in not requiring them to load or unload cars.

Riddle v. Pittsburgh & L. E. R. Co. 1 Inters. Com. Rep. 638.

In the absence of a custom or rule of business placing the duty upon the carrier to notify a shipper of the arrival of cars for his use, it is the duty of the shipper to make inquiry of the proper agent of the railroad company; but if the carrier undertakes to notify, it must perform its duty in this respect.

Riddle v. Balt. & O. R. Co. 1 Inters. Com. Rep. 778.

The proceedings and decisions of the Interstate Commerce Commission relating to refusal to furnish cars are referred to in the index to this volume, under title "Charges and Discrimination."

Connecting Lines; Express Companies.

At common law a railway company is bound to transport or haul upon its road the cars of any other railway company.

Vt. & M. R. Co. v. Fitchburg R. Co. 14 Allen, 463; Mackin v. Boston & A. R. Co. 135 Mass. 201.

A railroad company is bound to supply suitable vehicles of transportation and to offer their use to everybody impartially.

Ogdensburg & L. C. R. Co. v. Pratt, 89 U. S. 23 Wall. 123-133 (23 L. ed. 827-831).

In absence of a statute, a railroad is not

bound to stop its trains and exchange traffic at the junction of another road.

Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co. 110 U. S. 867 (28 L. ed. 291); and its liability terminates with its delivery to the connecting carrier.

Myrick v. Mich. Cent. R. Co. 107 U. S. 102 (27 L. ed. 325).

The use of cars upon other lines is a service incidental to the receiving, forwarding and delivering of traffic, and is within the provisions of the English Act.

Diphwys Casson Slate Co. v. Festiniog R. Co. 2 Nev. & Mac. 73; S. C. 32 L. T. (N. S.) 271.

Under the English Act it must appear that public convenience requires continuous carriage.

Barret v. Great Northern R. Co. 1 C. B. N. S. 428; S. C. 26 L. J. C. P. 88; 1 Nev. & Mac. 28; Caterham R. Co. v. London, B. & S. C. R. Co. 1 C. B. N. S. 410; S. C. 26 L. J. C. P. 161; 1 Nev. & Mac. 32; Parkinson v. Great Western R. Co. 40 L. J. P. 223; S. C. 24 L. T. N. S. 890; 1 Nev. & Mac. 280; Fishbourne v. Gt. S. & W. R. Co. 2 Nev. & Mac. 224; Wannan v. Scottish Cent. R. Co. 2 Sess. Cas. 1873; 1 Nev. & Mac. 237; Pickford v. Caledonian R. Co. 1 Nev. & Mac. 252; Local Board etc. v. London etc. R. Co. & S. E. R. Co. 2 Nev. & Mac. 214; Toomer v. London etc. R. Co. 3 Nev. & Mac. 79; Victoria etc. Co. v. Neath etc. R. Co. 3 Nev. & Mac. 37; James etc. v. Taff. Vale etc. R. Co. 3 Nev. & Mac. 540; Swindon etc. R. Co. v. Great Western R. Co. 4 Nev. & Mac. 349.

Where cars are dissimilar in character a railway company may refuse to forward, upon reasonable requirements.

Caledonian R. Co. v. North British R. Co. 3 Nev. & Mac. 56.

The mileage rate of three fourths of a cent per mile run, which is customary, among railroads, for freight cars of other railroad companies used upon the paying company's line, and which payment is, by the interchange of cars, practically equalized among the different roads, is not to be taken as the measure of payment for the use of cars belonging to persons other than railroad companies.

Burton Stock Car Co. v. Chicago, B. & Q. R. Co. 1 Inters. Com. Rep. 829.

The Burton Stock Car Company, which furnishes special improved live stock cars owned by it, to shippers over railroads, does not exchange with or use cars belonging to others, and is in no sense a "connecting line," entitled to equal facilities for interchange of traffic, under paragraph 2 of section 3 of the Act to Regulate Commerce. *Id.*

The Burton Stock Car Company is not entitled to claim that it is unjustly discriminated against, by a refusal on the part of railroad companies to pay it the same rate of mileage which carriers adopt as the basis in adjusting their car service accounts with each other. *Id.*

A railway company cannot make a distinction in its rates dependent upon whether the traffic is booked no further than it goes by railway or is booked to a destination beyond the limits subject to the traffic statute.

Ayr Harbour Trustees v. Glasgow R. Co. 4 R. & Can. Traf. Cas. 81.

Where one railway company works the rail

way of another company, it must give equal facilities as to through booking by the worked line as by its own and must not prefer its own route in the matter of rates.

Clonmel Traders v. Waterford R. Co. 4 R. & Can. Traf. Cas. 93.

A railway company is not bound to extend to other steamboats the same facilities as to through rates, etc., as it extends to the steamboat it selects to transact its business.

Napier v. Glasgow etc. R. Co. 1 Nev. & Mac. 393; *contra*, under the Act to Regulate Commerce. *Re Petition of Mallory (U. S. C. C. Fla.)*, 1 Inters. Com. Rep. 294.

Under the charter of the Texas & Pacific Railroad Company no discrimination against connecting roads is allowed in charging for freight or passengers.

Mo. Pac. R. Co. v. Texas & P. R. Co. 30 Fed. Rep. 2.

Railway companies are not obliged, in the absence of a statute, to furnish to all independent express companies equal facilities for doing express business upon their fast trains.

Express Cases, 117 U. S. 1 (29 L. ed. 791); 23 Am. & Eng. R. R. Cas. 545, *Notes*. See also *New England Express Co. v. Maine Cent. R. Co.* 5 Maine, 188; *McDuffee v. Portland & R. R. Co.* 52 N. H. 430; *Sandford v. Catawissa, W. & E. R. Co.* 24 Pa. 378.

The Massachusetts Statute does not render it unlawful for a railroad to carry on the express business itself, and to refuse to allow similar privileges to other parties.

Sargent v. Boston & L. R. Corp. 115 Mass. 416.

Under the Pennsylvania Statute requiring "That equal and impartial justice shall be done to all owners of property," a contract giving to one express company the exclusive right of transportation in passenger trains is unlawful and void.

Sandford v. Catawissa, W. & E. R. Co. 24 Pa. 378; *Audenried v. Philadelphia & R. R. Co.* 68 Pa. 370.

The English commissioners have no power to make an order on two railway companies to act jointly in doing what neither company has power to do separately.

Toomer etc. v. London etc. R. Co. 3 Nev. & Mac. 79.

Stations; Yards; Terminal Facilities.

A railway company may be required to furnish proper station facilities, and prevented from abandoning stations already established.

State v. New Haven & N. R. Co. 87 Conn. 153; 42 Conn. 56; *New Haven & N. Co. v. Hammarley*, 104 U. S. 1 (26 L. ed. 629); *R. Comra. v. Portland & O. C. R. Co.* 63 Maine, 269; *Com. v. Eastern R. Co.* 103 Mass. 354; *State, Moore, v. Chicago, St. P. M. & O. R. Co.* 19 Neb. 476; *Cincinnati Stock Yards Co. v. U. R. Stock Yards Co.* 7 Cin. Week. L. Bul. 396.

A railway company is bound to establish new stations and siding accommodations for passengers and traffic, reasonably sufficient for the business.

Local Board etc. v. N. E. R. Co. 3 Nev. & Mac. 306; *Harris v. London etc. R. Co.* 3 Nev. & Mac. 331; *Catherham R. Co. v. London, B. & S. C. R. Co.* 1 C. B. N. S. 410; *S. C.* 26 L.

J. C. P. 161; 1 Nev. & Mac. 81; *Hastings Town Council v. South Eastern R. Co.* 3 Nev. & Mac. 179; *South Eastern R. Co. v. Railway Comrs. L. R.* 6 Q. B. Div. 586; 50 L. J. Q. B. D. 201; 3 Nev. & Mac. 464; *London etc. R. Co. v. Staines etc. R. Co.* 3 Nev. & Mac. 48.

A railway company may be required to provide a waiting room for passengers and to have platforms extended for the accommodation of traffic, and siding accommodations for the reception and delivery of goods without delay.

London etc. R. Co. v. Staines etc. R. Co. 3 Nev. & Mac. 48; *Holyhead Local Board v. London R. Co.* 4 R. & Can. Traf. Cas. 37.

But the commissioners cannot order accommodation to be provided which will require the company to take additional land which it has no immediate power to take.

Harris etc. v. London etc. R. Co. 3 Nev. & Mac. 331.

In the case of *Hastings Town Council v. London etc. R. Co.* (*Hastings Town Council v. S. E. R. Co.* 3 Nev. & Mac. 179; *South Eastern R. Co. v. Railway Comrs. L. R.* 6 Q. B. Div. 586; 50 L. J. Q. B. 201; 3 Nev. & Mac. 464); it was held that the commissioners had jurisdiction to require a railway company to afford cattle accommodations and better facilities for the delivery of tickets at the booking office; but that other orders, relating to the construction of platforms and the erection of a bridge and the providing of a refreshment room, were erroneous.

A railroad unjustly discriminates against a town by placing its depot a mile and one half distant at its junction with another road.

State, Mattoon, v. Republican Valley R. Co. 17 Neb. 647; *State, Moore, v. Chicago, St. P. M. & O. R. Co.* 19 Neb. 476.

A company has no right to afford to one coal merchant superior facilities for storing coal.

West v. London & N. W. R. Co. L. R. 5 C. P. 623; *S. O.* 39 L. J. C. P. 233; 23 L. T. N. S. 371; 1 Nev. & Mac. 166.

A railway company cannot bind itself to deliver to a particular stock yard all the live stock going over its line to a certain point, but is bound to transport and deliver to all stock yards on equal terms; and the performance of this duty may be compelled by injunction at the suit of the proprietor of the stock yard discriminated against.

McCoy v. Cincinnati I. St. L. & C. R. Co. 18 Fed. Rep. 3; *Cincinnati Stock Yards Co. v. U. R. Stock Yards etc. Co.* 7 Cin. Week. L. Bul.; *Coe v. Louisville & N. R. Co.* 3 Fed. Rep. 775; *Keith v. Ky. Cent. R. Co.* 1 Inters. Com. Rep. 601.

When a railway company has fixed its rates for the transportation of grain from a given station on its line to Chicago, it cannot charge different rates for delivery to different warehouses in Chicago, on the line of its tracks.

Vincent v. Chicago & A. R. Co. 49 Ill. 33.

Undue delay in delivering traffic is ground of complaint.

Cent. Wales R. Co. v. G. W. R. Co. 3 Nev. & Mac. 191.

An exclusive privilege or unequal rights to omnibuses, cab or fly proprietors are prohibited.

Marriott v. London & S. W. R. Co. 1 C. B. N. S. 499; *S. C.* 26 L. J. C. P. 154; 1 Nev.

& Mac. 47; *Beadell v. Eastern Counties R. Co.* 26 L. J. C. P. 250; 1 Nev. & Mac. 56; *Painter v. London, B. & S. C. R. Co.* 2 C. B. N. S. 702; 1 Nev. & Mac. 58; *Ilfracombe etc. Co. v. London etc. R. Co.* 1 Nev. & Mac. 61.

A railway company admitting its own vans, used for the carriage of goods, to the railway station after 6:30 P. M., but excluding the vans of others, thereby gives an unreasonable preference to its own traffic.

Palmer v. London, B. & S. C. R. Co. 1 Nev. & Mac. 271; *S. C.* 40 L. J. C. P. 138; 24 L. T. N. S. 135; *Garton v. Bristol & E. R. Co.* 6 C. B. N. S. 639; *S. C.* 28 L. J. C. P. 806; 1 Nev. & Mac. 218; *Baxendale v. London & S. W. R. Co.* 12 C. B. N. S. 758; 1 Nev. & Mac. 281.

Carriage of Passengers.

A common carrier cannot refuse to carry nonunion laborers because liable to assaults of union men.

Chicago & A. R. Co. v. Pillsbury (Ill.) 6 West. Rep. 790.

Discrimination is permitted against passengers who do not purchase tickets; equal facilities being afforded to all to purchase.

Forsee v. Alabama G. S. R. Co. 68 Miss. 67.

Under the Massachusetts Statute (the general Railroad Act, 1874, chap. 372), § 138, requiring equal terms for the transportation of all persons or property, *held*, that a student who had paid the regular price of a season ticket was not entitled to recover the difference between the price paid and that which the company made to students upon special application.

Spofford v. Boston & M. R. Co. 128 Mass. 326.

The Interstate Commerce Law does not permit the sale of tickets to any class of people at rates different from those established for the general public. The fact that it is very desirable for the defendant to make sale of its lands is not a reason for discriminating in favor of explorers or settlers.

Smith v. Northern P. R. Co. 1 Inters. Com. Rep. 611.

The petition alleged that the defendant railroads had, prior to the time when the Interstate Commerce Act went into effect, entered into an arrangement with petitioner to allow 150 pounds of extra free baggage to passengers presenting the "baggage indemnity certificate" issued by petitioner, and that the defendants now refuse to make such allowance of extra free baggage, *held*:

(a) That there is nothing in the facts disclosed by the evidence which involves any question of unjust discrimination or extortion, or any other matter over which the Commission has jurisdiction;

(b) That the power to enforce contracts has not been confided to the Commission; nor has it any general power or authority to manage the business of carriers, but only a limited power, expressly defined by the Act, to interfere to prevent wrong and oppression in specified cases.

Traders & Travelers Union v. Phila. & R. R. Co. 1 Inters. Com. Rep. 871.

The defendant companies, in prohibiting their agents from receiving commissions and in

refusing to sell through tickets over the roads of complainants while the latter insists on paying commissions to defendant's agents, have not contravened the provisions of the third section of the Act, which require that railroad companies shall "afford all reasonable, proper and equal facilities" to connecting lines, etc. *Morrison, C.*, dissents.

Chicago & A. R. Co. v. Pa. Co. 1 Inters. Com. Rep. 357.

In the absence of statutory authority one railroad company can sell tickets and check baggage over the road of another company only by agreement; and the Act to Regulate Commerce does not in terms require one railroad company to sell through tickets over the road of another company. *Id.*

Held, that upon the evidence offered, the Commission cannot find that \$25 per 1000 miles is an unreasonable rate for mileage tickets. *Id.*

The Commission declines, in the absence of an actual case, to pass upon the question of the propriety of railroads continuing the issuance of free passes to the United States Fish Commission and the National Museum, to enable their employees to carry on their official duty at less expense to the United States. *Id.*

Commercial travelers are not entitled to mileage tickets at lower prices than they are sold to the public generally. *Id.*

Where a railroad ticket broker, having no apparent interest in the transaction, presented a complaint alleging unjust discrimination on the part of a railroad company in permitting a certain person to transfer to another the return portion of a passage ticket, while it refused to grant the same privilege to a third person holding a ticket alleged to be similar (but which was not so in fact) *held*, that the person aggrieved, should complain in his own name, and that the complaint by the ticket broker would not be entertained.

Ottinger v. Southern P. R. Co. 1 Inters. Com. Rep. 607.

A colored passenger having purchased a first class ticket is entitled to passage in a first class car; unjust preference, under section 8 of the Interstate Commerce Act, would not result from separating white and colored passengers, by providing cars equally safe and comfortable.

Council v. Western & A. R. Co. 1 Inters. Com. Rep. 638; *Heard v. Georgia R. Co.* 1 Inters. Com. Rep. 719.

Upon complaint to recover pecuniary damage for the ejection of a colored passenger from a first class car, the Commission has no power to award damages, since, under the amendment of the Constitution, the defendant is entitled to a trial by jury, in which case the plaintiff may recover attorney's fees under section 8 of the Act to Regulate Commerce, "to be fixed by the court."

Council v. Western & A. R. Co. 1 Inters. Com. Rep. 638.

Railroads have a right to grant special privileges to religious teachers.

Re Religious Teachers, 1 Inters. Com. Rep. 21.

The proviso in section 22 of the Interstate Commerce Act "That nothing in this Act shall apply to * * * the issuance of mileage * * *

passenger tickets," applies only to the act of issuing or giving out such tickets; the terms, conditions and circumstances upon which the sale of such tickets is made are subject to and must be in accordance with the Act in its general provision.

Larrison v. Chicago & G. T. R. Co. 1 Inters. Com. Rep. 869.

A sale of mileage tickets to commercial travelers at a certain rate, and a refusal to sell to other passengers except at a higher rate, is an unjust discrimination, within the meaning of the Act. *Id.*

A release of liability by commercial travelers to the railroad company does not constitute a good and sufficient consideration for such discrimination; nor does the fact that they may influence business in favor of the road, etc. *Id.*

Common carriers may continue the issuance of mileage passenger tickets, the charges for which must be reasonable and just, and free from unjust discrimination or unreasonable preference. *Id.*

Persons belonging to the class known as commercial travelers are not privileged to ride over railroads at lower rates than other persons, and to make a difference in this respect is unjust discrimination; this is true whether tickets issued are mileage tickets or in some other form. *Id.*

Neglect on the part of a railroad company to publish rates for mileage tickets is a violation of the Act. *Id.*

The fact that excursion or commutation tickets are put on sale at a given rate, does not entitle the purchaser of a mileage ticket (each class of tickets being issued for distinct purposes and the form of contract in each case being different) to complain of unjust discrimination if charged a higher rate.

Associated Grocers of St. Louis v. Mo. P. R. Co. 1 Inters. Com. Rep. 898.

As the United States Commission of Fish and Fisheries is one of the agencies of the government, and the distribution of fish and eggs by that Commission is by authority of the government, the transportation of fish and eggs so distributed falls within the exception of section 22 of the Act.

Re U. S. Commission of Fish and Fisheries, 1 Inters. Com. Rep. 606.

Long and Short Haul; Fourth Section.

There is no counterpart of the fourth section of the Act of Congress in English legislation; but statutes of similar character are to be found in Illinois. (Act of May 2, 1878, § 8; R. S. 188, p. 884, § 125; Starr & Curt. Stat. § 147); Massachusetts (General Railroad Act, 1874, chap. 873, § 140); and Oregon (Act of February 28, 1885, § 4; Laws of 1885, p. 88.)

But a larger charge for a shorter haul is an undue preference under the English Statutes.

Budd v. London & N. W. R. Co. 4 R. & Can. Traf. Cas. 398; *S. C.* 86 L. T. N. S. 802; and the same charge for a shorter haul; *Denaby Main Colliery Co. v. Manchester, S. & L. R. Co.* 3 Nev. & Mac. 426.

But reductions in fare in favor of longer distances are proper.

Hozler v. Caledonian R. Co. 24 L. T. 389; 1 Nev. & Mac. 27; *Jones v. Eastern Counties*

R. Co. 3 C. B. N. S. 718; 1 Nev. & Mac. 45; *Ransome v. Eastern Counties R. Co.* 1 Nev. & Mac. 117.

"Circumstances and conditions" of transportation are not changed by any of the following considerations:—Developing a new trade.

Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 97;

Or to secure traffic that would otherwise go by other lines;

London & N. W. R. Co. v. Evershed, L. R. 8 App. Cas. 1029; *Oxlade v. North Eastern R. Co.* 1 C. B. N. S. 454; 1 Nev. & Mac. 72;

Competing with sea transportation;

Budd v. London & N. W. R. Co. 86 L. T. N. S. 802; 4 R. & Can. Traf. Cas. 398;

The place from which goods are shipped;

Ransome v. Eastern Counties R. Co. 4 C. B. N. S. 185; 1 Nev. & Mac. 109;

Place of destination;

Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. *supra*.

Of the character of the shipper, as whether a rival.

Great Western R. Co. v. Sutton, L. R. 4 Eng. & Irish App. H. L. 226.

Pooling arrangements are contrary to common law, and to public policy and have been the subject of several statutory prohibitions.

State v. Vanderbilt, 37 Ohio St. 590; *Mo. Pac. R. Co. v. Texas & P. R. Co.* 80 Fed. Rep. 2; *Central Ohio Salt Co. v. Guthrie,* 35 Ohio St. 666; *Crawford v. Wick,* 18 Ohio St. 190; *Pullman Palace Car Co. v. Texas & P. R. Co.* 11 Fed. Rep. 625; *Menacho v. Ward,* 27 Fed. Rep. 529; *Charlton v. Newcastle & C. R. Co.* 5 Jur. N. S. 1100; *Hare v. London & N. W. R. Co.* 2 Johns & H. 80; *Stanton v. Allen,* 5 Denio, 440; *Nashua & L. R. Corp. v. Boston & L. R. Corp.* 19 Fed. Rep. 804; *Morris Run Coal Co. v. Barclay Coal Co.* 68 Pa. 173;

Note on Railway Pools, 15 Fed. Rep. 667; *Central R. R. Co. v. Collins,* 40 Ga. 563.

Cost of service constitutes a real difference in "circumstances."

Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 97; *Chicago & A. R. Co. v. People,* 67 Ill. 11; *Ransome v. Eastern Counties R. Co.* 1 Nev. & Mac. 117.

Constructions upon the English Statutes as to the manner of making schedule of rates:

Colman v. G. E. R. Co. 4 R. & Can. Traf. Cas. 108; *Watkinson etc. v. Wrexham etc. R. Co.* 8 Nev. & Mac. 874; *Diphwys Casson Slate Co. v. Festiniog R. Co.* 3 Nev. & Mac. 78;

Cairnes v. N. E. R. Co. 4 R. & Can. Traf. Cas. 221; *Clonmel Traders v. Waterford etc. R. Co.* 4 R. & Can. Traf. Cas. 92; *Jones v. N. E. R. Co.* 2 Nev. & Mac. 108.

It is provided by the Illinois Statute of 1873, § 8, Starr & Curt. Stat. 1885, § 147, that "It shall not be deemed a sufficient excuse or justification of such discriminations (same or greater charge for short haul), on the part of such railroad corporation, that the railway station or point at which it shall charge or receive the same or less rates of toll or compensation for the transportation of such passenger or freight, or for the use and transportation of such railroad car the greater distance, than for the shorter distance, is a railway station or point at which there exists competition with

any other railroad or means of transportation."

The same principle is settled by the English decisions.

London & N. W. R. Co. v. Evershed, L. R. 3 App. Cas. 1029; Budd v. London & N. W. R. Co. 36 L. T. N. S. 802; 4 R. & Can. Traf. Cas. 898; Thompson v. London etc. R. Co. 2 Nev. & Mac. 115; Greenoch v. S. E. R. Co. 2 Nev. & Mac. 819; *Note*, 16 Am. L. Rev. 883.

In a case arising under the Oregon Act of February 20, 1885, the court directed the receiver to charge "No more for the carriage of goods for a shorter haul than a longer one in the same direction, except to and from points where the rate attainable is affected by water transportation, in which case he may carry at as low a rate as the water craft do, without reference to the length of the haul."

Ex parte Koehler, 23 Fed. Rep. 529; *S. U.* 25 Fed. Rep. 73; 21 Am. & Eng. R. R. Cas. 52-58.

As to construction of Illinois Statutes, see:

Chicago & A. R. Co. v. People, 67 Ill. 11; St. Louis, A. & T. H. R. Co. v. Hill, 14 Bradw. (Ill. App.) 579; Wabash etc. R. Co. v. People (80 L. ed. 244); 1 Inters. Com. Rep. 81.

As to Massachusetts Statutes, see:

Com. v. Worcester & N. R. Co. 124 Mass. 561.

The Statute of North Carolina (Code § 1966), which imposes a penalty on any rail, road company which shall charge for transportation of any freight over its road a greater amount than shall be charged at the same time by it for an equal quantity of the same class of freight, transported in the same direction over any portion of the same railroad, of equal distance, is to be construed to mean that the compensation charged shippers for carrying an equal quantity of the same class of freight, going in the same direction, must be equal in amount for equal distances, no matter on what part of the road, at any time while its list of charges for carrying freight remains unchanged.

Hines v. Wilmington & W. R. Co. 95 N. C. 434.

A lower rate should not be made for the transportation of goods intended for export trade.

Twells v. Pa. R. Co. 3 Am. L. Reg. N. S. 728; Mo. Pac. R. Co. v. Texas & P. R. Co. 30 Fed. Rep. 2; Denaby Main Colliery Co. v. Manchester, S. & L. R. Co. L. R. 11 App. Cas. 97.

Carrying local passengers from one point on its line is not an identical service with that of carrying a through passenger from the same distance.

Union Pac. R. Co. v. U. S. 117 U. S. 355 (29 L. ed. 920). See also Missouri Pac. R. Co. v. Texas & P. R. Co. 30 Fed. Rep. 2.

A Statute of Illinois enacts that if any railroad company shall, within that State, charge or receive for transporting passengers or freight of the same class, the same or a greater sum for any distance than it does for a longer distance, it shall be liable to a penalty for unjust discrimination. The defendant in this case made such discrimination in regard to goods transported over the same road or roads, from Peoria in Illinois and from Gilman in Illinois

to New York; charging more for the same class of goods carried from Gilman than from Peoria, the former being eighty-six miles nearer to New York than the latter, this difference being in the length of the line within the State of Illinois.

Wabash, St. L. & P. R. Co. v. Ill. 118 U. S. 557 (30 L. ed. 244); 1 Inters. Com. Rep. 81.

The Supreme Court of the United States follows the Supreme Court of Illinois in holding that the Statute of Illinois must be construed to include a transportation of goods under one contract and by one voyage from the interior of the State of Illinois to New York. *Id.*

And it held further that such a transportation is "commerce among the States," even as to that part of the voyage which lies within the State of Illinois, while it is not denied that there may be transportation of goods which is begun and ended within its limits and disconnected with any carriage outside of the State, which is *not* commerce among the States. *Id.*

The latter is subject to regulation by the State, and the Statute of Illinois is valid as applied to it. But the former is national in its character, and its regulation is confided to Congress exclusively, by that clause of the Constitution which empowers it to regulate commerce among the States. *Id.*

Notwithstanding what is said in *Munn v. Illinois*, and *Pelk v. Chicago & N. W. R. Co.*, in 94 U. S. 113, 164 (24 L. ed. 77, 97), the United States Supreme Court holds now, and has never consciously held otherwise, that a statute of a State, intended to regulate or to tax, or to impose any other restriction upon the transmission of persons or property or telegraphic messages from one State to another, is not within that class of legislation which the States may enact in the absence of legislation by Congress; and that such statutes are void even as to that part of such transmission which may be within the State. *Id.*

It follows that the Statute of Illinois, as construed by the Supreme Court of the State, and as applied to the transaction under consideration, is forbidden by the Constitution of the United States. *Id.*

The Commission has not been given a general dispensing power to relieve hardships under the Law, but its power in that regard is strictly limited.

Re Iowa Barb Steel Wire Co. 1 Inters. Com. Rep. 605.

The Interstate Commerce Law contemplates that the cases in which the Commission is authorized to make orders for suspension of its operation are exceptional cases, and that where only general reasons operate, the general law shall be left to its general course, however serious the consequences in particular cases.

Jurisdiction of the Commission, 1 Inters. Com. Rep. 78.

The mere probability that injury will result from the operation of the Act will not authorize the Commission to direct a suspension. *Id.*

Incidental injuries under the Act must be borne for the public good until the Legislature provides a remedy. *Id.*

The prohibition in the fourth section of the Interstate Commerce Act against a greater charge for a shorter than for a longer distance

over the same line, in the same direction, the shorter being included within the longer distance, as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar.

Re Southern R. & Steamship Asso. 1 Inters. Com. Rep. 378.

The phrase "under substantially similar circumstances," in the fourth section, is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance. *Id.*

The judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts to decide whether error has been committed or whether the statute has been violated. And in case of complaint for violating the fourth section of the Act, the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions are substantially dissimilar. *Id.*

The provisions of section 1, requiring charges to be reasonable and just, and of section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4, as they do in other cases.

Re Southern R. & Steamship Asso. 1 Inters. Com. Rep. 378.

The existence of actual competition, which is of controlling force in respect to traffic important in amount, may make out the dissimilar circumstances and conditions, entitling the carrier to charge less for the longer than for the shorter haul over the same line in the same direction, the shorter being included in the longer, in the following cases:

(a) When the competition is with carriers by water which are not subject to the provisions of the statute;

(b) When the competition is with foreign or other railroads which are not subject to the provisions of the statute;

(c) In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition. *Id.*

When the greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not.

(a) Nor is it sufficient justification for such greater charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof;

(b) Nor that the lesser charge on the longer haul has for its motive the encouragement of

manufactures or some other branch of industry;

(c) Nor that it is designed to build up business or trade centers;

(d) Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up;

(e) The fact that long haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic. *Id.*

The fact that there is competition in the carriage of persons or property to or from a particular place is a circumstance that justifies a common carrier under section 4 of the Interstate Commerce Act to charge less for a long haul to or from said place than a short one included therein.

Ex parte Koehler (U. S. C. C.) 1 Inters. Com. Rep. 817.

Passes to families of employees. Section 2 of the Interstate Commerce Act in effect prohibits the giving of passes or free carriage to particular persons; and the exception allowed in section 23, in favor of officers and employees of the road, does not include the families of such persons. *Id.*

Defendant railway company has two lines of nearly equal length, one starting from Providence and the other from East Providence, which unite at Valley Falls, whence the main line runs into Massachusetts. The rate charged by defendant on coal shipped at Providence is the same as on coal shipped at East Providence as far as Valley Falls and the next station; but beyond that point the rate on coal from Providence is ten cents per gross ton more than on coal from East Providence. *Held:*

(a) That this is an unjust discrimination; that if it is fair and reasonable for the defendant to make the charge to Valley Falls from the two termini the same, there can be no justification for making different rates to stations beyond, based upon the fact that the coal comes from one terminus rather than from the other;

(b) That the evidence fails to support the contention of defendant that the extra rate upon coal received at Providence is only a fair equivalent for the additional cost of handling it there;

(c) That under all the circumstances it is not admissible for defendant to impose upon its patrons at Providence, whose investments were made before the East Providence line was constructed, an additional charge because of the inconvenience attending the transaction of its business at that station, and for which they are in no way responsible.

Providence Coal Co. v. Providence & W. R. Co. 1 Inters. Com. Rep. 868.

The defendant railway company had for some time paid the cost of hauling coal which was shipped by complainant, from complainant's wharf to defendant's freight station in Providence, without any contract obligation to that effect, but now refuses so to do. *Held*, that defendant cannot be compelled to continue paying for such hauling; that what defendant did for a time as a favor or by way of encouragement, it might discontinue at pleasure, and that there is nothing in the nature of a binding usage about it. *Id.*

Under the Interstate Commerce Act all charges made by the receiver of a railroad, in respect to such business as falls under the head of interstate commerce, for any service in the transportation of passengers or property, or for receiving, delivering, storing or handling property, must be reasonable and just; and such receiver may not discriminate in his rates, charges and facilities for or against either of two connecting steamship lines, but should give to both equal rates and facilities for trade and travel, for equal service, from all points.

Re Petition of Mallory, 1 Inters. Com. Rep. 294.

The complaint, in effect, asks from the Commission an order that shall require the defendant roads to receive freights at Schenectady for transportation at Boston, at rates less than are now charged by the same roads for the transportation of like freights to Boston from stations nearer Boston, under substantially similar circumstances and conditions.

Such order, if issued, would require the roads to depart from the general rule laid down in the fourth section of the Act.

While the Act authorizes the Commission to permit exceptions, it does not authorize it to require exceptions.

The Commission has not power to make rates generally, but only to determine whether rates imposed by the railroads are in conflict with the statute.

The question whether the rates now charged complainant are excessive is not raised by the complaint.

Thatcher v. Fitchburg R. Co. 1 Inters. Com. Rep. 356.

By the word "line" in the Act, a physical line is meant, not a business arrangement; and one line of road may be part of several lines.

Boston & A. R. Co. v. Boston & L. R. Co. 1 Inters. Com. Rep. 571.

Where, in a proceeding against several connecting railroad companies for charging more for a short than for a long haul, one of the companies claims that its only participation in the alleged offense consisted in its sharing in the low charges on the long haul, which were not in themselves alleged to be illegal, the complaint should not be dismissed as against such company, where its interest and the liability of the low rates on long haul traffic to be affected by changes made in the higher rates on short haul traffic is so great that in case such company had not been made a party, and should ask to be made a party, it would be proper so order.

Boston & A. R. Co. v. Boston & L. R. Co. 1 Inters. Com. Rep. 571.

Where, in a proceeding by one railroad company against other companies, for charging more for a short than for the long haul, it appears that the rates alleged to be illegal are local rates; that the petitioner does not pay or participate in paying them; that they are not competitive rates to those imposed on the petitioner's road; and there is no allegation that such rates are excessive or unjust, and the sole grievance of the petitioner is that the defendant companies accept through traffic at lower rates than are made by the petitioner and its

connections—such petitioner has no standing to maintain the proceeding. *Id.*

The right to make greater charges for short than for long hauls is exceptional and depends in every case upon the peculiar circumstances and conditions; and a ruling in reference thereto in the case of one carrier would not be applicable to another carrier differently circumstanced. *Id.*

If several railroad companies join in making the joint tariff which constitutes the lesser charge on the longer haul, while one or more of their number makes the greater charge on the shorter haul, the case is within the fourth section of the Act; and those who make such greater charge are called upon to justify it. *Id.*

Through business over the defendant companies' roads was done by the National Despatch Line (a fast freight line, neither a corporation nor an association of persons, but a name under which business was done), the several roads paying mileage for the cars used, furnished to such line by a car company, and the earnings of such line being divided among the roads in agreed proportions. The tariff for the long haul traffic in question was made by the manager of the Despatch Line, who was the agent for all the roads over which it did business, and was acquiesced in by them. Held, that the defendant companies were responsible for the long haul rates. *Id.*

Held, that such peculiar facts are not found to exist as will justify the greater charge over the shorter line by the Central Vermont Roads. *Id.*

Facts examined, and held:

That defendant receives a greater compensation for its haul from Indianapolis to Michigan City than it does for its haul from Frankfort to South Watah, and consequently does not on its own line charge more for the shorter haul;

That defendant does not, and cannot, control the fixing of rates by the crossing and intersecting lines, and has no option but to accept those rates which are fixed, and prorate upon them, or to cease to take grain altogether;

If it is desired to test the reasonableness of the through rate from Frankfort to New York, all the roads responsible for it should be made defendants. It is not enough to make the initial road defendant, unless that road has authority to make the rate for them all.

Allen v. Louisville N. A. & C. R. Co. 1 Inters. Com. Rep. 621.

Evidence examined, and held: the difference in the rates at Mazeppa, compared with the rates at Red Wing and Lake City should neither exceed 2½ cents on 100 pounds, nor one third part of the rates made in the adjustment of charges from competing towns.

Raymond v. Chicago M. & St. P. R. Co. 1 Inters. Com. Rep. 627.

On complaint of millers and others on the Iowa and Minnesota Division, of unjust discrimination; held:

(a) That the complaint is well founded; that the rate on wheat on that division is relatively too high; that while a reasonable differential may be allowed on that division, on account of greater distance and probable larger expense

of transportation and the greater stringency of the competitive forces on the River Division, the difference above the present rate on the River Division should not exceed $2\frac{1}{2}$ cents a hundred;

(b) That it is not a sufficient compliance with the Law that rates are reasonable in themselves; but they should be so relatively reasonable as to protect communities and business against unjust discrimination;

(c) That when the same carrier operates parallel lines, and for any cause accepts low rates on one line, it should furnish sufficient corresponding advantages to the patrons of the other lines to prevent undue prejudice and disadvantage, and to preserve the substantial equality contemplated by the statute.

Boards of Trade Union v. Chicago, M. & St. P. R. Co. 1 Inters. Com. Rep. 608.

The operation of section 4 of the Act suspended, for ninety days, as to the traffic of the petitioner between certain points.

Re Detroit, G. H. & M. R. Co. 1 Inters. Com. Rep. 17.

Petitioning railroad company relieved temporarily from the operation of the fourth section, on certain conditions.

Re Atchison, T. & S. F. R. Co. 1 Inters. Com. Rep. 58.

The operation of the fourth section of the Act suspended, in its application to certain railroads and connecting steamship lines, for a period not greater than ninety days, until the Commission can make a complete examination of the matters alleged in the petition.

Re Southern R. & Steamship Asso. 1 Inters. Com. Rep. 15.

The circumstances and conditions touching the transportation of passengers and freight to and from the Republic of Mexico through El Paso, Texas, by the Texas & Pacific R. Co. are (within the meaning of section 4 of the Interstate Commerce Act) so substantially different from those surrounding transportation to other points on said railway as to justify said company in establishing lower rates at El Paso on freight transported for export into and received from Mexico and for delivery at El Paso than is charged at points between that city and the points where the freights originate and where the distance and haul are shorter.

Re Tex. & Pac. R. Co. (U. S. C. C. E. D. of La.) 1 Inters. Com. Rep. 80.

For proceedings of the Commission relating to complaints for violation of the Fourth Section, applications for suspension, and orders suspending its operation, see Index *infra*, under title "Long and Short Haul."

RULES OF CONSTRUCTION.

Where English Statutes have been adopted, the settled construction of those statutes is incorporated in the Acts adopting them.

McDonald v. Hovey, 110 U. S. 619 (28 L. ed. 269); Oathcart v. Robinson, 80 U. S. 5 Pet. 265 (8 L. ed. 120); Pennock v. Dialogue, 27 U. S. 2 Pet. 1 (7 L. ed. 327); McCool v. Smith, 66 U. S. 1 Black, 459 (17 L. ed. 218); The Abbotsford, 98 U. S. 440 (25 L. ed. 168).

See Address by Senator Cullom, 1 Inters. Com. Rep. 800.

Transportation in a foreign country is not affected by the English Acts.

Branley v. South Eastern R. Co. 13 C. B. N. S. 68; Zunz v. South Eastern R. Co. L. R. 4 Q. B. 589; S. C. 88 L. J. Q. B. 209.

The Commission has no authority to call a railroad company to account for any wrong of which such company may have been guilty prior to April, 1887, when the Interstate Commerce Act went into operation.

Holbrook v. St. Paul, M. & M. R. Co. 1 Inters. Com. Rep. 823; Ottinger v. Southern P. R. Co. 1 Inters. Com. Rep. 607.

Where no overt acts of misconduct on the part of a defendant railroad company, which could support any judgment of the Commission or any mandatory order, are made to appear, the Commission has no discretion but to dismiss the complaint.

Holbrook v. St. Paul, M. & M. R. Co. 1 Inters. Com. Rep. 823.

RULES OF PRACTICE.

Rules of practice adopted by the Commission. Appendix I.

Sec. 1. Daily sessions at Washington.

" 2. Applications under section 4; petition; verification; notice.

" 3. Investigation by Commission.

" 4. Complaints under section 18; copies of complaint; names and addresses to be set forth; service of copies.

" 5. Answer within twenty days; filing; verification.

" 6. Hearing on complaint without answer.

" 7. Adjournment and extension of time.

" 8. Hearing on issue joined; failure to answer.

" 9. Subpoenas; depositions. (See amendment, Appendix II.)

" 10. Amendments.

" 11. Copies.

" 12. Affidavits, before whom taken.

Applications to the Commission for special exception under the Act will be granted only after investigation of the facts, upon a verified petition formally presenting a case.

Re Southern P. R. Co. 1 Inters. Com. Rep. 16; Re Petition of R. Conductors, 1 Inters. Com. Rep. 18.

The Commission cannot make an order or give an opinion in advance of an actual complaint and hearing.

Re Inmates of Nat. Homes, 1 Inters. Com. Rep. 75; Re Petition of R. Conductors, and Re Theatrical Rates, 1 Inters. Com. Rep. 18.

A desire to obtain a construction of the Interstate Commerce Act is not sufficient to support a proceeding before the Commission.

Boston & A. R. Co. v. Boston & L. R. Co. 1 Inters. Com. Rep. 571.

But it is not held that a complainant must necessarily have a pecuniary interest in order to entitle him to be heard; and it seems, under the provisions of the Act, that when an infraction of the Act would constitute a public grievance, it may be the duty of the Commission to investigate it, when brought to its attention by a responsible party in a duly authenticated form. *Id.*

Held, that the persons composing the Vermont State Grange of the Patrons of Husbandry had such an interest that it was proper that they, as an association, should raise a question

as to the justice of the high rates complained of by them, and that the proceeding was maintainable upon their petition. *Id.*

When an important question is raised by the pleading in the case, the determination of which will affect others quite as much as the parties before the Commission, but the parties give their attention almost exclusively to the other questions, and neither by the evidence nor in argument supply the Commission with the information to enable it to be understandingly determined, the Commission will decline to decide it, and leave the parties to bring it forward again as they may be advised.

Rice v. Louisville & N. R. Co. 1 Inters. Com. Rep. 722.

An amendment to a complaint seeking to introduce new grievances and charges will not be allowed.

Riddle v. Balt. & O. R. R. Co. 1 Inters. Com. Rep. 701.

Where complaint was served on receiver of defendant company, naming him as its president and alleging that the prior receivership had determined, upon answer that the receivership still existed, leave was given to amend the complaint to show the existence of the receivership.

Reynolds v. Western, N. Y. & P. R. Co. 1 Inters. Com. Rep. 685.

A motion to dismiss a complaint denied, because: 1, no notice of motion had been given; and 2, because the object of the motion was to reach the merits of the case and have them passed upon summarily, instead of at the customary final hearing.

Associated Grocers of St. Louis v. Mo. P. R. Co. 1 Inters. Com. Rep. 521.

It is the desire of the Commission that the practice and proceedings shall be as simple as possible, and that final hearings be had forthwith, without the interposition of dilatory motions, etc. *Id.*

Complaint dismissed, where complainant failed to appear at the hearing after notice thereof.

Jackson v. St. Louis, A. & T. R. Co. 1 Inters. Com. Rep. 599.

On a petition charging the exaction of unreasonable rates, the burden of proof is on the petitioner to sustain the charges by evidence which shows with reasonable certainty that they are in substance true.

Harding v. Chicago, St. P. M. & O. R. Co. 1 Inters. Com. Rep. 375.

Hence, petition charging that the rates on twine for harvesters, from Chicago to Hudson, was unreasonable, dismissed without prejudice, where the answer denied that the rate was unreasonable, and showed that it had been reduced, and neither party offered any evidence. *Id.*

The complaint charged unjust discrimination in exacting an extra rate for transporting cattle in a Burton stock car; the answer denied the fact of unjust discrimination, and no proof was given by either side. *Held*, that it is impossible for the Commission to say that if all the facts were before it, the greater charge could not be justified; and hence, as it is not suggested that further proceedings are desired, the case must stand dismissed, but without prejudice.

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Leonard v. Union P. R. Co. 1 Inters. Com. Rep. 627.

The Interstate Commerce Act contemplates that when a complaint is made against a carrier, on the ground of exorbitant rates, the carrier may change its rates before a hearing is had, so as to remedy the matter complained of, if it shall see proper so to do.

Fulton v. Chicago, St. P. M. & O. R. Co. 1 Inters. Com. Rep. 375.

Hence, petition dismissed without prejudice, where it appeared from a reply filed by the complainant to the defendant's answer, that the rates originally complained of had been reduced, and no complaint was made against such reduced rates. *Id.*

If, at a hearing before the Commission, of a complaint against a railroad company, the defendant avows a purpose to comply with the Law, the Commission must not only assume that the company will do so but must act upon that assumption until it has evidence that the purpose is not lived up to.

Holbrook v. St. Paul, M. & M. R. Co. 1 Inters. Com. Rep. 323.

Under the English Act, where the company admitted having made an undue preference, but asserted that the cause of complaint had been removed before the application for an injunction had been filed, so that it was not necessary that an injunction should issue, *held*, that the complainant was entitled to an injunction for the future.

Macfarlane v. N. B. R. Co. 4 R. & Can. Traf. Cas. 269.

But an attachment for disobedience to a writ of injunction was refused where it appeared by affidavits of the company that it was endeavoring to conform to the order of the court, although it appeared that the reformed scale of charges still operated in some respects injuriously to the interests of the complainants and advantageously to the other parties.

Ransome v. Eastern Counties R. Co. 4 C. B. N. S. 159; 1 Nev. & Mac. 116.

While the Commission will grant an application for rehearing for the correction of an error of law or fact, it will not direct a rehearing involving an expense to parties, unless satisfied that reargument may have the effect of changing the result. Where the relation of any carrier to the matter complained of is such that it is, in whole or in part, materially responsible for the alleged grievance, and has direct interest in any investigation of the subject matter involved, and the merits of the controversy cannot be investigated and determined in the absence of such carrier as a party, then that carrier should be made a party to the proceeding, and if not a party, no relief can be had against it.

Riddle v. Pittsburgh & L. E. R. Co. 1 Inters. Com. Rep. 773.

The Commission will not express an opinion where neither by complaint nor by application for relief is a case stated which will come within its jurisdiction.

Re Iowa Barb Steel Wire Co. 1 Inters. Com. Rep. 605.

The Commission has no power to construe, interpret or apply the Interstate Commerce Act in advance of an actual act or omission on the

part of a common carrier in contravention of the provisions of the Act.

Re Petition of R. Conductors, 1 Inters. Com. Rep. 18; Jurisdiction of the Commission, 1 Inters. Com. Rep. 78.

Upon petitions by railroad companies praying the Commission to "authorize the trunk lines to bill export freight to Boston at New York rates" etc., *held*, that as any legal ground for affirmative action on the part of the Commission was precluded by the fact that the parties bringing the practice to the attention of the Commission did so with explanations of its propriety and insisting upon its lawfulness, no order should be made on the petitions, but leave should be given to withdraw them.

Re Export Trade of Boston, 1 Inters. Com. Rep. 25.

The report and findings of the Commission upon the evidence relate only to the ascertainment and presentation of all the material facts necessary to fairly and justly present the merits of the controversy; and the Commission

does not report evidence which is only cumulative, or which is immaterial or irrelevant, or mere details of evidence already embraced in substantial facts stated, upon which the findings and conclusions of the Commission are made.

Riddle v. Pittsburgh & L. E. R. Co. 1 Inters. Com. Rep. 778.

Where the pleadings present issues of fact which cannot be disposed of by a decision which shall reach the merits without some evidence, and no evidence is presented, the case must be dismissed.

Leonard v. Union P. R. Co. 1 Inters. Com. Rep. 627.

The Commission will not make an award of damages where the defendant is entitled to have the amount assessed by a jury.

Riddle v. New York, L. E. & W. R. Co. 1 Inters. Com. Rep. 787; Heck v. E. Tenn. V. & G. R. Co. 1 Inters. Com. Rep. 775; Council v. Western & A. R. Co. 1 Inters. Com. Rep. 688; Heard v. Ga. R. Co. 1 Inters. Com. 719.

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Where a bill of lading specifies the rate per 100 pounds to be paid for goods carried but does not state their weight, which was readily ascertainable, the sum to be paid is sufficiently specified to accomplish the object of the Act. *Little Rock & F. S. R. Co. v. Hanniford* (Sup. Ct. Ark.) 530.

BRIDGES. See BICYCLERS.

1. Power to regulate commerce between States extends to erection of piers, bridges and all other instrumentalities of commerce which, in the judgment of Congress, may be necessary or expedient. *Stockton v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. J.) 411.

2. Act of Congress of June 16, 1886, authorizing construction of bridge across Staten Island Sound, known as Arthur Kill, is valid under power of Congress to regulate interstate commerce. *Id.*; *Decker v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. Y.) 434.

BRIEFS AND NOTES.

Power of Congress to authorize foreign corporation to build bridge. (U. S. C. Ct. N. J.) 414, 426, 435.

BROKERS. See AGENTS AND BROKERS.

BURDEN OF PROOF. See EVIDENCE.

CAR LOAD CLASSIFICATIONS. See CHARGES AND DISCRIMINATION, 41.

CARRIERS. See AGENTS AND BROKERS; BAGGAGE; BILL OF LADING; CHARGES AND DISCRIMINATION; COMMERCE; CONNECTING LINES; DEPOTS; LIVE STOCK; LONG AND SHORT HAUL; PASSENGERS; RATES.

Common; who are; duties. *Note*, 857

CHARGES AND DISCRIMINATION.

- I. IN GENERAL.
 - II. DISCRIMINATION AGAINST LOCALITIES.
 - a. Rules as to Rates.
 - b. Particular Localities.
 - III. TRANSPORTATION OF SPECIFIC ARTICLES.
 - IV. REFUSAL TO FURNISH CARS.
 - V. REFUSAL TO AFFORD FACILITIES TO CONNECTING LINES.
 - VI. CARRIAGE OF PASSENGERS.
- BRIEFS AND NOTES.
- See LONG AND SHORT HAUL; RATES; TICKETS.

I. IN GENERAL.

1. Powers and procedure of the Commission. 408, 446.
 2. Section 1 requiring charges to be reasonable, and section 3, forbidding unjust discrimination, apply when **exceptional charges** are made under section 4, as they do in other cases. *Re Southern R. & S. Assn. (Re Louisville & Nashville R. Co.)* 278.
 3. A variety of practical considerations must enter into making of **freight rates** and determine to a great extent whether rates are reasonable. *Beans v. Oregon Railway & Navigation Co.* 641.
 4. Railroad companies cannot be required to make **freight rates** upon mere conjectures. *Id.*
 5. The burden of proving the exaction of **unreasonable** rates is on petitioner. *Harding v. Chicago etc. R. R. Co.* 375.
- II. DISCRIMINATION AGAINST LOCALITIES.**
- a. Rules as to Rates.
 6. The **relative reasonableness** of rates from western points to Atlantic seaboard is governed by circumstances and conditions affecting traffic to points between which rates are given. *Boston Chamber of Commerce v. Lake Shore & M. S. R. Co.* 754.
 7. The length and character of the haul, the cost of the service, the volume of the business, and the conditions of competition, etc., are **elements bearing upon such charges.** *Id.*
 8. Rates should be so **relatively reasonable** as to protect communities and business against unjust discrimination. *Boards of Trade Union v. Chicago, M. & St. P. R. Co.* 608.
 9. A carrier operating parallel lines and accepting **lower rates on one line** should make corresponding charges on other line. *Id.*
 10. When a railroad company in establishing its charges on the different branches of its road so adjusted them as to divert trade and business to one locality, such **unreasonable preference for one place** is not excused by the fact that the rates are the result of competition with other carriers. *Raymond v. Chicago, M. & St. P. R. Co.* 637.
 11. An **advantage given to a competing town** on a main line must not be unreasonable. *Id.*
 12. It is not ground of complaint that railroad company **equalizes its rates as between**

small and large towns, although the effect may be prejudicial to the latter. *Crews v. Richmond & D. R. Co.* 703.

13. The purpose of the Interstate Commerce Act requires that when circumstances will fairly admit of it, **charges** to all points for like service should be made **relatively equal.** *Id.*

14. When the reasonableness of rates is in question, charges on long **through lines** cannot offer a just basis for comparison with **local rates** for relatively short distances. *Id.*

15. A **carrier is not responsible for rates** made by **connecting road** merely because of its giving them in connection with its own rates to parties making through shipments. *Id.*

16. That a refusal to give a **through rate** as for one shipment operates prejudicially to the town desiring privilege, does not make the refusal an unjust discrimination, when the carrier **applies the same rule to all towns.** *Id.*

17. **Discrimination** must consist of allowing one party what is denied another. *Id.*

18. **Carrier need not give the merchants** of towns on its line the **privilege** of shipping their goods from the point of purchase to their own locality and from there to the place of sale of the goods, at the same rate as would have been charged from the point of purchase to the point of ultimate delivery. *Id.*

b. Particular Localities.

19. Beatrice, Neb.—*Beatrice Board of Trade v. Union Pacific R. Co. et al.* 701.
20. Biloxi in favor of New Orleans—*Dunbar v. Louisville & Nashville R. Co.* 593.
21. Boston—*Boston Chamber of Commerce v. Boston & Albany R. Co et al.* 354, 391, 463, 604.
22. There is no unjust discrimination in charging more to Boston than to New York in rates from Chicago. *Id.* 754. *Export Trade of Boston, Re, 18, 23, 25; Fitchburg R. Co.* 23.
23. Carriage by indirect route—*Katzen v. Norfolk & Western R. Co.* 483, 588.
24. Delaware—Fruits and vegetables—*Delaware State Grange v. New York, Phila. & Norfolk R. Co. et al.* 649.
25. Detroit, Mich.—*Detroit Board of Trade v. Grand Trunk R. Co.* 698, 701.
26. Hartford, Conn.—Water Commerce—*Hartford & N. Y. Trans. Co. v. New York & New England R. Co.* 314.
27. Hartwell, Ga.—*McMullan v. Richmond & Danville R. Co.* 483.
28. Hot Springs, N. C.—*Hot Springs v. Western N. C. R. Co.* 316.
29. Hudson, Minn.—*Fulton v. Chicago, St. Paul, M. & O. R. Co.* 375; *Harding v. Same,* 375.
30. Lincoln, Neb.—*Lincoln Board of Trade v. Chicago, B. & Q. R. Co. et al.* 647; *Lincoln Board of Trade v. Southern Pacific R. Co.* 647. 702; *Lincoln Board of Trade v. Union Pacific R. Co.* 702; *Plummer v. Union Pacific R. Co. et al.* 648.

81. Marshallville, Ga.—*Slappey v. Central R. Co. of Ga. et al.* 675, 812.

82. Milwaukee, Wis.—*Milwaukee Chamber of Commerce v. Flint & Pere Marquette R. Co. et al.* 774, 792.

83. Minneapolis, Minn.—*St. Louis Millers' Assn. R.* 22.

84. New Orleans, La.—*Cotton—New Orleans Cotton Exchange v. New Orleans, Cincinnati & Texas Pac. R. Co.* 648.

85. Opelika, Ala., in favor of Montgomery and Columbus—*Columbus & Western R. Co.* 314, 494; *Harwell v. Columbus & Western R. Co.* 494, 681; *Re Opelika Board of Trade*, 314, 494, 681.

86. Phillipstown and Brady's Bend—*Coal—Allegheny River Coal Producers Assn. v. Allegheny Valley R. Co.* 604.

87. Providence and East Providence, R. I.—A higher rate on coal from Providence than from East Providence is an unjust discrimination, and under the circumstances it is not permissible to make an additional charge because of inconvenience attending transaction of business at East Providence. *Providence Coal Co. v. Providence & Worcester R. Co.* 316, 363.

88. Walla Walla, W. T.—The Oregon Railway & Navigation Company is ordered to cease charging more than 25½ cents per 100 pounds or \$4.70 per ton on wheat transported by it on its lines from Walla Walla, Washington Territory, to Portland, Oregon, during the present grain season. *Evans v. Oregon Railway & Navigation Co.* 314, 326, 641; *Reed v. Same*, 314, 328, 641.

III. TRANSPORTATION OF SPECIFIC ARTICLES.

89. The Commission should clearly see that duty requires an answer to the question, on *ex parte* application, whether special **privileges** by a railroad to manufacturers in a **single line of trade**, and not to manufacturers generally, is consistent with the law, before it does so. *Re Iowa Barb Steel Wire Co.* 605.

40. Beer from Milwaukee—*Stahl v. Oregon R. & Nav. Co.* 314.

41. Car load classifications—*Leggett v. Baltimore & O. R. Co.* 396; *Thurber v. New York Central & H. R. R. Co. et al.* 397, 684.

42. Cattle in Burton stock cars—*Leonard v. Union Pac. R. Co.* 472, 627.

43. The expense of hauling the Burton cars in one direction unloaded, since by their construction they are not suited to carry general freight, and the fact that a large percentage of ordinary cattle cars are back loaded upon long hauls of western roads, are considerations which justify difference in charge against shippers who prefer to hire improved stock cars. *Burton Stock Car Co. v. Chicago, Burlington & Quincy R. R. Co.* 329.

44. Classification of freights and underbilling—*Commercial Exchange of Phila. v. Erie Dispatch*, 778, 821; *Re Underbilling*, 778, 818, 821; *Walker v. Baltimore & O. R. Co. et al.* 649.

45. Underbilling weights of freight, whereby one person pays less compensation for like services than another is written inhibition of Act. *Re Underbilling*, 818.

46. Every carrier is held liable for correctness of weight and classification of freight received so far as same can be practically ascertained. *Id.*

47. Devices for evasion of Act commented on. *Id.*

48. Recommendations by Commission for regulations for detecting underbilling and of legislative action imposing penalty upon shippers guilty of underbilling. *Id.*

49. Coal rates—*Ohio Coal Exchange v. Wisconsin Cent. R. Co.* 793, 812; *Rend v. Chicago & N. W. R. Co.* 793, 812.

50. A discount allowed by a railroad company where consignments of coal in one year shall amount to 80,000 tons or upward is an unjust discrimination. *Providence Coal Co. v. Providence & Worcester R. Co.* 363.

51. Differences in rates per car load and less quantities—*Ayres v. Union Pacific R. Co.* 397; *Classification of Railroad Freights*, 317, 355.

52. Grain and flour from Schenectady, N. Y.—*Thatcher v. Fitchburg R. Co.* 356.

53. Live stock from Covington, Ky.—Carriers cannot make the yards of a certain company their exclusive stock depot at a certain place, there being other stock yards near by charging lower rates. *Keith v. Kentucky Central R. Co. et al.* 316, 601.

54. Lumber—Railroad Ties—Classification of railroad ties in different class from other lumber is an unjust discrimination. *Reynolds v. Western New York & P. R. Co.* 600, 685; *Reynolds v. New York & Phila. R. Co.* *Id.*

55. Rates of carrier under desire to keep upon its line a material for which it has use or to keep the price low for its own advantage cannot be justified. *Id.*

56. Lumber—Differences in rates between hewn and sawed lumber—*Jackson v. St. Louis, Arkansas & Texas R. Co.* 476, 599.

57. Lumber from Dalton, Ga.—*Farrar v. East Tennessee, Va. & Ga. R. Co. et al.* 600, 764.

58. Lumber from Fair Haven, Vt.—*Griffith v. Delaware & Hudson Canal Co.* 396, 483.

59. Meat products from Chicago—"Dressed Meat Cases," 294, 303, 314, 464.

60. Milk from Orange Co. N. Y.—*Howell v. New York, L. E. & W. R. Co.* 467; *Re Milk Traffic*, 24, 292, 315, 467.

61. Mineral water from Lansing, Mich.—*Michigan Congress Water Co. v. Chicago & G. T. R. Co.* 797.

62. Pearline, classification—*Pyle v. Southern Railway & Steamship Assn.* 486.

63. Pearline must be placed in fifth class freight in classification of Southern Railway & Steamship Association, and relative difference in rates on pearline and common soap must not exceed difference of sixty cents per 100 pounds on pearline and thirty-three cents on common soap. *Pyle v. East Tennessee, Va. & Ga. R. Co.* 600, 767.

64. Rates for carrying pearline and common soap to be maintained by Southern Railway & Steamship Association, stated. *Id.*

65. Statement of grounds of difference of classification of freight by railroad companies given. *Id.*

66. Petroleum oil—*Brady v. Pa. R. Co.* 649, 810; *Nicola v. Pa. R. Co.* 649, 810; *Rice v. Western N. Y. & P. R. Co.* 717, 792, 795, 811; *Rice v. Louisville & Nashville R. Co. et al.* 854, 876, 448, 478-482, 722.

67. Terms for rolling stock for transportation of petroleum oil should be uniform and published with rate sheets. *Rice v. Louisville & Nashville R. Co.* 722.

68. If from peculiarity of traffic, carrier cannot supply such stock, and consignors supply it for themselves carriers must not allow its deficiencies in this particular to be made means of putting at advantage those who make use in same traffic of facilities it supplies. *Id.*

69. Charge of transportation of oil in tank cars should be same as charged for transportation of barrel shipments of oil. *Id.*

70. That there are greater risks to carrier's property from such shipments does not justify greater charges therefor. *Id.*

71. Allowance can be made to owners of tank cars for their use. *Id.*

72. United States supplies—A carrier may make special rates with individuals to enable the latter to make proposals to the Interior Department for transportation of Indian supplies, such transportation being for the United States. *Re Indian Supplies*, 22.

73. Wheat from Colfax, W. T.—*McClaine v. Oregon R. & Nav. Co.* 395.

74. Wheat from Mazeppa, Minn.—*Raymond v. Chicago, Milwaukee & St. P. R. Co.* 474, 627.

75. Wheat from Minnesota towns—*Boards of Trade Union v. Chicago, Milwaukee & St. P. R. Co.* 608.

IV. REFUSAL TO FURNISH CARS.

76. *Rice v. Louisville & Nashville R. Co.* 722.

77. Refusing to furnish cars for transportation, when all cars are needed for transportation of freight which has accumulated along the line is not violation of Act. *Riddle v. Pittsburgh & L. E. R. Co.* 601, 688.

78. It is duty of carrier to furnish cars **rationably** to shippers along its line until the emergency is passed. *Id.*

79. A charge of preference of cars to one trade over another, and of a preference to shippers in not requiring them to load or unload its cars promptly was not sustained by the evidence. *Id.*

80. At times of special pressure, regular customers are not entitled to preference over occasional ones. *Riddle v. New York, L. E. & W. R. Co.* 787.

81. Shipper need not make special contract with carrier to be entitled to transportation for goods. *Id.*

82. Less desirable freight must be accepted upon reasonable terms, as well as that which is more desirable. *Id.*

83. When equipment of carrier usually applied to transportation of particular article is not equal to demand, carrier must appropriate other cars to such service. *Id.*

84. Carrier is not justified in refusing cars for transportation of coal at certain point by

fact that it could make **more money by using** its regular coal cars on another portion of its line. *Id.*

85. That at certain time article can not be **profitably shipped at existing tariff rate** is not conclusive evidence that that rate is unreasonable. *Id.*

86. The N. Y., L. E. & W. R. Co., extending to Dayton, Ohio, by agreement being considered with C., C. & I. R. Co., extending from Dayton to Cincinnati, an **initial road** at Cincinnati, with the right to make rates to that place, Cincinnati must be treated as point upon line for the purpose of **proceeding** against the company for unjust discrimination in furnishing coal cars. *Id.*

87. **Carrier**, charged with unjust discrimination, may show that it made extra **exertions** in good faith to obtain cars for shipper from connecting line to whom shipper had to look for such cars. *Riddle v. Baltimore & O. R. Co.* 701, 778.

88. In absence of custom, carrier need not **notify shipper** that it can not obtain cars for his freight; it is the duty of the shipper to obtain this information for himself. *Id.*

89. Refusal to carry coal—*Heck v. East Tennessee, Va. & Ga. R. Co. et al.* 498, 775.

90. Transportation of lumber—*Missouri & Ill. Tie & Lumber Co. v. Cape Girardeau & Southwestern R. Co.* 292.

91. Dakota wheat—*Holbrook v. St. Paul, Minneapolis & Manitoba R. Co.* 815, 828.

92. Manitoba wheat—*Derby v. St. Paul, Minneapolis & Manitoba R. Co.* 815.

V. REFUSAL TO AFFORD FACILITIES TO CONNECTING LINES.

93. Interchange of traffic—*Western & Atlantic R. Co. v. East Tenn., Va. & Ga. R. Co.* 488; *Worcester Excursion Car Co. v. Pennsylvania R. Co.* 811.

94. Burton Stock Car Company, which furnishes stock cars to shippers over railroad, does not exchange with or use cars belonging to others, and is not a connecting line entitled to equal facilities for interchange of traffic under section 8, par. 2, of Act. *Burton Stock Car Co. v. Chicago etc. R. R. Co.* 329.

95. Such company is not unjustly discriminated against by refusal of railroad companies to pay same rate of mileage for its cars as for ordinary freight cars. *Id.*

96. Customary mileage rate for freight cars of other railway companies used upon paying company's line, and which payment is, by interchange of cars, practically equalized among different roads, is not the measure of payment for the use of cars belonging to other persons than railroad companies. *Id.*

97. Charges by receiver of railroad in relation to interstate commerce business must be reasonable and just; and there can be no discrimination as to rates, charges or facilities for or against two connecting steamship lines. *Re Mallory* (U. S. C. Ct. Fla.) 294.

98. Refusal to interchange freight—*Owens v. Richmond & Danville R. Co.* 490, 492, 703;

Kentucky & Ind. Bridge Co. v. Louisville & Nashville R. Co. 708, 715.

99. Refusal to accept shipments of wheat unless billed to elevators—*Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co.* 795.

VI. CARRIAGE OF PASSENGERS.

100. It is an unjust discrimination to remove a **colored passenger** holding a first class ticket from a first class car, to a second class car, less clean and comfortable. *Heard v. Georgia R. Co.* 814, 719; *Council v. Western & Atlantic R. Co.* 292, 855, 688.

101. The separation of white and colored passengers is lawful if the accommodations are equal in all respects. *Id.*

102. The Commission declines to proceed on the plaintiff's claim for damages, for injuries done in his violent removal from car, leaving him his remedy in the courts. *Id.* 688.

103. Twenty-five dollars per 1,000 miles is not unreasonable rate for **milage ticket**. *Associated Wholesale Grocers v. Missouri Pac. R. Co.* 321, 898.

104. **Rate at which excursion or commutation tickets are sold does not entitle milage ticket purchaser to complain of unjust discrimination if charged a higher rate.** *Id.*

105. A sale of milage tickets to **commercial travelers** at lower prices than they are sold to public generally, is an unjust discrimination. *Id.*; *Larrison v. Chicago etc. R. R. Co.* 869.

106. A **release of liability** by commercial travelers is not a good consideration for such discrimination. *Id.* 869.

107. Section 2 of Act prohibits giving of **passes** to particular persons, and the exception allowed in section 22 in favor of officers and employees of road does not include the families of such persons. *Ex parte Koehler* (U. S. C. Ct.) 317.

108. In the absence of an actual case, the Commission will not pass upon the question of passes to the United States Fish Commission. *Re U. S. Commission of Fish and Fisheries*, 606.

109. Use of by Territorial Judge of Dakota. *Tuttle v. Northern Pacific R. Co.* 483, 588.

110. Complaint. *Dexter v. Chicago, B. & Q. R. Co.* 598.

111. **Land explorers** and settlers are not entitled to lower rates than the general public. *Smith v. Northern Pac. R. R. Co.* 611.

112. Rates may be reduced for **religious teachers** and as act of charity. *Re Religious Teachers*, 21.

113. **Emigrants** from Castle Garden, New York City. *Savery v. New York Central & H. R. R. Co.* 695; *Savery v. Trunk Lines*, 483.

114. **Fares.** Half rate. *Re Inmates of Nat. Homes*, 75.

115. Passenger rates between Hot Springs and Arika, N. C. *Hot Springs v. Western North Carolina R. Co.* 816.

116. **Tickets.** Through passenger. *Chicago & Alton R. Co. v. Pa. R. Co.* 291, 293, 357.

INTER 8.

117. Complaint by ticket broker, having no apparent interest in transaction, alleging discrimination in allowing transfers of return portions of tickets, will not be entertained. *Ottinger v. Southern Pac. R. Co.* 607.

118. The Commission will not make rules as to **free baggage** until violation of Act is charged. *Re Order of Railway Conductors*, 18; *Traders & Travelers Union v. Phila. & Reading R. Co.* 18, 62, 315, 371.

119. The Commission has no jurisdiction in a case presented involving agreement between Traders & Travelers Union and certain carriers, for allowance of extra free baggage to passengers presenting "baggage indemnity certificate" issued by such Union under arrangement made prior to time when Act went into effect. *Id.* 371.

BRIEFS AND NOTES.

Discrimination; general rule; against localities; against specific article; character, quantity, **value of goods**; classification; underbidding; competition; furnishing cars; connecting lines; express companies; stations; yards; terminal facilities. *Note*, 859-867.

Difference in cost of service so as to justify reasonable difference in rates. 725.

Complainant has burden of proof. 724.

Carriage of **passengers**. *Note*, 867.

CLASSIFICATION OF FREIGHT.

See CHARGES AND DISCRIMINATION, 44-48.

COLORED PERSONS.

1. It is an unjust discrimination to **remove** a colored passenger holding a first class car ticket from **first class car** to a second class car, less clean and comfortable. *Heard v. Georgia R. Co.* 814, 719; *Council v. Western & Atlantic R. Co.* 292, 855, 688.

2. The **separation of white and colored passengers** is not unlawful if the accommodations are equal in all respects. *Id.*

3. The Commission declined to proceed on plaintiff's claim for **damages**, for injuries done in his violent removal from car, leaving him his remedy in the courts. *Id.* 688.

COMBINATIONS.

1. Any **one member** of a joint combination may **file** copies of joint **tariff** for all the members. *Re Filing Copies of Joint Tariff*, 76.

2. Complaint against Trunk Lines alleging combinations to **exclude** emigrant company from **interviewing emigrants** at Castle Garden, New York City. *Savery v. Trunk Lines*, 483.

COMMERCE.

I. **POWER OF CONGRESS.**

II. **STATE POWERS AND RESTRICTIONS.**

a. *Interstate Commerce Generally.*

b. *License Tax upon Nonresidents.*

c. *Police Regulations.*

d. *Foreign Corporations.*

III. **LINES WHOLLY WITHIN STATE; CONNECTING LINES; OTHER SUBJECTS OF INTERSTATE COMMERCE ACT.**

BRIEFS AND NOTES.

I. POWER OF CONGRESS.

1. Power to regulate interstate commerce vested in Congress is the power to prescribe the rules by which it shall be governed. *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 882.

2. The power of Congress is supreme over interstate commerce, unembarrassed by state laws. *Id.*; *Stockton v. Baltimore etc. R. R. Co.* (U. S. C. Ct., N. J.) 411. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 838.

3. The failure of Congress to make express regulations indicates that the subject shall be free. *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 882; *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.) 808; *Robbins v. Taxing District of Shelby Co.* (U. S. Sup. Ct.) 45; S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 839.

4. The control of navigable waters constituting channels of communication between States and foreign countries is within commercial power of Congress. Cited in *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 888; S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 840.

5. Power to regulate commerce between States extends to the erection of piers, bridges and all other instrumentalities of commerce which, in judgment of Congress, may be necessary or expedient. *Stockton v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. J.) 411.

6. Act of Congress of June 16, 1886, authorizing construction of bridge across Staten Island Sound, known as Arthur Kill, is valid under power of Congress to regulate interstate commerce. *Id.*; *Decker v. Baltimore & O. R. Co.* (U. S. C. Ct. N. Y.) 484.

7. Regulation of fares and freights for transportation between different States is within power of Congress. *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.) 808.

II. STATE POWERS AND RESTRICTIONS.

a. Interstate Commerce Generally.

8. Interstate commerce consists of intercourse and traffic between citizens of different States, and includes the transportation of property and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities. *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 883. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 839.

9. Transportation of property from one State to another is interstate commerce, whether carriers engaged in moving it or vehicles on which it is borne, cross line of State or not. *Ex parte Koehler* (U. S. C. Ct. Or.) 28.

10. A transportation of goods under one contract and by one voyage from the interior of Illinois to New York is interstate commerce. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 81.

11. In absence of interference by Congress a State may carry on works of a local character, although they necessarily more or

less affect interstate commerce. *Ouachita etc. Packet Co. v. Aiken* (U. S. Sup. Ct.) 879; *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 832.

12. A State can not regulate interstate commerce. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 81; *Western U. Tel. Co. v. Pendleton* (U. S. Sup. Ct.) 806.

13. A state tax upon interstate commerce is void. *Re Hennick* (Sup. Ct. D. C.) 66. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 880.

14. A state law imposing such tax is not cured by including in its provisions subjects within jurisdiction of State. *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.) 808; *Re Hennick* (Sup. Ct. D. C.) 70. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 884.

15. No State can impose a tax upon that portion of interstate commerce which is involved in the transportation of persons and property, whatever be the instrumentality by which it is carried on. Cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 829. S. P. in *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 882.

16. The only state interference with the landing and receiving of passengers and freight which is permissible is confined to such measures as will prevent confusion among vessels and collision between them, and insure their safety and convenience and facilitate the discharge and receipt of passengers and freight. *Id.* 883.

17. State law requiring master of vessel engaged in foreign commerce to pay certain sum to state officer on account of each passenger brought from a foreign country is void. Cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 836.

18. Wharfage is subject to local state laws. Congress having passed no Act to regulate it. *Ouachita etc. Packet Co. v. Aiken* (U. S. Sup. Ct.) 879.

19. Charges for wharfage graduated by tonnage of vessels using wharf are not open to objection that they are duties on tonnage within meaning of Constitution. *Id.*

20. Where wharfage charges are reasonable it in no way concerns those who pay them what application is made of the proceeds. *Id.*

21. The appropriation of wharfage charges to maintain, extend, light and police the wharves is unobjectionable, although profits may be realized by lessees from the city which owns them. *Id.*

22. Goods brought into a State for sale, although they become thereby a part of the mass of its property, cannot be taxed by reason of their introduction into the State or because they are products of another State. Cited in *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.) 811.

23. Illinois Act regulating transportation of goods under one contract to points beyond the State is unconstitutional. *Wabash, St. L. & P. R. Co. v. People* (U. S. Sup. Ct.) 81.

24. State tax upon gross receipts of

railroads for carriage of freight or passengers into, out of or through State, is void. *Fargo v. Stevens* (U. S. Sup. Ct.) 51.

25. **State tax upon earnings of sleeping car company** engaged in transporting passengers from one State to another is void. *Indiana v. Woodruff Sleeping & Parlor Coach Co.* (Sup. Ct. Ind.) 798. S. P. cited in *Wabash, St. Louis & P. R. Co. v. People* (U. S. Sup. Ct.) 37.

26. **A state tax upon a steamship company** upon gross receipts from transportation between different States, and to and from foreign countries, is unconstitutional. *Phila. etc. Steamship Co. v. Pennsylvania* (U. S. Sup. Ct.) 808.

27. The capital stock of a **foreign ferry company** engaged in interstate traffic is not taxable by State. *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 382.

28. A State may regulate the charges of **public warehouses**. Cited in Dis. Op. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 44.

29. Indiana Statute regulating mode in which **messages** sent by telegraph companies, doing business in that State, shall be delivered in other States is void. *Western U. Tel. Co. v. Pendleton* (U. S. Sup. Ct.) 806. S. P. cited in *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 37.

30. Issuing policy of **insurance** is not interstate commerce. *List v. Pennsylvania* (Pa. Sup. Ct.) 784.

b. License Tax upon Nonresidents.

31. A license tax upon nonresident merchants, drummers or agents is **invalid**. *Robbins v. Tazewell District of Shelby Co.* (U. S. Sup. Ct.) 45; *Corson v. Maryland* (U. S. Sup. Ct.) 50; *Re Hennick* (D. C. Sup. Ct.) 66; *State v. Pratt* (Vt. Sup. Ct.) 299. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 384.

c. Police Regulations.

32. Arkansas Act, 1885, February 27, **prohibiting greater charge than specified in bill of lading**, and imposing a penalty for refusal to deliver on payment or tender of charges as shown in such bill, is within police power of State. *Little Rock & F. S. R. Co. v. Hanniford* (Sup. Ct. Ark.) 580.

33. **Police power of State defined** and illustrated. Cited in *Id.* 581.

34. State cannot **under cover of exerting its police powers** substantially prohibit or burden interstate commerce. Cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 382.

35. State statute requiring locomotive **engineers** to be licensed is not regulation of interstate commerce. Cited in *Id.* 840. S. P. in *Smith v. Alabama* (U. S. Sup. Ct.) 804.

36. **Fee to be paid by applicant** for examination is not provision for raising revenue and is not tax upon transportation. *Id.* 804.

37. **State statute** which conflicts with common-law exercise of powers of Congress INTER S.

over commerce must **give way** to supremacy of national authority. *Id.*

38. Rhode Island, Public Statute, chap. 634, § 1, **prohibiting the keeping of intoxicating liquors** for sale is not obnoxious to Federal Constitution conferring exclusive power to regulate commerce upon Congress. *State v. Fitzpatrick* (Sup. Ct. R. I.) 718. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 385.

39. Iowa Code, § 1553, **forbidding carrier to bring into State** intoxicating liquors without first having certificate therein required is regulation of commerce and void. *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 388.

40. It is not legitimate exercise of police power. *Id.*

41. **Prohibiting driving or conveying of certain cattle into State** between certain days in each year is void as regulation of commerce, and is not legitimate exercise of police power. Cited in *Id.* 382.

42. Under police power, State may **prohibit** spread of crime or pauperism or disturbance of the peace; it may exclude from its limits convicts, paupers, idiots and lunatics, as well as persons afflicted with contagious diseases. Cited in *Id.*

d. Foreign Corporations.

43. State Legislature may prescribe **conditions** upon which foreign corporation may do business, unless engaged in interstate commerce. *List v. Pennsylvania* (Pa. Sup. Ct.) 784; *Indiana v. Woodruff Sleeping & Parlor Coach Co.* (Sup. Ct. Ind.) 798; *Stockton v. Baltimore etc. R. Co.* (U. S. C. Ct. N. J.) 411. Cited in *Barron v. Burnside* (U. S. Sup. Ct.) 295.

44. Congress can confer upon a state corporation **powers** not contained in its original charter. *Stockton v. Baltimore etc. R. Co.* (U. S. C. Ct. N. J.) 411.

45. Louisiana Constitution, § 286, **providing** that a foreign corporation shall have a place of business and an agent upon whom service may be made within the State, is void as a restriction on navigation. *New Orleans & M. Packet Co. v. James* (U. S. C. C. La.) 599.

46. Iowa Act of April 16, 1886, seeking to make the right of foreign corporations to transact business in that State dependent upon **surrender of right to remove causes** to federal courts, is invalid. *Barron v. Burnside* (U. S. Sup. Ct.) 295.

47. A corporation is a citizen of the State by which created, so far as its right to sue and be sued in the federal courts is concerned. *Id.*

III. LINES WHOLLY WITHIN STATE; CONNECTING LINES; OTHER SUBJECTS OF INTERSTATE COMMERCE ACT.

48. The word "line" in the Act to Regulate Commerce means a **physical line**, not a business arrangement. *Boston & A. R. Co. v. Boston & L. R. Co.* 571.

49. **Short road** used as means of conducting interstate traffic in coal by companies owning **connecting** interstate roads is sub-

ject to Act to Regulate Commerce. *Heck v. East Tennessee, V. & G. R. Co.* 775.

50. Such road must be accessible to interstate shippers on equal and reasonable terms, and cannot be used to discriminate between mine owners on its line. *Id.*

51. Knowledge of carrier, whose line is wholly within State, that the ultimate destination of freight is without State will not make it subject to Interstate Commerce Act. *Missouri etc. Lumber Co. v. Cape Girardeau & S. R. Co.* 607.

52. Bills of lading over connecting lines to points beyond the State, issued by a railroad whose line is entirely within one State, are subjects of interstate commerce. *Re Annapolis, W. & B. R. Co.* 315.

53. Interstate Commerce Act does not apply to carriage wholly within a State of property shipped from or destined to a point without, not in a foreign country. *Ex parte Koehler* (U. S. C. C. Or.) 28.

54. Express business conducted by a railroad company is within the Interstate Commerce Act; *aliter* as to independent express companies. *Re Express Companies*, 22, 317, 363, 448, 451, 456, 677.

55. Communication that bridge company discriminates against bicyclers. *Re Kenton Wheel Club of Covington*, 28.

BRIEFS AND NOTES.

Power of Congress; how far exclusive. *Notes*, 309, 351; 31, 786, 825; (U. S. Sup. Ct.) 45-53, 307, 382; (U. S. C. Ct.) 411, 427; (Sup. Ct. D. C.) 66-69.

Power of Congress to regulate navigation. (U. S. C. Ct. N. Y.) 421, 435.

State powers and restrictions. *Note*, 853.

State tax upon interstate commerce is void. (U. S. Sup. Ct.) 45-53, 307, 382; 779, 800; (Sup. Ct. D. C.) 63-69.

It makes no difference whether such commerce is carried on by individuals or corporations. 801.

Tax on fares is tax on passengers. 800.

State quarantine laws do not derive validity from their adoption by Congress. 807.

State police powers. *Note*, 853.

State possesses power to adopt police regulations. 825.

State laws prohibiting manufacture of intoxicating liquors are valid police regulations. 825.

State may exercise its police power, even when it incidentally operates upon commerce. 806.

What is interstate commerce. *Note*, 853.

Transportation of passengers from one State to another is. 806.

Business of ferriage between different States. (U. S. Sup. Ct.) 384.

Telegraphing from one State to another is. (U. S. Sup. Ct.) 307.

Foreign corporations; rights and privileges. (U. S. Sup. Ct.) 295.

INTER S.

State law impairing right of removal to federal court, as condition of doing business, is void. *Id.*

Lines within Act—Lines wholly within State; "common control, management or arrangement for continuous carriage;" Interstate Commerce Act, § 1; English Regulation of Railways Act of 1873, § 11. *Note*, 853.

COMMERCIAL TRAVELERS. See COMMERCE, II, b.

1. A sale of mileage tickets to commercial travelers at a rate lower than to other passengers is an unjust discrimination. *Associated Wholesale Grocers v. Missouri Pacific R. Co.* 321, 398; *Larrison v. Chicago etc. R. R. Co.* 369.

2. A release of liability by commercial travelers is not a good consideration for such discrimination. *Id.* 369.

COMMISSION. (THE INTERSTATE COMMERCE.) See RULES; RULINGS.

1. Commission has no jurisdiction in a case presented involving agreement between Traders & Travelers Union and certain carriers, for allowance of extra free baggage to passengers presenting "baggage indemnity certificate" issued by such Union, under arrangement made prior to time when Act went into effect. *Traders & Travelers Union v. Phila. etc. R. R. Co.* 371.

2. The Commission has no authority to call a railroad company to account for a wrong committed prior to time when Act went into effect. *Holbrook v. St. Paul, M. & M. R. Co.* 323.

3. The Commission can not construe the Act before violation thereof charged. *Re Order of Railway Conductors*, 18; *Re Theatrical Rates*, 18; *Re Inmates of Nat. Homes*, 73, 75.

4. In the absence of an actual case, the Commission will not pass upon the question of passes to the United States Fish Commission. *Re United States Commission of Fish and Fisheries*, 606.

5. The Commission has no power to make rates generally, but only to determine whether rates imposed by railroads are in conflict with statute. *Thatcher v. Fitchburg R. R. Co.* 365.

6. The Commission has no power to enforce contracts, nor has it any general power to manage business of carriers. *Traders & Travelers Union v. Phila. etc. R. R. Co.* 371.

7. The Commission has only a limited power, expressly defined by the Act, to interfere to prevent wrong and oppression in specified cases. *Id.*; *Re Iowa Barb Steel Wire Co.* 605.

8. While the Act authorizes the Commission to permit exceptions, it does not authorize it to require exceptions. *Thatcher v. Fitchburg R. R. Co.* 356.

9. Where the complaint does not state a case within its jurisdiction, the Commission will not express an opinion. *Re Iowa Barb Steel Wire Co.* 605.

10. The Commission will not make any ruling where petitioner alleges legal-

ty of practice sought to be authorized. *Re Export Trade of Boston*, 25.

11. The Commission does **not report cumulative evidence** or mere details of evidence already embraced in substantial facts stated, upon which its findings are made. *Riddle v. Pittsburgh & L. E. R. Co.* 778.

COMMON LAW.

There is no common law of the **United States** distinct from the common law of England as adopted by the several States, each for itself, applied as its local law, and subject to such alteration as may be provided by its own statutes. Cited in *Smith v. Alabama* (U. S. Sup. Ct.) 808.

COMMUTATION TICKET. See TICKETS, 6.

COMPETITION.

That there is competition in carriage of persons or property to or from a particular place, is a circumstance that **justifies** a carrier, under section 4, to **charge less for a long haul** to or from such place, than a short one included therein. *Ex parte Koehler* (U. S. C. Ct. Or.) 817; *Re Southern R. & S. Assn.* 278.

COMPLAINT. See PLEADING AND PRACTICE, I.

CONDEMNATION PROCEEDINGS. See EMINENT DOMAIN.

CONNECTING LINES. See CHARGES AND DISCRIMINATION, V.

1. The Interstate Commerce Act **only applies to such carriers as use a railway or a railway and water craft under common control or management for a continuous carriage or shipment of property from one State to another.** *Ex parte Koehler* (U. S. C. Ct. Or.) 28.

2. The Act does **not apply to railroad wholly within State, joining with connecting steamers** in independent although concurrent reduction of rates, unless goods are going to or from a foreign country. *Id.*

8. *Burton Stock Car Company*, which furnishes stock cars to shippers over railroad, does **not exchange with or use cars belonging to others, and is not a connecting line** entitled to equal facilities for interchange of traffic under section 3, par. 2, of Act. *Burton Stock Car Co. v. Chicago etc. R. R. Co.* 829.

4. **Such company is not unjustly discriminated against** by refusal of railroad companies to pay same rate of mileage for its cars as for ordinary freight cars. *Id.*

5. A carrier is **not liable for rates made by a connecting road.** *Allen v. Louisville, N. A. & O. R. Co.* 621; *Crews v. Richmond & D. R. Co.* 703.

6. Where in a proceeding against several connecting roads for violation of section 4, one claims that its only participation consisted in **sharing in low charges on long haul**, complaint should not be dismissed as against it. *Boston & A. R. R. Co. v. Boston & L. R. R. Co.* 571.

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7. In absence of statutory authority, one railroad company can **sell tickets over road of another company only by agreement.** *Chicago & A. R. R. Co. v. Pennsylvania Co.* 857.

8. The Act does **not require** one company to **sell through tickets** over road of another. *Id.*

9. Railroad companies **may forbid** their agents to receive commissions for **sale of tickets** over other companies' roads. *Id.*

10. The practice of **one company's paying the agents of another company a commission for selling tickets** over former's road is not reasonable or proper. *Id.*

CONSTITUTIONAL LAW. See COMMERCE.

1. **Arkansas Act**, 1885, February 27, prohibiting greater charge by a carrier for transportation of freight than specified in bill of lading, and imposing a penalty for refusal to deliver on payment or tender of charges as shown in such bill, is not special legislation, nor a regulation of interstate commerce, but **within police power** of State. *Little Rock & F. S. R. Co. v. Hanniford* (Sup. Ct. Ark.) 580.

2. An Act being general and uniform in its operation, upon all persons coming within the class to which it belongs, is not special. Cited in *Id.* 581.

BRIEFS AND NOTES.

Constitutionality of part of Act. (U. S. Sup. Ct.) 296.

CONSTRUCTION. See ACT TO REGULATE COMMERCE.

CONTINUANCE AND ADJOURNMENT.

Adjournment and extension of time is within discretion of Commission. *Rule 7, Appendix I*, 843.

CONTINUOUS CARRIAGE.

Complaint alleging interruption of continuous carriage in violation of section 7. *Plummer v. Union Pac. R. Co.* 596; *Raymond v. Chicago, B. & Q. R. R. Co.* 592.

CONTRACTS.

The Commission has **no power to enforce contracts.** *Traders & Travelers Union v. Phila. etc. R. Co.* 371.

CORPORATIONS. See COMMERCE, II, d.

COURTS. See APPEAL AND ERROR.

1. The jurisdiction of **federal courts** cannot be affected by state legislation. *Barron v. Burnside* (U. S. Sup. Ct.) 295.

2. A **corporation** is a citizen of the State by which created, so far as its right to sue and be sued in the federal courts is concerned. *Id.*

CUSTOM AND USAGE.

That a railway company for some time paid **cost of hauling coal from complainant's wharf to station** is not ground for compelling such payment by the company. *Providence Coal Co. v. Providence & W. R. Co.* 863.

DAMAGES.

A claim for pecuniary damages entitles the defendant to a jury trial, and the Interstate Commerce Commission will not consider it. *Peck v. East Tennessee, V. & G. R. Co.* 775; *Council v. Western & A. R. Co.* 292, 355, 688; *Riddle v. New York, L. E. & W. R. Co.* 787.

DEFINITIONS. See CHARGES AND DISCRIMINATION, 17; COMMERCE, 8, 33.

Interstate commerce. *Ex parte Koehler* (U. S. C. Ct. Or.) 28; *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 882. S. P. cited in *Bowman v. Chicago & N. W. R. Co.* (U. S. Sup. Ct.) 880.

BRIEFS AND NOTES.

Interstate commerce; what is. *Notes*, 858; (U. S. C. Ct. N. J.) 420.

Power to regulate. (U. S. C. Ct. N. J.) 420.

DEPARTMENT OF STATISTICS.

Creation of, by Commission; auditor appointed. 854.

DEPOSITIONS.

Depositions may be taken as provided by U. S. R. S., §§ 863, 864, without application to Commission. *Rule 9* as amended. *Appendix II*, 848, 410.

DEPOTS.

Carriers cannot make the yards of a certain company their exclusive stock depot at a certain place, there being other stock yards near by charging lower rates. *Keith v. Kentucky Cent. R. R. Co.* 601.

DISCOUNT. See REBATE.

DISCRIMINATION. See CHARGES AND DISCRIMINATION.

DISMISSAL AND DISCONTINUANCE.

1. Motion for, may be made at hearing. *Rule 6, Appendix I*, 848.

2. Leave should be granted to withdraw petition when petitioner alleges legality of practice sought to be authorized. *Re Report Trade of Boston*, 25.

3. Where no overt acts of misconduct on part of defendant railroad appears, the Commission has no discretion but to dismiss complaint. *Holbrook v. St. Paul, M. & M. R. Co.* 828.

4. Petition charging exorbitant rates will be dismissed where rates are reduced before hearing. *Fulton v. Chicago etc. R. R. Co.* 875; *Harding v. Chicago etc. R. R. Co.* 875.

5. The pleadings presenting issues of fact and no evidence being presented, the case will be dismissed. *Leonard v. Union Pac. R. Co.* 627.

6. Upon failure of complainant to appear at hearing, complaint will be dismissed. *Jackson v. St. Louis, A. & T. R. Co.* 599.

7. Complaint for over charge withdrawn where complainants receipt in full settlement for over charges was shown by respondent. *Stahl v. Oregon R. & Nav. Co.* 814.

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DRUMMERS. See COMMERCE, II, b; COMMERCIAL TRAVELERS.

EMIGRANTS. See CHARGES AND DISCRIMINATION, 118.

EMINENT DOMAIN.

United States may condemn land within State without consent of State. *Stockton v. Baltimore etc. R. Co.* (U. S. C. Ct. N. J.) 411.

BRIEFS AND NOTES.

Exercise of right of, by United States, without consent of State. (U. S. C. Ct. N. J.) 426.

Right to compensation. (U. S. C. Ct. N. J.) 414.

EMPLOYEES.

Section 2 of the Act prohibits giving of passes to particular persons; and the exception allowed in section 23 in favor of officers and employees of road does not include the families of such persons. *Ex parte Koehler* (U. S. C. Ct.) 817.

ERROR. See APPEAL AND ERROR.

EVIDENCE. See DEPOSITIONS; TESTIMONY.

1. The burden of proof is on petitioner charging exaction of unreasonable rates. *Harding v. Chicago etc. R. Co.* 875.

2. In case of complaint for violation of section 4 of Act, the burden of proof is on the carrier to justify any departure from the general rule prescribed by statute, by showing that circumstances and conditions are dissimilar. *Re Southern R. & S. Assn.* 278.

EXCURSION TICKETS.

Rate at which excursion tickets are sold does not entitle mileage ticket purchaser to complain of unjust discrimination if charged a higher rate. *Assn. Wholesale Grocers v. Missouri Pacific R. Co.* 898.

EXPRESS COMPANIES.

1. Express business conducted by a railroad company is within the Interstate Commerce Act; *aliter* as to independent express companies. *Re Express Companies*, 22, 677.

2. Pleadings, etc. 817, 863, 448, 451, 456.

FARES. See RATES.

FEDERAL COURTS. See COURTS.

FERRIES. See COMMERCE, 27.

A ferry is a means of commercial intercourse between States, bordering upon dividing waters, and it must be conducted without imposition by States of taxes upon the commerce between them. *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 883.

FISH AND FISHERIES.

The transportation of fish and eggs, distributed by the United States Commission of Fish and Fisheries, is within the exception of section 23 of the Act. *Re United States Commission of Fish and Fisheries*, 609.

FOREIGN CORPORATIONS. See COMMERCE, II, d.

FOURTH SECTION. See LONG AND SHORT HAUL.

FREE PASSES. See PASSES.

HEARING. See CONTINUANCE AND ADJOURNMENT; REHEARING; RULES, 4, 10.

1. Carrier deeming complaint insufficient may serve notice for hearing on complaint without answer, and facts stated are admitted. Motion to dismiss for insufficiency may be made at hearing. *Rule 6, Appendix I, 842.*

2. Final hearings shall be had forthwith without dilatory motions, etc. *Associated Wholesale Grocers v. Missouri Pac. R. Co. 321*

3. Upon failure of complainant to appear at hearing, complaint will be dismissed. *Jackson v. St. Louis, A. & T. R. Co. 599.*

IMMIGRATION. See COMMERCE, 42.

INSURANCE. See COMMERCE, 30.

INTERCHANGE OF TRAFFIC. See CHARGES AND DISCRIMINATION, V.

INTERSTATE COMMERCE. See COMMERCE.

INTERSTATE COMMERCE ACT. See ACT TO REGULATE COMMERCE.

INTERSTATE COMMERCE COMMISSION. See COMMISSION.

INTOXICATING LIQUORS. See COMMERCE, 38-40.

JOINT TARIFF.

1. Joint tariffs to be printed in ordinary type, and copies kept at every depot or station upon the line of the carriers uniting therein. *Order as to Publication of Joint Tariffs, 598.*

2. Any one member of a joint combination may file copies of joint tariff for all the members. *Re Filing Copies of Joint Tariff, 76.*

JURISDICTION. See CHARGES AND DISCRIMINATION, 119; COMMISSION; CONTRACTS; COURTS; DAMAGES.

JURY.

A claim for pecuniary damages entitles the plaintiff to a jury trial and the Interstate Commerce Commission will not consider it. *Peck v. East Tennessee, V. & G. R. Co. 775; Council v. Western & A. R. Co. 638; Riddle v. New York, L. E. & W. R. Co. 787.*

LAND EXPLORERS.

Land explorers and settlers are not entitled to lower rates than the general public. *Smith v. Northern Pac. R. Co. 611.*

LICENSE. See COMMERCE, II, b; 35, 36.

LIVE STOCK.

1. Carriers cannot make the yards of a certain company their exclusive stock depot at a certain place, there being other stock yards near by charging lower rates. *Keith v. Kentucky Cent. R. Co. 316, 301.*

2. Conveyed in Burton stock cars, rates for. INTER 8.

Burton Stock Car Co. v. Chicago, B. & Q. R. Co. 329.

LONG AND SHORT HAUL.

I. GENERAL RULES; CIRCUMSTANCES JUSTIFYING GREATER CHARGE FOR LESSER HAUL; COMPLAINTS FOR VIOLATION OF SECTION 4.

II. SUSPENSION OF FOURTH SECTION.

III. APPLICATIONS FOR SUSPENSION. BRIEFS AND NOTES.

I. GENERAL RULES; CIRCUMSTANCES JUSTIFYING GREATER CHARGE FOR LESSER HAUL; COMPLAINTS FOR VIOLATION OF SECTION 4.

1. Circular as to short haul rates. 601.

2. The joint rates on long hauls usually are, and should be, proportionately lower than local rates on short hauls. *Farrar v. East Tennessee, V. & G. R. Co. 764.*

3. The Act to Regulate Commerce aids the rule making the aggregate charge of transportation of freight less in proportion every hundred miles after the first. *Id.*

4. The prohibition in section 4 of the Interstate Commerce Act is limited to cases in which circumstances and conditions are substantially similar. *Re Southern R. & S. Assn. 278.*

5. Carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances or conditions that forbid or permit a greater charge for a shorter distance. *Id.*

6. Judgment of carriers in respect to circumstances and conditions is not final and is subject to authority of the Commission and of the courts to decide whether error has been committed or statute violated. *Id.*

7. In case of complaint for violation of section 4, the burden of proof is on the carrier to justify any departure from the general rule prescribed by statute, by showing that circumstances and conditions are dissimilar. *Id.*

8. Section 1, requiring charges to be reasonable, and section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4, as they do in other cases. *Id.*

9. The existence of actual competition which is of controlling force may, in certain cases, make out the dissimilar conditions entitling the carrier to charge less for longer than for shorter haul. *Id.; Ex parte Koehler, (U. S. C. Ct. Or.) 817; Harwell v. Columbus & W. R. Co. 631.*

10. That railroads have water competition, and are obliged to meet it, is not in itself sufficient to justify the lesser charge for the greater distance. *Id. 631.*

11. It is not a justification for charging more for a shorter than for a longer distance that the traffic which is subjected to such greater charge is way or local traffic; nor that the shorter haul traffic is more expensive to the carrier; nor that the lesser charge has for its motive the encouragement of manufactures or some other branch of industry; nor that it is designed to build up trade

centers; nor that the lesser charge for the longer haul is merely a continuation of favorable rates under which trade centers or industries have been built up. *Re Southern R. & Steamship Assn.* 278.

12. The fact that long haul traffic will only bear certain rates is not reason for carrying it for less than cost at expense of other traffic. *Id.*

13. The "circumstances and conditions" touching transportation to and from Mexico through El Paso, Texas, by Texas & Pacific R. Co., are so substantially different from those surrounding transportation to other points as to justify the establishment of lower rates than charged at points where the distance and haul are shorter. *Re Texas etc. R. Co.* (U. S. C. Ct. La.) 80.

14. Where in proceeding against several connecting roads for violation of section 4, one claims that its only participation consisted in sharing in low charges on long haul, complaint should not be dismissed against it. *Boston & A. R. R. Co. v. Boston & L. R. R. Co.* 571.

15. The sole grievance of petitioning road in such case being that defendant company accepted through traffic at lower rates than itself, the petitioner has no standing to maintain the proceeding. *Id.*

16. The desire to have the Act construed will not support such proceedings. *Id.*

17. The right to make greater charges for short than for long haul depends upon peculiar circumstances and conditions in each case. *Id.*

18. Complainant must not necessarily have pecuniary interest to be entitled to be heard. *Id.*

19. The Vermont State Grange has such interest that it may raise the question and the proceeding is maintainable upon its petition. *Id.*

20. Where several companies join in joint tariff, those making greater charges must justify it. *Id.*

21. Defendant companies permitting through business to be done over their tracks, by the National Despatch Line, are responsible for long haul rates. *Id.*

22. A complaint, in effect asking from the Commission an order requiring defendant roads to receive freight at Schenectady for transportation to Boston, for rates less than are now charged by some roads for transportation of like freights to Boston from stations nearer Boston, under substantially similar circumstances and conditions must be dismissed. *Thatcher v. Fitchburg R. Co.* 856.

23. Complaints for violation. *Allen v. Louisville, New Albany & C. R. Co.* 586, 621; *Boston & Albany R. Co. v. Boston & Lowell R. Co.* 291, 400, 500, 557, 571; *Business Assn. of Minnesota v. Chicago, & N. W. R. Co.* 483; *Same v. Chicago, St. P. M. & O. R. Co.* 483, 591; *Farrar v. East Tennessee, Va. & Ga. R. Co. et al.* 754; *Friend v. Southern Pacific R. Co. et al.* 58, *Koehler Re*, 817; *Raymond v. Chicago, B. & Q. R. Co.* 592.

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II. SUSPENSION OF FOURTH SECTION.

24. Order for suspension must be based upon investigation. *Jurisdiction of Commission*, 73.

25. The cases in which the Commission is authorized to make orders for suspension of operation of Act are exceptional. *Id.*

26. Mere probability that injury will result will not authorize Commission to direct suspension. *Id.*

27. The Act does not authorize the Commission to require exceptions. *Thatcher v. Fitchburg R. Co.* 856.

28. The Commission will not grant a general suspension of section 4 of Act, but will give relief only as to traffic between specified points. *Re Richmond etc. R. R. Co.* 32.

As to Particular Roads.

29. Atchison, Topeka & Santa Fé R. Co. 1, 27, 58; Cape Fear & Yadkin Valley R. Co. 31; Cincinnati, N. O. & T. P. R. Co. 28; Detroit, Grand Haven & Milwaukee R. Co. 17; Illinois Central R. Co. 21; Louisville & Nashville R. Co. 278; Louisville, N. O. & T. R. Co. 21; Newport News & Miss. Valley R. Co. 21; New York, Phila. & Norfolk R. Co. 21; Norfolk & Western R. Co. 21; Norfolk Southern R. Co. 28; Northern Pacific R. Co. 27; Richmond, Fredericksburg & Potomac R. Co. 21; St. Louis & Cairo Short Line R. Co. 21; St. Louis & San Francisco R. Co. 27; Southern Pacific R. Co. 16, 27; Southern R. & Steamship Assn. 15, 17, 21; Tennessee & Ohio R. Co. 21; Texas & Pacific R. Co. 23, 30.

III. APPLICATIONS FOR SUSPENSION.

30. Applications must be made by petition, stating relief desired and points between which authority is asked to charge less; and verified by officer or agent of petitioner. *Rule 2, Appendix I*, 841.

31. Application for exceptions under Act will only be granted after investigation upon verified petition. *Re Southern Pac. R. R. Co.* 16.

32. Notice must be published by petitioner in not less than two newspapers along the line for at least ten days prior to presentation of petition, stating nature of relief applied for and time of presentation of application; proof of each publication must be filed with petition. *Id.*; *Rule 2, Appendix I*, 841.

Proceedings for Suspension.

33. Atlantic & North Carolina R. Co. 292; Central R. & Banking Co. 15; Chicago, St. Paul, Minneapolis & Omaha R. Co. 24, 63; Indianapolis, Decatur & Springfield R. Co. 15; Evidence at Atlanta, 76; Evidence at Memphis, 62, 63, 72, 212; Evidence at Mobile, 186; Evidence at New Orleans, 62, 179; Fruit Interests of California, *Re*, 23; Gullett Cotton Gin Co. *Re*, 68; Iowa Barb Steel Wire Co. *Re*, 21, 605; Lake Shore & M. S. R. Co. 63, 292; Louisville & Nashville R. Co. 15, 278; Louisville, New Orleans & Texas R. Co. *Re*, 21; Manufacturers & Jobbers Union v. Minneapolis & St. L. R. Co. 483, 630; Meadville & Louisville R. Co. 292; Minneapolis & Northwestern R. Co. 73; New York C. & H. R. R. Co. 63;

New York, Phila. & Norfolk R. Co. v. Atlantic Coast Line, 447, 582; Oregon R. & Nav. Co. *Re*, 62; Pacific Mail Steamship Co. 293; Pacific Pine Lumber Co. 23; Palatka, Fla. 72; Pittsburgh & L. E. R. Co. 63, 292; Prescott, Arizona, 72; Queen & Crescent R. Co. System, 78; Redwood Mfg. Asso. 23; *Re* Richmond & Allegheny R. Co. 22; *Re* Southern Pacific R. Co. 16, 25; Southern R. & Steamship Asso. 15, 17, 76, 278; Sultan & Co. 293; *Re* Union Pacific R. Co. 60; Western & Atlantic R. Co. 15; *Re* Wisconsin Cent. R. Co. 21.

BRIEFS AND NOTES.

Rules. *Note*, 868.

MAXIMS.

1. *Omne majus continet in se minus*. Dis. Op. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 42.
2. *Sic utere tuo ut alienum non laedas*. *Ex parte Koehler* (U. S. C. Ct.) 819.

BRIEFS AND NOTES.

Expressio unius est exclusio alterius. (U. S. C. Ct. N. J.) 416.

MISSIONARIES.

Missionaries may have reduced rates. *Re Religious Teachers*, 21.

NAVIGABLE WATERS.

1. Navigable waters of the United States are those which form by themselves or by uniting with others a continuous highway for commerce with other States. Cited in *Decker v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. Y.) 441.

2. The control of navigable waters constituting channels of communication between States and foreign countries, is within the commercial power of Congress. Cited in *Gloucester Ferry Co. v. Pennsylvania* (U. S. Sup. Ct.) 988.

3. Congress may authorize a private corporation to occupy the navigable waters within a State and appropriate soil under them, for purposes of interstate commerce, without consent of State. *Stockton v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. J.) 411; *Decker v. Baltimore etc. R. R. Co.* (U. S. C. Ct. N. Y.) 434.

4. Act of Congress of June 16, 1886, authorizing construction of bridge across Staten Island Sound, known as Arthur Kill, etc., is valid. *Id.*

5. Fifth Amendment of Federal Constitution does not apply in such case. *Id.*

6. The shores of navigable waters and the soil under them were not granted by the Constitution to the United States but were reserved to the States respectively. Cited in *Id.* 441.

NEGROES. See COLORED PERSONS.

NONRESIDENTS. See COMMERCE, II, b.

OATH. See AFFIDAVITS.

OFFICE AND OFFICER. See AFFIDAVITS.

INTER S.

OVERCHARGE.

1. Hearing of complaint of people of Hot Springs, N. C., against the Western, North Carolina Railroad Company for overcharge in passenger rates; upon company's promise to refund excess, the case was permitted to remain open for a few days to see if company fulfilled promise. *Hot Springs v. Western N. C. R. R. Co.* 816.

2. Complaint for overcharges withdrawn where complainant's receipt in full settlement for overcharges was shown by respondent. *Stahl v. Oregon R. & Nav. Co.* 814.

PARALLEL LINES. See CHARGES AND DISCRIMINATION, 9.

PARTIES. See PLEADING AND PRACTICE, 1.

PASSENGERS. See BAGGAGE; CHARGES AND DISCRIMINATION, VI.

1. It is unjust discrimination to remove a colored passenger holding a first class ticket from a first class car to a second class car, less clean and comfortable. *Heard v. Georgia R. Co.* 493, 719. *Council v. Western & A. R. Co.* 292, 355, 638.

2. The separation of white and colored passengers is not unlawful if the accommodations are equal in all respects. *Id.*

3. The Commission declines to proceed on the plaintiff's claim for damages, for injuries done in his violent removal from car, leaving him his remedy in the courts. *Id.* 638.

PASSES.

1. Section 2 of Act prohibits giving of passes to particular persons; and the exception allowed in section 22 in favor of officers and employees of road does not include the families of such persons. *Ex parte Koehler* (U. S. C. Ct. Or.) 817.

2. Complaint charging use of free pass by Territorial Judge of Dakota. *Tuttle v. Northern Pac. R. R. Co.* 483, 588.

3. In the absence of an actual case, the Commission will not pass upon the question of passes to the United States Fish Commission. *Re United States Commission of Fish and Fisheries*, 606.

PETITION. See PLEADING AND PRACTICE, I.

PILOTAGE.

Pilotage regulations are susceptible of state regulation. Authorities cited in Dis. Op. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 41.

PLEADING AND PRACTICE.

I. COMPLAINT; PARTIES.

II. ANSWERS.

III. AMENDMENT.

IV. PRACTICE.

BRIEFS AND NOTES.

See AFFIDAVITS; COMMISSION; DEPOSITIONS; DISMISSAL AND DISCONTINUANCE; HEARING; JURY; REHEARING; RULES.

FOR PLEADINGS under various sections of Act, See various TITLES.

I. COMPLAINT; PARTIES.

1. **Complaint under section 13** must be by petition, stating facts claimed to be a violation of the Act, and verified; as many written or printed copies of the complaint must be presented as there may be respondents; names and addresses must be set forth and indorsed upon the writ; and a copy is to be served upon each respondent by mail or personally with notice, to satisfy the complaint or answer within time specified. *Rule 4, Appendix I, 841.*

2. Application for exception under Act will only be granted after investigation upon verified petition. 15; *Re Southern Pac. R. R. Co. 16.*

3. Carrier must be made a party where merit of controversy cannot be determined without it. *Riddle v. Pittsburgh & L. E. R. Co. 778.*

4. To test the reasonableness of a through rate, all the roads responsible for it should be made defendants. *Allen v. Louisville, N. A. & O. R. Co. 621.*

5. The person aggrieved should complain in his own name; a complaint by a ticket broker having no interest in the transaction will not be entertained. *Ottinger v. Southern Pac. R. R. Co. 607.*

II. ANSWERS.

6. Answers, verified, must be filed with the Commission within twenty days from notice, unless a shorter time is prescribed, and a copy served upon complainant. *Rule 5, Appendix I, 841.*

7. If respondent makes satisfaction before answering, the written acknowledgment thereof must be filed and may be set forth in answer; if made after service of answer, a supplemental answer may be filed. *Id. 842.*

8. Upon failure to answer, the Commission will take proof and make order. *Rule 8, Id. 842.*

III. AMENDMENT.

9. Pleadings may be amended in discretion of Commission. *Rule 10, Appendix I, 842.*

10. Practice of the Commission in allowing amendments is to be limited under rules of law; amendments to complaint, introducing new charges, not allowed. *Riddle v. Baltimore & O. R. R. Co. 701.*

11. Complaint against railroad company stating that it had been previously in the hands of a receiver who was now president, was allowed to be amended so as to show existence of receivership which it appeared on hearing was still in existence. *Reynolds v. Western New York & P. R. Co. 685.*

IV. PRACTICE.

12. Powers and proceedings of Commission. *Letter of Chairman Cooley, 408.*

13. Practice and proceedings shall be as simple as possible. *Associated Wholesale Grocers v. Missouri P. R. Co. 821.*

14. Letter of Chairman Cooley in response to communication expressing desire that Commission

would go to certain State and there hear testimony in certain cases then pending at issue, and such other cases as may have arisen in that State; suggestion in letter that facts be put in writing and that counsel make diligent effort to bring within smallest possible compass the necessity for oral evidence. 446.

15. Orders for suspension must be based upon investigation. *Jurisdiction of Commission, 78.*

16. Leave should be granted to withdraw petition when petitioner alleges legality of practice sought to be authorized. *Re Export Trade of Boston, 25.*

17. If, at hearing, defendant company avows purpose to comply with law, the Commission must act upon the assumption that defendant will do so, until it has evidence that the purpose is not lived up to. *Holbrook v. St. Paul, M. & M. R. Co. 838.*

18. A motion to dismiss a complaint denied because no notice of motion had been given and the object of the motion was to reach the merits of the case and to have them passed upon summarily instead of at final hearing. *Associated Wholesale Grocers v. Missouri P. R. Co. 821.*

19. Where after the examination of the evidence upon a complaint charging unjust discrimination and unlawful preference in tariff of rates, but before the announcement of the opinion, the respondent conceded the relief sought and published a tariff of rates in accordance with the complaint, the Commission only made a report to complete the record of the case. *Manufacturers & Jobbers Union v. Minneapolis & St. L. R. Co. 630.*

20. When an important question is raised by the pleadings, but the parties neither by evidence nor by argument supply the Commission with information as to it, it will not be decided. *Rice v. Louisville & N. R. Co. 723.*

BRIEFS AND NOTES.

Rules of practice. *Notes, 872.*

POLICE REGULATIONS. See COMMERCE, II, c.

PRACTICE. See PLEADING AND PRACTICE, IV.

RAILROAD COMPANIES. See AGENTS AND BROKERS; BAGGAGE; BILL OF LADING; CHARGES AND DISCRIMINATION; COMMERCE; CONNECTING LINES; LONG AND SHORT HAUL; PASSENGERS; RATES.

RATES. See CHARGES AND DISCRIMINATION; SCHEDULES.

1. The Commission has no power to make rates generally, but only to determine whether rates imposed by railroads are in conflict with statute. *Thatcher v. Fitchburg R. R. Co. 856; Re Theatrical Rates, 18.*

2. But the Commission has power to regulate fares and freights for transportation between different States. *Phila. etc. Steamship Co. v. Pennsylvania (U. S. Sup. Ct.) 308.*

3. A state statute cannot regulate rates

for interstate commerce. *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 31.

4. Rates should be so **relatively reasonable** as to protect communities and business against unjust discrimination. *Boards of Trade Union v. Chicago, M. & St. P. R. Co.* 608.

5. A carrier operating **parallel lines**, and accepting lower rates on one line, should make corresponding charges on other line. *Id.*

6. Rates are not to be lower for **commercial travelers** than for general public. *Associated Wholesale Grocers v. Missouri Pacific R. Co.* 321, 398; *Larrison v. Chicago & Grand Trunk R. Co.* 369.

7. Nor for **land explorers** and settlers. *Smith v. Northern Pac. R. Co.* 611.

8. But may be reduced for **religious teachers** and as act of charity. *Re Religious Teachers*, 21.

9. A carrier may make **special rates** with individuals, to enable the latter to make proposals to the Interior Department for transportation of Indian supplies, such **transportation** being for the United States. *Re Indian Supplies*, 22.

10. Twenty-five dollars for 1,000 miles is not unreasonable for a **mileage ticket**. *Associated Wholesale Grocers v. Missouri Pacific R. Co.* 321, 398.

11. Carriers charged with exorbitant rates may **change rates before hearing**. *Fulton v. Chicago etc. R. Co.* 375.

REBATE.

A discount allowed by a railroad company where consignments of coal in one year shall amount to 80,000 tons or upwards is an unjust **discrimination**. *Providence Coal Co. v. Providence etc. R. R. Co.* 863.

REFUSAL TO FURNISH CARS. See CHARGES AND DISCRIMINATION, IV.

REHEARING.

The Commission will **not** order a rehearing involving expenses to parties, **unless** satisfied that the **result** might be **changed**. *Riddle v. Pittsburgh & L. E. R. Co.* 773.

RELIGIOUS TEACHERS.

Religious teachers may have reduced **rates**. *Re Religious Teachers*, 21.

REMOVAL OF CAUSES.

Iowa Act of April 6, 1886, seeking to make right of **foreign corporations** to transact business in that State dependent upon surrender of right to remove causes to federal courts, is invalid. *Barron v. Burnside* (U. S. Sup. Ct.) 295.

RIVERS. See NAVIGABLE WATERS.

RULES.

1. **Sessions** of Commission held at Washington No. 1315 F. St. northwest, at 11 o'clock, daily, except Saturdays and Sundays. When special sessions are held elsewhere, necessary regulations will be made. *Rule 1, Appendix I*, 841.

INTER 8.

2. **Applications under section 4** (Long and Short Haul section), to be made by verified **petition**, stating extent of relief desired and points between which authority is asked to charge less. *Rule 2, Id.*

3. **Notice** to be published by petitioner in two newspapers along line for ten days prior to presentation of petition, stating nature of relief applied for and time of presentation of application; proof of each publication to be filed with petition. *Id.*

4. **Investigation** will be made by **Commission** at time and place designated, where testimony will be received. *Rule 3, Id.*

5. **Complaint under section 13** must be by verified petition, stating facts claimed to be violation of Act; as many **copies** of complaint must be presented as there are respondents; **names and addresses of parties** must be set forth and indorsed upon writ; and copy is to be **served** upon each respondent, with notice to satisfy complaint or answer within time specified. *Rule 4, Id.*

6. **Answers**, verified, must be **filed** with Commission within twenty days from notice, unless shorter **time** is prescribed; and copy served upon complainant. *Rule 5, Id.*

7. If respondent makes satisfaction before answering, written acknowledgment thereof must be filed and may be set forth in answer; if made after service of answer, **supplemental answer** may be filed. *Id.* 842.

8. Carrier deeming complaint insufficient may serve notice for **hearing** on it **without answer**; facts stated are admitted. Motion to dismiss for insufficiency may be made at hearing. *Rule 6, Id.*

9. **Adjournment** and extension of time is within discretion of Commission. *Rule 7, Id.*

10. Upon **issue** being **joined**, time and place of **hearing** will be assigned; witnesses examined orally before Commission, except where otherwise ordered; petitioner has burden of proof. *Rule 8, Id.*

11. Upon **failure to answer**, the Commission will take proof and make order. *Id.*

12. **Subpenas** will be issued by any commissioner and will be required to be obeyed. *Rule 9, Id.*

13. **Depositions** may be taken as printed by U. S. R. 8., §§ 863, 864 without application to Commission. *Rule 9, as amended; Appendix II*, 843; 410.

14. **Amendments** of pleadings are in discretion of Commission. *Rule 10, Appendix I*, 843.

15. **Copies** of petition, opinion, etc., will be furnished upon payment of expense thereof. *Rule 11, Id.*

16. **Affidavits** may be taken before any officer authorized to administer oath. *Rule 12, Id.*

BRIEFS AND NOTES.

Rules of practice. *Note*, 872.

RULINGS.

1. The Commission will **not** make any ruling where **petitioner alleges legality**

of practice sought to be authorized. *Re Export Trade of Boston*, 25.

2. The Commission can not construe the Act before violation thereof charged. *Re Order of Railway Conductors*, 18; *Re Theatrical Rates*, 18; *Re Inmates of Nat. Homes*, 78, 75.

SCHEDULES.

1. When purposes of Act seem to be fully accomplished by rate sheets as printed, and no one complains, Commission may not feel inclined to interfere on its own motion where sheets are printed in smaller type than prescribed by Act. *Re Rate Sheets*, 816.

2. Any one member of a joint combination may file copies of joint tariff for all the members. 76.

3. Neglect to publish rates for mileage tickets is violation of Act. *Larrison v. Chicago etc. R. R. Co.* 369.

4. Complaint alleging violation of section 6. *Plummer v. Union Pac. R. Co.* 596.

SERVANTS. See EMPLOYEES.

SESSIONS. See RULES OF COURT, 1.

SETTLERS.

Land explorers and settlers are not entitled to lower rates than the general public. *Smith v. Northern Pac. R. R. Co.* 611.

SHIPPING FACILITIES. See CHARGES AND DISCRIMINATION, IV, V.

SHIPS AND SHIPPING. See COMMERCE, 17, 26.

SLEEPING CARS.

A state tax upon sleeping cars of a company, used in carrying passengers into and out of the State, is void as a regulation of interstate commerce. *Indiana v. Woodruff Sleeping & Parlor Coach Co.* (Ind. Sup. Ct.) 798; S. P. cited in *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 81.

SPECIAL LAWS. See CONSTITUTIONAL LAW.

STATE. See COMMERCE, II.

STATIONS. See DEPOTS.

STATISTICS. See DEPARTMENT OF STATISTICS.

STATUTES. See ACT TO REGULATE COMMERCE; CONSTITUTIONAL LAW.

The Interstate Commerce Act does not afford a remedy for transactions occurring before it took effect. *Ottinger v. Southern Pac. R. Co.* 607.

SUBPENA. See RULES, 12.

SUSPENSION OF LONG AND SHORT HAUL SECTION (§ 4).
See LONG AND SHORT HAUL.

TARIFFS. See SCHEDULES, 2; JOINT TARIFFS.

TAXES. See COMMERCE, II.

TELEGRAPH COMPANIES.

1. Intercourse by telegraph between INTER 8.

States is interstate commerce, and State has no authority to regulate same. *Western Union Tel. Co. v. Pendleton* (U. S. Sup. Ct.) 806. S. P. cited in *Wabash etc. R. Co. v. People* (U. S. Sup. Ct.) 87.

2. Indiana Statute regulating mode in which messages sent by telegraph companies, doing business in that State, shall be delivered in other States, is void, as an interference with interstate commerce. *Western U. Tel. Co. v. Pendleton* (U. S. Sup. Ct.) 806.

TESTIMONY.

1. In matter of various petitions for suspension of section 4 in proceedings at Atlanta, Georgia. 76.

2. In proceedings at Mobile, 186; at New Orleans, 179; at Memphis, 218.

3. In *Boston & Albany R. R. Co. v. Boston & Lowell R. R. Co.* 500.

4. On application charging discrimination in favor of New York, in rates to Chicago, as against Boston. *Re Export Trade of Boston*, 18, 28.

5. In proceeding against Providence & Worcester Railroad Company for discrimination. *Providence Coal Co. v. Providence etc. R. R. Co.* 816.

6. In proceeding against Pennsylvania Railroad Company for unlawful preference in interchange of passengers at Chicago. *Chicago & Alton R. R. Co. v. Pennsylvania R. R. Co.* 293.

7. On petition charging refusal to furnish cars. *Re Thatcher*, 817.

8. On complaint against Western & Atlantic Railroad Company for damages for forcible ejectment from first class car of colored man holding first class ticket. *Council v. Western etc. R. R. Co.* 855.

THEATRICAL RATES.

The Commission will not say in advance of violation of Act what rates company shall make for any class or organization of persons. *Re Theatrical Rates*, 18.

TICKETS.

1. Carriers may continue issuance of mileage passenger tickets at reasonable prices, free from discrimination. *Larrison v. Chicago etc. R. Co.* 369.

2. Neglect to publish rates for mileage tickets is violation of Act. *Id.*

3. Twenty-five dollars per 1,000 miles is not an unreasonable rate for mileage ticket. *Associated Wholesale Grocers v. Missouri Pac. R. R. Co.* 898.

4. A sale of mileage tickets to commercial travelers at a lower rate than to other passengers is an unjust discrimination. *Id.*; *Larrison v. Chicago etc. R. R. Co.* 369.

5. A release of liability by commercial travelers is not a good consideration for such discrimination. *Id.*

6. Rate at which excursion or commutation tickets are sold does not entitle mileage ticket purchaser to complain of unjust discrimination if charged a higher rate. *Associated Wholesale Grocers v. Missouri Pac. R. R. Co.* 898.

7. The Act does not require **one company** to **sell** through **tickets** over road of **another**. *Chicago etc. R. R. Co. v. Pennsylvania Co.* 857.

UNDERBILLING. See CHARGES AND DISCRIMINATION, 44-48.

UNITED STATES.

1. United States may **condemn land** **with-**
in State without consent of State. *Stockton*
v. Baltimore etc. R. R. Co. (U. S. C. Ct. N. J.)
411.

2. Fish and eggs, distributed by the **United**
States Commission of Fish and Fisheries,
are entitled to **free transportation**.
Re United States Commission of Fish and Fish-
eries, 606.

3. In the absence of an actual case, the Com-
mission will not pass upon the question of
passes to the United States Fish Commission.
Id.

INTER 8.

4. A carrier may make **special rates** with
individuals to enable the latter to make pro-
posals to the Interior Department for transpor-
tation of Indian supplies, such **transporta-**
tion being for the United States. *Re Indian*
Supplies, 22.

USAGE. See CUSTOM AND USAGE.

WAREHOUSEMAN. See COMMERCE, 28.

WATERS AND WATERCOURSES.
See NAVIGABLE WATERS.

WHARFAGE. See COMMERCE, 18-21.

WITNESS.

Subpenas will be issued by any commis-
sioner and will be required to be obeyed. *Rule*
9, Appendix I, 842.

END OF VOLUME I.

